

**Town of Cumberland  
Board of Adjustment and Appeals  
Minutes of Meeting  
Thursday, December 9, 2010**

**I. Call to Order:**

The meeting was called to order at 7:00 p.m.

**II. Roll Call:**

**Present:** Scott Wyman, Chair, Andrew Black, Matt Manahan, David Joyce, Christian Lewis

**Absent:** Adrian Kendall, Mike Martin, Ron Copp

**Staff:** Bill Longley, Code Enforcement Officer, Pam Bosarge, Board Clerk

Mr. Wyman welcomed the applicants and gave an overview of the rules of procedure for the meeting.  
Mr. Wyman stated there would be an opportunity for public testimony.

**III. Hearings and Presentations:**

- 1. Special Permit: The Town of Cumberland requests a special permit for gravel extraction at the Town's gravel pit at Goose Pond Road, Tax Assessor map R07, Lot 48 in the Industrial (I) district.**

Mr. Longley presented information as follows: The applicant is the Town of Cumberland requesting an annual renewable permit. This evening Chris Bolduc, Director of Public Services is present to review the application. This annual renewable permit is typically requested earlier in the year; normally there is a question from the Board as to any issues or violations or known complaints. To his knowledge there are no complaints.

Mr. Bolduc stated he is present to answer any questions from the Board, and there have been no complaints. This is an annual renewal process the Town must go through under the new ordinance review we are looking at a five year renewal process which hasn't been approved by the Council.

Mr. Wyman stated the Town Council has enacted a moratorium on new permits, but this is a renewal and does not fall under that category.

Mr. Bolduc stated that is correct, the moratorium is for new gravel extraction permits; this is an existing gravel permit.

Mr. Wyman asked Mr. Bolduc if he had reviewed the previous findings from the Board, and asked if anything had changed.

Mr. Bolduc stated yes he has reviewed the previous findings and nothing has changed.

Mr. Manahan asked if the town missed the 2009 application.

Mr. Longley answered yes; Mr. Ogden was the last person before the Board. Bill Landis was Public Services Director prior to Mr. Bolduc. You may recall the Board asked for a five year renewal once an applicant had been through five annual renewals. That process was approved at the Planning Board level

and forwarded to the Town Council. It doesn't appear to have been voted by the Council, so the Town is back before the Board for renewal.

Mr. Manahan asked assuming no comments from the audience we could adopt the same findings it would be pro forma.

**Mr. Wyman asked for testimony from the public in favor of the application. There were none. He asked for testimony in opposition. There were none. He asked if there was testimony neither for nor against but on a neutral basis. There was none. The public portion of the meeting was closed.**

Mr. Manahan moved to grant the special permit to the Town of Cumberland for a special permit for gravel extraction at the Town's gravel pit at Goose Pond Road; Tax Assessor Map R07, Lot 48 in the Industrial (I) district and adopting the same findings and conclusions as we adopted when the Board approved this same permit in 2008.

Mr. Lewis seconded.

VOTE: Unanimous

**2. Interpretation Appeal: Susan and Spence Bisbing of 2 Spruce Lane appeal the decision of the code Officer regarding the compliance of an existing home occupation at 21 Foreside Road, Tax Assessor Map U01, Lot 26 in the Low Density Residential (LDR) district.**

Mr. Longley gave an overview as follows: There have been several conversations and meetings with the Bisbings in regards to a neighbor who was granted a home occupation almost ten years ago. To date I have found none of the suggested violations to be inconsistent with either the Board's granting of the Home Occupation or with any plans that were presented to the Board as to how they were going to do business. I wrote a memo back in August 2009. There was an appeal of that memo and the Board chose not to allow the appeal. Since then the Court has found that the Bisbings have a right to be heard, and hence we are here tonight.

Mr. David Hirshon, Esq. stated he was present on behalf of Spence and Susan Bisbing. The Bisbings have lived in their home in Cumberland since 1980, about thirty years. About twenty years after they moved into their present home their neighbor requested a special exception in connection with a home occupation. That was granted in August of 2000. In connection with that application of the neighbors seeking home occupation there were several neighbors who objected to the granting of that application including the Bisbings. The Brouder's presented in 2000 a business plan and as a result of the hearing before the Board their special exception for a home occupation was granted. As part of that process the Board stated in part the home occupation or the business "is to run in accordance with the business plan presented". The Brouder's presented in 2000 their business plan and based on that plan the special exception was granted. The business plan has a number of components, but the two that bring them before the Board this evening are stated rather succinctly at page one, and page three of the business plan dated August 8, 2000 (included in your packets). Page one stated "However privacy is important to us and we will do our best to be as inconspicuous as geography and plantings will allow"; page three as item # 4, 5 the Brouder's stated "We will preserve and improve the exterior appearance of our home, studio, and grounds. While not invisible we will make our in-home studio as inconspicuous as possible to neighboring properties".

Based upon those specific representations the special exception was granted. In 2009 his clients complained to the Code Enforcement Officer (CEO) in connection with the Brouder's. The complaints were based in part upon light emanating from the Brouder's property in connection with the home occupation. This light creates problems for Dr. Bisbing who as an emergency physician with different working hours than the normal 8:00 to 5:00. He was having problems sleeping because of light from the house. Complaints had nothing to do with noise, or traffic, but essentially with lighting. As a result of

their complaint the CEO conducted an investigation. There were at least two emails generated by Mr. Longley before his opinion letter in which he referred to on August 28, 2009. One email among others states: "with review of the file and conversations with people in the neighborhood don't see that anything needs to be done. The e-mail continues to state Item # 1: the business hours of operation have recently been less than stated due to the economy. That is not the issue; the hours of operation were not the issue. # 2: the upkeep is consistent with other homes in the area and a substantial investment has been made on items that don't show from the road.

Mr. Manahan asked if the Board had this document.

Mr. Longley stated it is not part of the submittal but is part of the file.

Mr. Wyman stated we discussed Mr. Longley's correspondence in a previous meeting.

Mr. Longley stated it is probably in a previous packet; there are two emails and he has paraphrased fairly substantially what I said.

Mr. Hirshon continued to quote another of Mr. Longley's e-mail dated February 4; which said in part the Code Officer had held discussions with other neighbors. And that maintenance of the structure is not an item that is easily enforced. If a homeowner states I have spent substantial money on the upkeep of my home \$250,000, existing of new insulation, heating system and those were the type of things intended in the wording of his letter. If the walls need a coat of paint this year or next that is not something I can require under the building code. If the business plan stated that the owner would paint the building every two years that would be a restriction that would be enforceable. However, the language in the special exception is vague and ambiguous. Mr. Hirshon stated he doesn't necessarily disagree with that however, that is not the basis of the complaint. As he mentioned if you look at the special exception there are two specific areas that state they will make their in-home studio as inconspicuous as possible to neighboring properties as plantings and geography will allow. And that is basically the Bisbing's position that Mr. Longley failed to address this is the substance of their complaint. They weren't complaining about the Brouder's hours of operation, or traffic; but they were complaining that they couldn't sleep because of lighting that was not being blocked. Contrary to what the Brouder's represented to this Board; they have not done anything to make their property as inconspicuous as plantings allow. He could argue that they haven't fixed this place in ten years; we are not looking for that discussion. We are simply saying they need to do some plantings. He and the Bisbings can't understand how this board can approve a request based upon specific recommendations the recipient do nothing and the Board conclude it is okay. It is clear that the point continues to be missed. Mr. Longley presented three recent letters from neighbors; these neighbors live on Route 88 and the issue that concerns his clients doesn't concern any of them. Secondly, these letters in part refer to noise.

Mr. Manahan stated he hasn't heard evidence with these two items, being:

1. Privacy is important to us and we will do our best to be as inconspicuous and geography and plantings allow. Which says they will try to be inconspicuous and if necessary they will add plantings; so the first question is how conspicuous or inconspicuous is their property and therefore are plantings necessary.
2. The second point: we will preserve and improve the exterior appearance of our home, studio, and grounds while not invisible we will make our home occupation as inconspicuous as possible to neighboring properties. Mr. Manahan asked for evidence that it is more conspicuous than it should be. Do you have photos or evidence that it is problematic?

Mr. Hirshon stated there is a photo in the applicant's packet.

Mr. Manahan stated he had seen a photo; but it wasn't clear.

Mr. Hirshon stated he would have the Bisbing's explain it to the Board.

Mr. Black asked about the role of the Board in this instance; based on the Superior Court's decisions. What is the effect of any decision it makes and what sort of deference do we give to the Code Officer or standard of review we apply to his decision.

Mr. Hirshon stated it depends on their perspective; clearly one interpretation is that you have an advisory role. As an example if you decide there should be plantings the CEO is probably not required to follow your recommendation. And the applicant probably doesn't have basis for an appeal. I think that is a fair interpretation of the Superior Court decision and existing case law.

Mr. Black asked what standard of review we give the Code Enforcement Officer's decision.

Mr. Hirshon stated there is nothing he saw in our ordinance that would require the Board to give any deference to the decision or recommendation to the Code Enforcement Officer.

Mr. Joyce asked a related question is it your burden to prove there is a violation or is it the permit holder's burden to prove they are in compliance.

Mr. Hirshon stated he would like to say it is the permit holder's, but he believes it is their burden to prove there is a violation of the special exception.

Mr. Wyman stated you did refer to lighting in your opening remarks, is that interior or exterior lighting.

Mr. Hirshon stated it doesn't matter, the source of the light is coming from the home occupation; and whether it is interior or exterior is irrelevant. There is nothing in the special exception that differentiated between interior or exterior lighting; they stated the home occupation would be as inconspicuous as possible. If it is for example interior lighting you could make it inconspicuous in a number of different ways.

Mr. Wyman stated lighting would not be a factor if it was used as a guest house; because it was built as a guest house. If there were guests using the structure and the lights were on would that make a difference? Or if the building was used as a place to read, would the lighting make a difference?

Mr. Hirshon stated the plantings are a method to resolve the lighting issue; we are looking for a solution. The purpose of the plantings would be to mitigate problems arising from their failure to comply with the granting of the special exception.

Mr. Lewis clarified that lighting is one complaint.

Mr. Hirshon stated yes, that is the primary complaint.

Mr. Lewis stated clarified that traffic noise etc. are not the complaint only light.

Mr. Hirshon stated yes that is correct.

Mr. Lewis stated plantings may be one of many solutions.

Mr. Hirshon stated yes, but plantings seem like the most practical and reasonable solution.

Mr. Manahan asked if you are alleging that lighting violates the two sentences in the August 8, 2000 letter referring to being inconspicuous as possible. The statements in their letter are very subjective statements; I need to hear evidence on how you can show there is a violation of those two provisions.

Mr. Hirshon stated if someone submits an application and says I will make this studio as inconspicuous as possible and then does nothing whatsoever, which is an inconsistency there was a representation that something was going to be done. There has been nothing done whatsoever, clearly there was an acknowledgement of a problem or an issue.

Mr. Manahan stated this Board listens to the evidence and if there are concerns raised we include specific conditions such as x, y and z. The applicant stated they are willing to do whatever is necessary, it is quite a subjective requirement to say make as inconspicuous as possible and expect the applicant to do something. You are saying they should be held to a standard that we the Board didn't require in 2000, but now retroactively we should impose something onto them by reading into their document something that we should have included as a specific condition, which the Board normally does when they see an issue.

Mr. Hirshon stated he was not present in 2000, but by virtue of the business plan submitted with these representations the Board clearly acknowledged the problem and it was resolved by essentially allowing the Brouder's application to be granted with the understanding that if necessary they would take certain actions consistent with the plan to prevent problems from occurring down the road.

Mr. Manahan asked if necessary in whose judgment?

Mr. Hirshon stated if someone has a complaint it is stated to the Code Enforcement Officer. It doesn't necessarily mean the Code Enforcement Officer's judgment is correct. We are before you this evening because the Court recognized we have a basis to present an appeal. If you agree the Code Enforcement Officer may not have to do what you order him to.

Mr. Manahan stated we can't order him to do anything; this is an advisory ruling.

Mr. Hirshon stated it would be very unusual for a Board to meet, take evidence, and issue what could be an advisory decision, and have it ignored by the Code Enforcement Officer.

Dr. Spence Bisbing of 2 Spruce Lane stated when they purchased their house the Brouder's studio was used as a guest house; which was used very infrequently. Currently on a nightly basis the Brouder's have taken the action of installing an outside light; they have installed lighting in the window, and currently have Christmas lights. What used to be a nice dark view from our room and den where we watch TV; now has intrusive lights. Our house is without a doubt the most affected and most visible. There is no one else whose house faces the front of the building and the lighting other than us. It has had an impact in that we can't enjoy our family room (den) or the bedroom. Currently it is not an issue because the windows are closed and the shades are drawn, however; in the summer I used to be able to sleep with the windows open. Now I have to sleep with the shades closed and have an air conditioner because the lights do prevent me and my wife from sleeping. We would like to have some way to mitigate the light impact on our house.

Mr. Lewis asked the approximate distance between their house and the Brouder's.

Dr. Bisbing stated about 200 feet.

Mr. Lewis asked specifically what lights are the issues in the summertime, and you said they are not as bothersome in the wintertime.

Dr. Bisbing stated the lights are there year round, and they shine into our den; and the exterior light on a timer faces towards their property, and in the bay window there is a light on every night. They are an issue year round in the den, but not for sleeping this time of year. I can no longer sleep with the windows open.

Mr. Lewis asked which light is directed at your house.

Dr. Bisbing stated both lights have an impact.

Mr. Lewis clarified that both the interior and exterior lights have an impact.

Dr. Bisbing stated yes.

Mr. Lewis asked if the exterior light was a flood light or a spot light, and if it was pointed towards your house or down at the ground.

Dr. Bisbing stated he didn't know what type of light it was, but it is pointed downward.

Mr. Manahan asked if there were any photos of the light or a site plan showing the light. Mr. Manahan reviewed the location of the light with Dr. Bisbing.

Mr. Lewis asked what hours of the day the light is on.

Dr. Bisbing stated he didn't know it is on at dark. It was on this evening on their way to Town Hall. The light is also on when I come home from work at 1:00 or 2:00 in the morning. I don't know when the light turns off.

Mr. Black reviewed the location of the interior light, and type of light.

Dr. Bisbing stated the interior lights are in the bay window. I don't know what type of light, currently there are Christmas lights.

Mr. Black reviewed the approximate distance from Brouder's house to the Bisbing's.

Dr. Bisbing stated yes.

Mr. Black clarified the approximate distance from the bay window and asked if it beamed into his house or caused shadows.

Dr. Bisbing stated it is visible and they don't get shadows.

Mr. Black asked if the outside light cast shadows onto their property.

Dr. Bisbing stated no.

Mr. Black asked if those were the only two lights Dr. Bisbing was referring to.

Dr. Bisbing stated yes.



**Mr. Wyman asked for testimony from the public in favor of the application. There was none. He asked for testimony in opposition.**

Mr. Daniel Brouder stated he and his wife Victoria live at 21 Foreside Road; they have lived there for ten years. His wife cannot be here this evening as she is attending a trade show in Phoenix, Arizona. I will be speaking for both of us. For the record we are studio jewelers, our business is quiet, inconspicuous, and is compatible with neighboring properties. We have no sign on the street, or mail box, we make little or no noise working in our house and cottage. We have no retail customers, we do not advertise in any local papers; we have never exhibited at local art fairs and we make no attempt to attract customers to our studio. We generate no traffic our business is closed to the public. We do not publish our street address on our website; we meet our customers off premises at trade shows. Although our permit allows us to hire up to two non-family members to work for us we have only one employee Crystal Brown. She has been with them since they moved ten years ago. She is a good friend and in addition to working she watches their children when they are away in the evening. If you walk by our property there may be evidence we are at home but there is no evidence we are working in a professional capacity as opposed to pursuing a hobby. We use our garage and cottage on a regular basis during the day, after hours and on weekends for personal projects. I enjoy woodworking; we spend a lot of time working on our house and use the bay of the garage closest to Spruce Lane as a home workshop. We spend much of our free time in the studio. In the ten years they have lived and worked from their home the Bisbings are the only neighbors who have ever complained. Other neighbors including Steve and Kathy Heinz who abut our property and their house is closer to the cottage than the Bisbings have never complained about our business, cottage or the way we use it. The Bisbings argue that we have not done as much as we can to make our business inconspicuous as they would like. They support this claim by quoting a few general comments I made in a cover letter which I have never referred to as a business plan. This letter was submitted with our home occupation application ten years ago. I quote for example "however, privacy is important to us and we will do our best to be as inconspicuous as geography and plantings allow". This is one sentence in a paragraph and they omit sentences that provide needed context. For example in the same paragraph I write "this location is practically invisible to Foreside Road", I do not say you can't see it. "The garage is visible to Spruce Lane and it will be difficult to see into the studio from Spruce Lane". I do not say you can't look into the windows if you try. I did not promise to make the cottage invisible when we moved in. We own very little land in back of the garage / cottage the land is in full shade most of the days and there are already a number of big trees against the border. Planting anything against the cottage will make future maintenance difficult and may even damage the building. Contrary to the Bisbings claim that we could do more to make their property inconspicuous presumably with more plantings it is not practical. We do not have enough land to allow for planting in the back of this building. The photos submitted by the Bisbings show a modest out building with no indication of a business inside. The cottage was constructed in 1968 twelve years before the Bisbings purchased their home. The view from the front of their house is of the back of our garage. Our business and personal use of the building does not change that fact. If our cottage bothers them so much why haven't they planted a row of shrubs on their front lawn to effectively block view of our garage? Recently the Bisbings planted a row of arborvitae perpendicular to Spruce Lane. Why don't they plant along Spruce Lane to improve privacy, unlike or backyard their yard gets some sun. Instead of planting some shrubs on their land however, the Bisbings recently asked Skillin's nursery to draw up a landscape plan asking us to plant \$3,000 dollars worth of trees on two pieces of property that do not belong to either myself or the Bisbings. They gave this plan to the Code Enforcement Officer and told him this plan would be acceptable to them. I have never heard of one neighbor requesting another to plant on property that belongs to someone else. Over the last ten years we have spent hundreds of thousands of dollars renovating and restoring our property. In 2007 we proposed a major overhaul of our property along Spruce Lane as part of an extensive renovation they had planned for their home. The Bisbings objected to the master plan for the property because they proposed to cut a new driveway to Spruce Lane. This change would have allowed us to

reduce the size of the parking lot behind the main house and the cottage which is somewhat visible from Spruce Lane and the Bisbing property. The large size of the parking lot was a point of contention between a previous owner and the Bisbings. We had hoped our plan to diminish the size would be seen as a benefit to both us. A planned garage, attached mudroom workshop addition would have improved the utility and function of our antique house while affording greater privacy between our yard and the Bisbings. This new attached space would have allowed us to move some of our daily and evening activities out of the cottage away from the Bisbings and connect it to our main house. Their plan was dependent upon receiving approval by a majority of Spruce Lane members. The Bisbings lobbied heavily to reject our plans and we failed to achieve a needed majority. After our original proposal was rejected we scaled back our plans and undertook a modest renovation of the main house. We did not skimp on quality and improvements to the exterior of our home, new windows, roof, and siding; these improvements are clearly visible as you drive down Spruce Lane. The Bisbings claim we have failed to maintain, preserve, and improve the exterior appearance of our home, studio, and grounds. Could more be done, yes; the question is should the Town oblige us to spend the money to modify our property even though the Town finds no violation to please a neighbor. The last part of the Bisbing's presentation is a collection of letters written over ten years ago by neighbors who have never met us. Several of these people have now passed away; the McSallys and Steins have moved none are here tonight to speak in favor of the Bisbings or against us. What little information these people did have about us prior to us moving here came in part by speaking to Susan Bisbing. I know this because Spence Bisbing called my wife in New York the day before the August 12<sup>th</sup> meeting to tell Victoria that he thought we should know that we were not welcome in this neighbor. He also wanted Victoria to know that his wife Susan was going up and down the street asking neighbors to oppose our plan to move. This intimidating call was a shock; given we had called Susan twice to ask if they had any questions about what we do for a living. They never called back to ask questions. We moved to Maine in part because we knew several Maine artists who work from their home. None of our friends have experienced this type of hostility. Several years ago the Bisbings asked the Code Enforcement Officer to investigate us; he did and determined there was no violation. The Bisbings then went to the Town Manager; the Code Officer again determined there was no violation. On August 18, 2009 we met with the Code Officer, Town Manager, and our Attorney Richard Olsen. At this meeting we discussed in great detail both our personal and professional use of our home. The Code Officer and Town Manager agreed that the current use is legal and appropriate. Unfortunately things have gotten progressively worse; we have had to spend thousands of dollars on legal fees as the Bisbings argue allegations of wrong doings. In tonight's presentation Mr. Hirshon didn't bring up the Bisbing's claim that our in-in home studio violates a deed restriction. This claim is false this has not been brought up and this topic is not captured in the minutes of the 2000 meeting. The Bisbing's do not mention in 2009 when they first appealed the ruling. In their 2009 presentation to the Board they say "please note we have no issue with the operation of a home occupation and understand the right to do so". In the same presentation the Bisbing's provide several photos of their property taken at night. It may not be illegal to take photos of our home after dark, but frankly it is creepy. They also recorded when we turn lights on and off for a period of time and reported this information to the Code Officer. At the last Spruce Lane Association meeting that Victoria and I attended Susan attempted to discredit us by comparing us to a previous neighbor who was illegally renting the cottage many years ago. In front of other neighbors in our own home Susan stated that the property had always been a problem, and that we should be expelled from the Spruce Lane Association. We feel the Bisbing's behavior over the year's amounts to bullying. The ongoing ways to attempt to disrupt our business with vexatious unfounded claims, their night photography of our private property, the intrusive monitoring of our personal lives, all of this generates far more damage to our street and neighborhood than our studio. I ask the Board to consider the letters of support from our current neighbors and ignore letters that were written ten years ago (Submitted in the written record). We will continue to be good neighbors; we will cooperate with the Town's Code Enforcement Officer and will take steps to address reasonable and legitimate complaints. In return we ask the Board to support the findings of its Code Enforcement Officer and his determination that there is no violation at our address.



Mr. Wyman referencing the picture submitted for the current appeal; asked if there was a light in the bay window.

Mr. Brouder stated it is a desk lamp on his desk.

Mr. Wyman stated in the peak of the doorway there appears to be a light fixture is that correct.

Mr. Brouder stated yes it is a fluorescent security light; that was installed approximately two years ago.

Mr. Wyman asked if there was a hood over the light.

Mr. Brouder stated yes, it is pointed down at the ground.

Mr. Wyman asked if he knew how far the light bleeds away from the building.

Mr. Brouder stated there is approximately eleven feet of property there and it may spill over a little but certainly not out to the road. Our property abuts the Spruce Lane Park.

Mr. Wyman asked if the trees on the other side of the property were common property.

Mr. Brouder stated yes that is the property that the Bisbings wanted us to plant trees on.

Mr. Lewis asked the wattage of the exterior light.

Mr. Brouder stated it is fluorescent 75 watts; he was not sure on the luminosity. It was installed in part because my wife felt insecure going out to the studio knowing we were being photographed.

Mr. Manahan asked if there had been any vandalism or break-ins.

Mr. Brouder stated no, but with all the publicity, published in the paper we became concerned we might have a problem.

Mr. Manahan asked do they use that door.

Mr. Brouder stated no, that door goes to the furnace room.

Mr. Manahan stated when your wife goes out in the evening does this light helps her to see her way. What direction does she come from?

Mr. Brouder stated yes, she is intimidated by the neighbors and she comes from the other side of the house. The light was installed by Burleigh Electric and he obtained an electrical permit from the town.

Mr. Black asked for clarification on the purpose of the light.

Mr. Brouder stated it is a security light.

Mr. Black stated you installed this light approximately two years ago, and prior to that you didn't have the same security concern.

Mr. Brouder stated no.

Mr. Black asked if that was the door his wife uses.

Mr. Brouder stated no it is not.

Mr. Black asked using the photos submitted is the door his wife uses.

Mr. Brouder stated it is on the other side of the building.

Mr. Black reviewed the location of the house.

Mr. Brouder stated if you think of Spruce Lane as being perpendicular to Route 88 go past our main house and then past the studio.

Mr. Black asked the location of the house.

Mr. Black asked the hours that the light is on.

Mr. Brouder stated it is on a timer that goes on when it gets dark and goes off automatically late in the evening 1:00 a.m.

Mr. Black asked if there was a switch.

Mr. Brouder stated no, it is a security light; they want the house to be illuminated after hours given the publicity they have received.

Mr. Manahan asked if they were afraid the Bisbings would break in.

Mr. Brouder stated no, they are not afraid the Bisbings breaking in. My wife has been harassed repeatedly for years and when we were presented a series of photos at night we decided to install a security light.

Mr. Joyce asked if the furnace room was accessible from inside the building.

Mr. Brouder stated no.

Mr. Stephen Heinz of 3 Spruce Lane stated the Bisbings live across the street from us and the Brouder's live next door. We have lived there a little over two and a half years. We hate to see conflict between good folks in neighborhood. We owned our property for about a year and a half before we knew there was a business next door. They found out when Mr. Brouder told them, other than that it is so inconspicuous we were unaware of it. When we moved in we repaired a security light it is a mercury vapor light on the peak of the garage. There are no street lights on Spruce Lane, we had a similar light on our prior residence it gives us a feeling of comfort. I would certainly hope and encourage the Board to take a ride down Spruce Lane our light is about as bright as anything next door. The Bisbings have never said anything about our light being a problem. This controversy is poisonous to the neighborhood; it is not diminishing my property value. This is the third time I have shown up at this Board it is wasting my time and the Board's time. It is probably as a taxpayer an expense to the town as well. I know this is just an advisory decision that the Board will make tonight, please deny this appeal and support your Code Enforcement Officer and please if there is language that you can include to discourage this from going any further please include it. Thank you very much. My garage is perpendicular to Spruce Lane and is not the same situation as the Bisbings. Their lights don't shine in any of my windows.

Mr. Joyce asked if there were any windows in his house that he can see the Brouder's.

Mr. Heinz stated from his bay window he might be able to see their house.

**Mr. Wyman asked if there was anyone else to speak in opposition, anyone who wants to speak on a neutral basis. Noting we have additional letters from the McDuffie's at 1 Pine Ridge Road; Deborah Lyden at 20 Foreside Road; and a letter from the Somes' family at 27 Foreside Road that supports the Brouder's opinion their business is not a problem.**

**The public portion of the meeting was closed.**

Mr. Joyce asked Mr. Longley what he has seen when he went to the property.

Mr. Longley stated he had made several trips to Spruce Lane; I didn't go during evening hours to look at lights. I talked with a neighbor in close proximity and the Brouder's there were no issues. It was reported that the Brouder's were operating longer than 5:00 p.m. and that I should investigate. In conversations with Mr. Brouder he stated he goes into the studio and sits by the fire to read, there was nothing to do with work hours. It was his personal enjoyment of his property; I accepted that; I found no evidence that there was business going on, or any issues to others in the neighbors. Hence, I wrote my letter on August 25<sup>th</sup> 2009 that I found no evidence of violation. Whether or not someone paints their building is not his call, if the Board had issued a condition that said the building should be painted every three years and it hadn't been painted in six years that is something I could take action on. There are no ordinances to require someone to paint a building. The issue comes up quite often people call and asks if I can make a neighbor paint his house. The answer is no that is not the function of the Code Officer. I have listened to testimony this evening and still don't know if there is a violation.

Mr. Manahan stated it sounds like the crux of the issue is this light. It sounds like the light could be spite light. My question is if someone puts up a light fixture at a residence where there is no home occupation and someone complains there is an annoying light next door is there anything you as the CEO can do.

Mr. Longley stated there are no ordinances or codes in the Town of Cumberland. He used an example in the Town of Yarmouth where he is also the Code Officer; the Village District has certain buffering requirements for lighting. That area is from NYA to Handy Andy's there are mixed uses in this district. Cumberland electrical permits are issued by staff, and inspected by Stan Brown the electrical inspector.

Mr. Manahan asked given this is a home occupation that was approved by this Board in 2000 would you or might you interpret this light to not conform with inconspicuous.

Mr. Longley stated the complaints received were about hours of operation and the light was part of the hours of operation. These complaints were prior to the installation of the outside light.

Mr. Black asked if there was any association of this light with the business.

Mr. Longley stated no, he found the use was personal use of the property.

Mr. Joyce asked if the letter quoted by Attorney Hirschon incorporated into the Special Exception that was granted in 2000.

Mr. Longley stated he was not here; he was reviewing the original file.

Mr. Wyman stated we talked about plantings but he did not believe we incorporated plantings.

Mr. Manahan stated there is an allegation from the Bisbing's that the letter was a business plan.

Mr. Wyman stated he can remember only one time when the Board dealt with lights and that was the football lights at the high school. The people on Farwell Avenue were concerned about the bleeding of the lights. We had an engineer come to the Board and give a presentation on the lighting. We have no testimony on the bleeding of the lights for this hearing.

Mr. Manahan stated we have testimony the lights shine into Dr. Bisbing's windows at night.

Mr. Lewis stated if this is an appeal before the light was installed should we be considering the exterior light.

Mr. Manahan asked for clarification on if the light was installed but not the issue at the time of complaint; they were concerned with the hours of operation.

Mr. Longley stated the items that Mr. Shane wrote in his e-mail were the concerns filed by Mrs. Bisbing were the hours of operation often exceed those stated in the plan; the upkeep of the property is not as stated in the plan; and internal lighting of the building in which the home occupation exists is not shaded or screened. The internal lighting has an adverse impact on her property in the evenings; per the plan the home occupation was not to operate after 5:00 p.m. My charge was to investigate those three items. Which is why I responded in my e-mail to those items in the format that the attorney felt were inconsistent with what the allegations were? I don't recall when the light was installed; I know the original complaint came prior to the exterior light being installed.

Mr. Manahan stated the irony of this situation is it sounds like the appeal of your decision is not of a decision with respect to this light in particular; it was other issues at the time. If we were to deny the appeal; they could then ask you to take enforcement against the light tomorrow. You could then say no, I don't think the light is a problem and we could be back before the board as to whether you should have taken enforcement action against the light.

Mr. Longley stated possibly.

Mr. Black moved that the Board of Adjustment and Appeals in this interpretation appeal issue an advisory ruling to the Code Enforcement Officer that his decision doesn't need to be overturned.

Mr. Manahan asked if we should deny the interpretation appeal, shouldn't the motion be to deny the interpretation appeal.

Mr. Black moved to deny the interpretation appeal on the basis that the appellants have not presented sufficient evidence to show that the Brouder's have violated their 2000 approval.

Mr. Manahan seconded.

Discussion on the motion:

Mr. Manahan stated he does think the light is problematic and in a situation where you have close neighbors clearly this is a very unfortunate situation. It is unfortunate that these types of things escalate; and light seems to be more of a thorn than it needs to be. I do support the motion notwithstanding the editorial comment.

Mr. Black stated it is very unfortunate we are here tonight. Aside from the issues here it doesn't appear the light has any relationship to the business itself which is the only means by which you could get a Code Enforcement Officer to find them not in compliance. It seems there are simple solutions, it is not appropriate for this Board. It is a colossal waste of taxpayers' money that we are here tonight to try to understand this. There is testimony regarding this light being installed over two years, maybe it is spite light; I don't know. If the light is for security when going outside there is an opportunity to install a switch, why does it have to be on a timer? There are solutions and this is not the forum to judicate those solutions. In this day and age when there are taxpayers' in our community having a difficult time paying taxes. It is very unfortunate we have to come here, we are volunteers; but there is money expended for these hearings. It is unfortunate; there is a better way to spend our money.

VOTE: Unanimous

#### IV. Administrative Matters

##### 1. Minutes of September 9, 2010

Mr. Manahan moved to approve the minutes of September 9, 2010 with technical corrections.

Mr. Lewis seconded.

VOTE: Unanimous

2. Mr. Longley stated the State of Maine has adopted a new building code which was adopted on December 1, 2010. There are new ventilation, radon, and energy codes that didn't exist prior to December 1<sup>st</sup>. If anyone has any questions, please contact my office.

#### V. Adjournment:

Mr. Manahan moved to adjourn at 8:30 p.m.

Mr. Black seconded.

VOTE: Unanimous

A TRUE COPY ATTEST:

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R. Scott Wyman, Board Chair

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Pamela Bosarge, Board Clerk