

**TOWN OF NEWFIELDS SELECT BOARD  
MEETING MINUTES  
TUESDAY MAY 28, 2024**

**Select Board Present:** Chairman Michael Sununu, Hoby Harmon & Mark Kasper  
**Others Include:** Attorney John Weaver, Lynn & Mark Girard & Scott Wachsmuth

The Select Board reviewed and approved the following items:

Checks Dated	05/03/24:	Accounts Payable Manifest	\$21,558.01
Checks Dated	05/24/24:	Accounts Payable Manifest	\$8,592.35
Checks Dated	05/31/24:	Accounts Payable Manifest	\$26,816.78

Michael called the meeting to order at 7:01pm.

**Town Landing Washout**

The overseer of the Town Landing, Win Fream, discussed preventative measures for erosion at the Town Landing. Win said Brian, the Road Agent, delivered a few yards of dirt near the top of the road area and looked at the storm drainage. Win is waiting for Brian to deliver some ¾ inch rocks and plans to put the additional rocks near the landing area. Michael will remind Brian to deliver the rocks. Bill Meserve suggested putting in a retention pond to collect the stormwater runoff.

**Correspondence Regarding the Vernon Family Farm**

Michael referenced letters addressed to the Select Board from three of the Vernon Family Farm abutters. (see attached) Michael opened the discussion with Attorney Weaver.

Attorney Weaver introduced himself as representing Ruth Patterson & Gerald Cox. He mentioned that he just recently became aware of the situation and has not been able to review the Town documentation regarding the farm yet. His clients identified several ways the operation at the farm property is not complying with the conditions of the site plan approval as well as with the State particularly with the operations of the restaurant and the noise levels at certain events on the property. As mentioned in his client’s correspondence, volume levels exceed 85 decibels and is a level for which OSHA has special guidelines. His clients are concerned with these regularly occurring levels at their residence. Attorney Weaver is looking to investigate the issue and determine the extent to which the operations do not comply with the conditions and existing law and would like to collaborate with the Town and Farm to identify controls and new conditions to put on the operations so that it can continue but not be a deterrent to the abutters but be a benefit to everyone.

Michael clarified that the letter Attorney Weaver referenced was to the Select Board regarding Vernon Family Farm dated 5/22/24, and sent by the attorney’s colleague, Thomas

Hildreth. Attorney Weaver concurred and added that the letter speaks of other concerns as well. Michael said he would then allow the other abutters to discuss their letters and then open the matter up for discussion with others in the room.

Michael cited Scott Wachsmuth's letter dated 4/19/24 and asked if there was anything else he would like to speak about. Scott indicated that the biggest issue is the restaurant. The site plan requires all municipal & state permits and approvals to be granted and are for said use. Restaurants are not a permitted use in the residential zone under RSA 3.4.13. He added that there is also an issue with the food service license. There has been some back and forth as to whether it is catering or a restaurant. He presented the Board with some reference material which were applications for the Health and Human Services (HHS). He read two sections of the applications. 1) A food establishment - 0-24 seats or a bar area where food is prepared. 2) Catering – is a food operation that prepares meals in a commercial kitchen for service at an off-site location. According to the HHS, one is considered a caterer if you cook in an offsite commercial kitchen, keep the food warm or cold and bring to the site and serve. He has an issue with what is actually taking place on the property. Scott referred to the HHS document which is regarding the floor plan review which referenced outdoor seating and a requirement for handwashing & food ware washing stations, back flow and toilet facilities. The Vernons lack a state approved septic system for the farm.

Michael referenced the generic applications Scott provided and said that he had not seen any HHS applications for the farm and asked Scott if he had any copies of the specific licenses or applications that were pulled for the farm. Scott said he did not and added that he believes the offsite catering license is at 44 Amesbury Rd in Kensington and the offsite liquor license is somewhere else but did not know for sure the address. He added that according to HHS, it is clearly a restaurant which is not allowed in the Town residential area. If you're cooking onsite, you are a restaurant. He believes it is RSA 78 A-3 section 20 that states it is a restaurant.

Mark said that he had a few questions and addressed Scott asking him if he was trying to indicate that a restaurant is defined by having a certain seating capacity. Scott replied that according to HHS, a restaurant is not required to have any seats, it is defined as cooking onsite; seating is not required. Mark then asked if Scott had seen the Vernons cooking onsite this year. Scott replied that he had not noticed if they had cooked at their first event of the year.

Michael then asked Lynn Girard if she would like to speak on behalf of her letter to the Board. Lynn read a statement to the Board. (see attached)

Michael asked her if she had a copy of the conservation easement review that went to the Conservation Commission. She said she asked Sue for it, but she could not find the 2023 report.

Michael asked if the abutters had any other issues, they would like to add prior to opening the meeting up for discussion.

Scott replied that there were other issues, but it would take another meeting to discuss them all.

Mark Girard told the Board that the Town needs to be careful how far we let it go. They own twenty acres and can do the same thing. There are no parameters for this and there needs to be. They just want to reign it in. The farm is very different from what it was when they first moved to Newfields.

Attorney Weaver followed up on the comment and said there is a gray area within the agritourism law, and it can be expanded to something that really is not what the statute intended and can lead to a disservice to the community and asked the Board to think carefully about what agritourism really is and how the use of this property supports or exceeds the definition.

Michael told him the Town has been trying to address this issue for the past two years. This started with the Planning Board review. A lot of this centers around the issue of Agritourism. It is poorly defined and makes it difficult for any consistent definition of activities that are permitted or not permitted to be identified under the statute language. He believes this is what the Planning Board struggled with during their extensive review in the meetings over the past years and coming to the notice of decision. To some extent the definition is truly in the eyes of the beholder. This has been discussed many times in Concord and the gray areas need to be better defined. We are not going to redefine agritourism tonight and he encouraged everyone who has an issue with it to call the State to get it more defined.

Michael said the issues at hand are those outlined in the notice of decision which are 1) the noise issues the residents addressed and looking at the data from the monitoring devices, noise violations did occur. 2) the driveway is a standing issue and after the driveway is completed and relocated, it will still need a police presence for a blind drive and alcohol. 3) the determination for the facilities and use of the pavilion needs to be addressed, and until it is, the pavilion should not be used for the events.

Mark Kasper commented that it is important to understand there are two groups of people who need to be heard. He said he visited both properties. He said the Girards are a little close and can understand that the music may get a loud. He then went to the Vernons and spoke with them about the noise level and suggested VFF lower the music level. Mark said there needs to be some compromise. Nothing the Vernons are doing is illegal but at same time, the neighbors should be heard.

Attorney Weaver said he did not disagree, but violations of the noise ordinances last year do carry fines.

Attorney Manzelli submitted a letter to the Board. She said most of these issues they have touched upon. The summary is that the farm is not doing anything illegal and is performing agritourism as allowed. On behalf of the abutters, the farm has conducted activities for ten years although she is not saying the activities have not changed. They could have had more events last year and this year. They are having less this year and are using noise monitoring to adjust as needed. The readings from across the street so the readings could have been from traffic, lawn mowers and other radios, in Attorney Manzelli's opinion.

Michael said the monitoring took place at the Patterson and Girard property. They used slow data collection every ten seconds at 5 ft not the 4ft requirement above the ground. While it is correct, one cannot filter out the other noises but what was very clear is that there are periods mostly between 6:00pm and 9:00pm of spikes every ten seconds of consistent noise violations over long periods of time during the events. Clearly, they were in violation of the noise ordinance. The Town did not take any action last year, but if required the town will take action. If necessary, they will have a professional come in to test and if so, there will be violations which will mean fines and cease and desist if it continues.

Attorney Manzelli mentioned the Vernons' personal statement with the site plan application in October 2022 that people can read if they wish and added that the neighbors cannot have it both ways. The Girards cannot complain about the farm in this meeting when they have sat on their front lawns on occasion listening to the music. She reminded the Board of Conservation Commission due diligence on the issues addressed tonight were addressed in 1/5/17 that agritourism did not violate the conservation and referenced a letter she sent to the Town on 12/2/22.

Michael commented that the Conservation review to confirm that the farm's agritourism was in compliance took place in 2017 and he asked if there were any more recent than that. Attorney Manzelli said no. Michael said the reason he asked is that the farm's activities in 2017 were very different from today.

Attorney Manzelli said the farm satisfied the conditions of the site plan approval on 5/8/23. On 5/11/23 the Planning Board issued a final decision. Since it has been over a year, it is too late to ask for any of the modifications that are being asked tonight. There are no merits for a cease and desist as the farm is not in violation of the approval. It is only septic for the pavilion and that she notified the Town.

Hoby said it was the Newmarket building inspector who notified the Board that there would not be an extension for the septic system if it was not in by a certain date.

Attorney Manzelli stated that the farm received its amended driveway permit on 5/22/23 in satisfaction with section 2a of the Notice of Decision. After that permit the Town required a stonewall removal agreement signed on 8/19/23. DOT continued to refuse to sign it. The Town and DOT agreed to have the Town acknowledge the farm have a stonewall removal agreement on 4/8/24 and now the farm has until 5/22/2025 to complete driveway

relocation. She added that the farm is not a restaurant. This issue has been reviewed extensively during the site plan approval process and in a 12/2/22 letter and by the Planning Board granting the site plan approval, they accepted that nothing occurring at the site constitutes a restaurant.

Her last point was the need for finality. For everyone, the Board and the farm, to put the issues behind us. She thanked the Board for the opportunity to respond.

Mark offered to speak with Scott Wachsmuth to hear his concerns and relay them to the Vernons.

Michael said the process the Planning Board went through making a decision was the Town working through with the Vernons and their attorney to address the issues, but it is still the responsibility of the Board to ensure things are followed. As to the outstanding septic issue, the Board needs to make sure it is complied with. The driveway is a safety issue that falls under this Board, the noise issues and town ordinances still must be monitored. It's not that we can just pass a notice of decision and we do not care whether it's complied with or not. To be honest, the Town's compromise was the notice of decision. Although he still has issues with the notice, the Board's job is to ensure that the Town and Vernons comply with the terms of that notice. Clearly issues were raised by several abutters, and we are addressing it tonight. The parties have compromised throughout this process already and will most likely continue to compromise but it is the Board's responsibility to ensure the agreements between the Town and Vernons are worked out and adhered to.

Lynn referred to the VFF site plan review and asked Attorney Manzelli where in the site plan did it say a bar and a restaurant.

Attorney Manzelli replied that the application process is comprised of a 100-page narrative that explained that there are 12 stools inside the pavilion.

Lynn commented that the stools are at the bar.

Amy replied that there is not a bar in the pavilion.

Lynn and another resident said emphatically that there is a bar in the pavilion serving alcohol.

Scott addressed Mark's earlier points. Scott said he has lived on Piscassic Rd for twenty-three years. The Vernons purchased the property in 2014. He said everything was fine until they had someone living in one of the outbuildings using a bucket for a bathroom. The Town asked him to stop this practice, he would not, and it ended up with a cease-and-desist order. He referenced Attorney Manzelli's statement that the Vernon's have been in agritourism since 2014. They were not until maybe 2015. Since then, cars have been in and out of the place all hours of the night waking up his grandson. Jeremiah Vernon interjected asking if it was Scott's house that had the light shining into their bedroom windows, said an expletive

and left the building. Scott continued to say he was accused of not being neighborly. Nicole Vernon said he was lying.

Attorney Manzelli and Michael asked Scott to get to the point. Scott said to say the Vernons are complying with the law is incorrect. He referenced the Notice of Decision:

- #13 which states that no restaurant use of the property shall be made unless all required municipal and state permits and approvals have been granted for said use, including but not limited relief from the Zoning Ordinance through the Newfields ZBA and Site Plan Review through the Newfields Planning Board. Scott said there was a site plan but no review from the ZBA regarding a restaurant. He added that restaurants are only allowed in the commercial zone in Newfields. All last season cooking took place on the farm. The Department of Health & Human Services description of a catering business is to cook on the caterer's site.
- #8 which states any speakers used at the event for music, entertainment or other purposes shall be directed away from surrounding properties and shall be mounted off of the ground by at least three feet. Scott said the speakers were facing Ruth Patterson's which she had an issue with, so the Vernons then placed it facing his property.
- #9 which states Vernon Family Farm shall install a vegetative buffer along a portion of the common property boundary line between the Vernon Family Farm and the property located at 319 Piscassic Road, Newfields, NH, identified on Tax Map 211, as Lot 15, to the reasonable satisfaction of the current owners and the Newfields Planning Board. The vegetated buffer shall be maintained by Vernon Family Farm and its successors and assigns so long as the Property is being used for farming purposes.

Attorney Manzelli said she stood by her statements that they have no violations and added that food violations are controlled by the State not municipalities.

Michael agreed and added that whether someone is, or is not, in compliance with the food and liquor regulations is determined by the HHS and the Liquor Commission.

Some residents commented on what constitutes harmful noise levels.

One resident could not find the noise ordinances listed on the Town website. Michael said it is listed on the Town website under Planning Board in section 4.7 page 11 of the building and zoning ordinance. (see attached) The ordinances are as follows: daytime commercial limits are under 65 decibels and under 55 decibels at night; daytime residential are under 60 decibels and under 50 decibels at night which is after 8:00pm. He added that there were clear violations of the ordinances over the past year timeframe. If there continues to be a noise problem, we will end up having a professional monitor the noise level and if there's a violation, fines will be issued. He prefers they comply with the ordinance. From the beginning, this has always been about complying with the existing ordinances. This is where

the Vernons ran into a problem, they came in asking forgiveness, not permission. They violated the Town ordinances first and then came in and said they were sorry, but can we continue to do what we are doing. The Board is trying to ensure they are complying with the ordinances that affect us all – the abutters, the Vernons and everyone else in Town. The Town is trying to be responsible and therefore compliance with the ordinances is going to be required. If they do not resolve the septic issue, they will not be able to use the pavilion. If they do not get the driveway done, that will also be a problem.

A resident commented that the monitoring devices are subjective.

Lynn said the noise levels were high enough to keep setting off their ring cameras over the past weekend.

Michael articulated that everyone agrees the noise level is a problem and will be addressed if it continues. Attorney Manzelli agreed that the message has been received and the Vernons are addressing the issue.

Attorney Weaver also mentioned an instance when some people trespassed from the Vernon's events onto Ruth Patterson's property.

Attorney Manzelli said the trespass may not be associated with the farm. Attorney Weaver said it was confirmed by his client that the person came from the farm event.

Hoby mentioned that people are taking bits of the information and making opinions and conclusions based on what "someone made up about the Select Board and not being fair and balanced" without reading all the information and what has transpired over the past 5-7 years.

Scott Wachsmuth asked what type of use the farm (which is in a residential area) falls under since the Town ordinance has differing noise limits for residential and commercial properties. Michael will ask Town Counsel or the Town Planner for advisement.

The Board responded to questions and comments.

Michael said that the noise issue may continue to be an ongoing issue if the neighbors of the winery or the Muddy River Smokehouse have issues, the Town will address those as well. The critical issue is the compliance of the notice of decision and ensuring it is done as agreed to. Michael told Attorney Manzelli that the Board will continue to monitor and communicate with her. Michael mentioned that he will also check on the use of the property regarding residential/commercial zone. He expressed his assumption to Attorney Manzelli that the pavilion will not be used until it is in compliance. Attorney Manzelli assured him that would be the case.

Hoby spoke with Attorney Manzelli about the redesign of the septic since it is encroaching on the conservation easement. She told him the holdup is that the Vernons may need to

install a new well. Hoby conveyed his discussion with Mike Cuomo earlier in the morning about the new test pits and the previously designed pits which Mike referenced the State had found a violation of an overlap/encroachment of the conservation easement.

Attorney Manzelli responded that there has always been a plan for an encroachment and that she did not believe it can be achieved without an encroachment on the conservation land. The communication between her and Town counsel is looking to get the plan finalized and have a meeting with the Conservation Commission.

Hoby confirmed that this is a commercial septic system, based on volume and flow, which you are saying tonight will have to encroach on conservation land. Attorney Manzelli replied that is her understanding. She is not positive, and the design is not final. She informed Hoby that she will be meeting with well and permitting consultants this week and will inform him next week.

### **Loco Marathon**

The Board and Police Chief Young discussed the 2024 Loco Marathon & Half Marathon which will take place on Sunday, October 20<sup>th</sup>.

### **Muddy River Smokehouse Liquor License Letter**

Michael motioned, seconded by Hoby, to assent to Muddy River Smokehouse's request for Town to write a letter to the State Liquor Commission in support of their liquor license for the restaurant. All were in favor and the motion carried. Michael will write the letter and forward it to the others for review.

### **Tax Warrant**

Michael motioned, seconded by Hoby, to approve the Tax Collectors Warrant in the amount of \$3,586,991.00. All were in favor and the motioned carried.

### **Abatements**

Michael motioned, seconded by Hoby, to accept the abatement for map 212 lot 4.1 in the amount of \$6,316.00. All were in favor and the motion carried.

Michael motioned, seconded by Hoby, to accept the abatement for map 203 lots 4 & 6 in the amount of \$20.00 & \$2.00. All were in favor and the motion carried.

### **Tax Collector's Deed**

Michael motioned, seconded by Hoby, to accept the tax deed on 399 Piscassic Rd by the Tax Collector, Sue McKinnon. All were in favor and the motion carried.

### **MS-535**

Michael motioned, seconded by Mark, to approve the draft MS-535 Final Report of the 2023 Budget for submission. The report is prepared by the auditors and indicates that the Town did not pay more than the voters approved in appropriation and that revenues go to the Town. All were in favor and motion carried.

## **Minutes**

Michael motioned, seconded by Hoby, to approve 4/23 & 5/7 minutes as amended. All were in favor and the motion carried.

## **Health and Human Services Donations**

Hoby motioned, seconded by Mark, to approve the Health and Human Services Donations with the amounts the same as last year. Michael opposed. He stated that while he appreciates what they do, he does not feel it's appropriate to take from others to make the donations. If residents wish to donate to organizations, they can choose to do so. The motion carried.

## **Right to know Request**

Michael mentioned that a right to know request came in for the Conservation Commission. Chris Griffith from the Conservation Commission told Michael that Attorney Durbin is also aware of the request.

## **Hoyle and Tanner**

Bill Meserve discussed the proposed stormwater contract with the Board. Michael will reach out to Hoyle and Tanner for a contract. Bill informed the Board that he is still waiting for the Department of Environmental Services (DES) to get back to him regarding the rain gardens' waiver.

## **175<sup>th</sup> Celebration**

Hoby extended his sincere appreciation to the Celebration Committee and the Police department for an exceptional job over this past week. He thanked those who volunteered, especially those how worked from sunup to sundown over the long weekend.

Michael acknowledged the Celebration Committee who worked for two years on this event, the Fire department, the Police, those who opened their homes for the home tour, the people who donated to the Historical Night, the Martins for hosting the contra dance and Kent Lawrence for hosting...thank you!

## **Conservation Commission Email**

Forrest followed up on the Conservation Commission's (CC) email. Michael told Forrest to send an email with the names of those who wish to have a separate email account to the Board, copying Sue McKinnon and the Police department who have been the ones initiating the new email service.

Forrest added that the CC will be reviewing & posting the easement monitoring reports in the next few weeks.

## **Vernon Family Farm Platform**

Hoby said he meant to bring this up earlier in the meeting. A request was made by the Vernons for the Town to certify that the Vernon's new platform complies with the building

ordinances. Town counsel requested information from the farm before the Town would do so. Michael is not aware of the information coming to the Town, nor has any certification taken place. Michael advised Hoby to follow up with Attorney Durbin.

**Rugg Purchase and Sales Agreement**

Mark brought up the Rugg purchase and sales agreement. Michael said it will be on the June agenda.

**June Meeting Dates**

June 11<sup>th</sup> & June 25<sup>th</sup>

Michael motioned at 8:47pm seconded by Hoby, to adjourn the meeting. All were in favor and the motion carried.

Respectfully submitted,

Kisha Therrien