

Newfields Zoning Board of Adjustment
July 31, 2024

Attendance: Chairman Kent Lawrence, Betsy Coes, Steve Yevich, Bob Elliott and alternate Catherine Tarnowski. Jack Steiner and alternate Scott Sakowski were absent from the meeting.

Guests: Attorney Thomas W. Hildreth

Chairman Lawrence called the meeting to order at 7pm and introduced the Board Members above. Chairman Lawrence introduced tonight's case to first determine whether the Zoning Board of Adjustment has jurisdiction over the appeal that was filed:

1. Case #24-07-31-01- Appeal of Administrative Decision

An Appeal of Administrative Decision under Article 1, Section 1.8 of the Newfields Zoning Board's Rules of Procedure, filed by McLane Middleton on behalf of Ruth Patterson and Gerald Cox, 295 Piscassic Rd.; Girard Family, 298 Piscassic Rd.; and Scott Wachsmuth, 306 Piscassic Rd., Newfields. The parties seek to require the property at 301 Piscassic Rd. to comply with the building, zoning, and land use ordinance of the Town of Newfields and the terms of the Conservation Easement, encumbering portions of the property. The property is located in the Residential Agricultural District, known as Map 211 to Lot 14.

Chairman Lawrence read-- Under the RSA 676:5, Section II(b): the decision of an administrative officer includes any decision involving construction, interpretation or application of the terms of the ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings. But it does include any construction, interpretation or application of the terms of the ordinance which is implicated in such enforcement proceedings. So, on this statutory definition of what the zoning board can do, there is some apparency that this case doesn't belong here. This is a meeting at this point, so this hasn't been formally accepted. He gave the appellants' attorney a chance to describe how he feels the Board does have authority to act in this case.

APPEAL NARRATIVE

Presented by Tom Hildreth, attorney at McLane Middleton, representing three neighbors to the Vernon Farm. Derek informed him this would be an issue and it was on page 3 of my papers because he knew it was coming. As he thought about this, he was reminded of the fellow who was the running mate of Ross Perot in 1992 who started his debate with "Who am I and why am I here?" Mr. Hildreth said let me step back for a second: one of the reasons that they're here, he thinks, is feedback that the system isn't working. The Vernon Family Farm has been before boards in town for 10 years, and there doesn't seem to be any end in sight. And everyone's frustrated by that: the Vernon's, he's sure; the neighbors, he knows they are; and he's sure the volunteer members of the Board are frustrated as well as members of the public who have interest in one side or the other. Much of it boils down to this hard to pin down definition of agritourism. When they first got involved in this case in May, their clients had all three already written letters to the Select Board saying we have continuing concerns about how this is operating, conditions are not being complied with, and so forth. They hired the firm, and they wrote a wrap-around letter and specifically asked the Select Board to issue a cease-and-desist order. They were

seeking them to exercise their authority as the enforcing board in town to suspend the operations until the conditions of the site plan approval had been fulfilled.

He wasn't at the meeting, but his colleague was, and he paraphrased by saying bottom line is the Board of Selectmen took no action. They heard from the clients, they heard from his colleague, they heard from the Vernon Family Farm attorney. There was some discussion about the fact that agritourism remains this elusive concept that we can't define. He thinks the chairman of the board urged people who had a beef with that fact to write to their representatives in Concord to have them solve the problem. At the end of the meeting, the minutes reflect that it petered out, with the Select Board simply saying we're going to keep an eye on things. He thinks Amy Manzelli, Attorney for the Vernon Family Farm, had represented that they were actively working on fulfilling the conditions of approval of the site plan, and the Select Board seemed to be taking no action. There was no vote, there wasn't a motion for them to decide. They certainly didn't do what was asked of them, but they listened to their concerns. And he can't ask this board, from the section that the chair read, to take on directly that ask and refusal, the request for the cease and desist and refusal to grant it.

But there is that second part of the statute that says this board can hear appeals of actions by administrative boards, including the Board of Selectmen, where their decision, in this case the decision not to take action, is predicated on an erroneous interpretation of the zoning ordinance. And there are two aspects that he wanted to bring to the Board's attention if it accepts jurisdiction and hears our case. One concerns the fundamental rights of any farm to conduct so-called agritourism events in the absence of Planning Board and site plan approval in the RA zone. So, this would require grappling with the decision of what kinds of uses are embraced by rights and would not require any kind of municipal review or approval, including site plan. He thinks that the evidence would show that without a site plan review, a farm in the RA zone cannot engage in such uses. There was a precedent decision involving a winery in town in 2014 where that decision was also made. So that's one aspect that involves interpretation. The other one involves compelling the Selectmen or the Planning Board to wrestle to ground some working definition of agritourism, some definition of restaurant. A town's zoning ordinance incorporates the concept of agritourism by reference to the state statute. And it seems it's incumbent on the town's boards that are enforcing that town-adopted zoning ordinance that we don't punt on that issue, but take a firm stand and take enforcement actions appropriately. Those are the two domains where I think that there are definitional issues. And at the end of the day if I had my way, this board would make the decision to the effect that a Select Board, if you thought that the Vernon Family Farm could conduct events when its conditions of its site plan are not fulfilled, you were mistaken because our ordinance doesn't allow those uses except with a full site plan approval, not just conditional but fully compliant. Secondarily, if you believe that what the Vernon Family Farm is doing on the property in terms of meal service and beverage service constitutes a restaurant, they don't have this board's zoning variance approval to conduct that operation, and again forces them to grapple with the definition of what kinds of meals may be served under the agritourism law vs. where is the line drawn and it tips over into a restaurant. The evidence will show that at different places in the record, Mr. Vernon himself has contemplated, "I have a restaurant on my property," at least in the minutes. You'll see, if you read the minutes of the Planning Board decision leading up to their December 2002 site plan approval that there were about half a dozen definitions of restaurant suggested in the course of the conversation and the Planning Board never settled on one. If you guys said we don't have jurisdiction, it's fine by him. This is not the last stop on the train. Their recourse next week will be a petition for mandamus to the Superior Court, asking for an order to compel the Selectmen to enforce the decision of the ordinance. There is a private civil action that will be brought against the Vernon Family Farm by the neighbors for recurring trespass and the noise that is coming onto their properties. Looking at the

sufficiency of the liquor licenses and food licenses, there have been misrepresentations made to state agencies when they were procuring these licenses. So, this is a brief visit on a long journey. We're here in part because it's a conservative move by a lawyer to assume that some action taken by a tribunal, especially when you asked for it, is a decision and if you don't appeal it within a given time frame, you may be accepting a conclusion that will come back to haunt you.

ZBA DISCUSSION

Chairman Lawrence asked for discussion amongst the Board re: approving or denying the appeal. He said it wasn't brought to us within the 30 days of the Planning Board appeal period. The Select Board on town incursions to the neighbors—that's something he doesn't know the answer to, but he suspects it could be ongoing with their determination on how to deal with that. The council has certainly gotten it right that agritourism is not well-defined at the state level. He was close to a representative at the time, and he described to her that this was going to be an incredible burden on communities, and here they are this evening. He considers this a burden. Steve said as he read 676:5, we don't have jurisdiction over a decision or nondecision in this particular case because it doesn't include a discretionary decision. The Select Board decided not to act, and Chairman Lawrence added that's a discretion. Catherine said she would agree it doesn't represent an error in interpretation of an order or decision, and it wouldn't be within our jurisdiction. Bob said he agrees we don't have the jurisdiction as cited by 676:5. Betsy said we shouldn't be here.

Chairman Lawrence made a motion that the Zoning Board of Adjustment doesn't have the authority to hear the appeal of administrative decision applied for this evening against the Board of Selectmen by Attorney Hildreth. Betsy seconded. Vote Yes—5, No—0.

Chairman Lawrence said this concludes the part of whether we have jurisdiction. This is sometimes a sticky wicket and an awfully big thing to have five people sitting in the community to have put on. But there are certainly some good points that are brought out in your application, and he wished them well in your pursuit.

Betsy made a motion to close the meeting, and Bob seconded at 7:17 pm.

Kent Lawrence, Chairman