



Town of Halifax Commonwealth of Massachusetts

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

HALIFAX ZONING BOARD OF APPEALS Monday, October 24, 2016

The Halifax Zoning Board of Appeals held a public hearing on Monday, October 24, 2016 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Robert Gaynor, Peter Parcellin, Gerald Joy, Robert Durgin and Daniel Borsari were in attendance.

Kozhaya Nessralla was in attendance but recused himself from the public hearing.

Chairperson Gaynor called the meeting to order at 7:21 pm and reprised the audience that this public hearing/meeting is being audio taped. He also explained the procedure and the protocol at the public hearings.

The Board reviewed the mail and other matter/issues:

Procedural Matters

CONTINUANCE MOTIONED TO THURSDAY, OCTOBER 24, 2016 AT 7:00PM

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, October 17, 2016 at 7:30 p.m. in Meeting Room 1, Town Hall, 499 Plymouth Street, Halifax, MA on the application by Robert Bergstrom, c/o "Mudfest" (of 56 Spofford Avenue, Hanson, MA) to the land located on Hemlock Lane, Halifax, MA. Said property is owned by Samera Nessralla, as shown as Assessors Map #51, Lot 1. The applicant seeks to Appeal the Building Inspector's "...determination that the Mudfest show that is being promoted is a commercial event with the intent of financial gain. The site would be used as an outside area of assembly and recreation and therefore would fall under the commercial use of 167-7 Summary of Use Regulations, allowable by right in the B zone and by Special Permit in the Conservancy and Industrial Zone. This use is not allowed in the AR district"; as stated under Summary of Use Regulations, Commercial Uses (page 167:22). The applicant seeks an Appeal of the Building Inspectors decision in accordance with the Zoning By-laws of the Town of Halifax under Section 167-21A (1) (page 167:64). Area is zoned Residential. Petition #857

Chairman Gaynor reminded everyone in the room of the rules. There won't be any discussion back and forth in the room. All questions and answers will go through the Chair. He will find out what the questions or opinions were. We will respect the person that has the right to the floor and has the right to their opinion and we will let them finish and complete their thoughts before anyone will interrupt or anything. Alright, Marion read in the petition# 857 at our last meeting we had requested that we get an option from Town Counsel, Rich Hucksam, who responded back to our questions. Let me just go through this real quick as his letter starts out:

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Dear Members of the Zoning Board of Appeals,

This message is in response to your request for advice concerning Petition No. 857. You have asked several questions which I have answered individually below.

You have informed us of the following facts. Petition No. 857 concerns an appeal of a decision (the “decision”) of Building Inspector/Zoning Enforcement Officer Robert Piccirilli dated September 14, 2016. In the decision, Mr. Piccirilli states that “[t]he site would be used as an outside area of assembly and recreation and therefore would fall under the commercial use section of 167-7 Summary of Use Regulations, allowable by right in the B zone and by Special Permit in the Conservancy and Industrial Zone. This use is not allowed in the AR district.”

The property at issue contains more than five acres and is located in the AR-Agricultural-Residential zoning district. The primary use of the property is for operation of a farm. The Mudfest is an event involving four wheel drive trucks driving through mud. Mudfest has occurred at the property one or two days a year for the last several years.

Summary of Opinion

In our opinion based upon the facts we have been provided, Mudfest is a commercial outdoor amusement or recreation place or place of assembly and therefore is prohibited in the AR zoning district pursuant to Section 167-7.C. of the Zoning Bylaw. However, in our opinion, Mudfest could be allowed as an accessory or incidental use to the primary agricultural use of the subject property if the Zoning Board of Appeals finds that Mudfest is both subordinate and incidental to the primary agricultural use. In order for Mudfest to be allowed as an accessory or incidental use, there must be some reasonable relationship between Mudfest and the primary agricultural use of the subject property.

Question No. 1

Does MGL Chapter 40A, Section 3 make it possible for farmers to use their land in this capacity?

Answer No. 1

Section 167-7.C. of the Town’s Zoning Bylaw (the “Bylaw”) states that the following uses are prohibited in the AR zoning district: “[c]ommercial indoor or outdoor amusements, recreation places or places of assembly ...” In our opinion based upon the facts we have been provided, Mudfest is a commercial outdoor amusement or recreation place or place of assembly and therefore is prohibited in the AR zoning district pursuant to Section 167-7.C. of the Bylaw.

However, Section 167-7.D.(1) of the Bylaw states: “Agriculture. Under MGL c. 40A, the Zoning Enabling Act, agricultural uses are allowed on any parcel of five (5) or more acres (even if divided by a road), regardless of the zoning district. ...”

Section 167-3 of the Bylaw defines agriculture as “[t]he cultivation of ground for the purpose of producing fruits and vegetables for the use of man and beast or the act of preparing the soil, sowing and planting seeds, dressing plants and removing crops, and includes gardening, horticulture, silviculture and raising or feeding of cattle and other livestock.”

M.G.L. c.40A, Section 3 states:

“[n]o zoning ordinance or by-law shall ... prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, ...except that all such activities may be limited to parcels of 5 acres or more ... For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. ... For the purposes of this section, the term “agriculture” shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery

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stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises. ...”

M.G.L. c.128, Section 1A states:

“[f]arming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.”

It has been held that M.G.L. c. 40A, Section 3 as quoted above applies to uses that are accessory or incidental to a primary agricultural use. Tisbury v. Martha’s Vineyard Commission, 27 Mass. App. Ct. 1204 (1989)(greenhouse with 4000 gallon fuel tank held to be part of primary agricultural use).

It has also been held that removal of 300,000 cubic yards of gravel was not incidental to the primary use of property as a cut-your-own Christmas tree farm. Henry v. Board of Appeals of Dunstable, 418 Mass. 841, 845 (1994). In Henry, the Court stated that:

“[t]he word “incidental” in zoning by-laws or ordinances incorporates two concepts: “It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. . . . But ‘incidental,’ when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of ‘incidental’ would be to permit any use which is not primary, no matter how unrelated it is to the primary use” (emphasis supplied).

In our opinion, Mudfest could be allowed as an accessory or incidental use to the primary agricultural use of the subject property if the Zoning Board of Appeals finds that Mudfest is both subordinate and incidental to the primary agricultural use.

Massachusetts Department of Agricultural Resources (MDAR) guidance (ALM 10-05) indicates that the following factors should be considered to determine whether a use is subordinate to a primary agricultural use:

1. do revenues from the secondary activity predominate over revenues from the primary agricultural use?
2. What percentage of revenues from the property is generated from the secondary activity compared to revenues from the primary agricultural use?

The facts we have been provided seem to indicate that, since it occurs only once or twice a year, Mudfest is subordinate to the primary agricultural use of the property. However, this is a determination for the Board to make.

In regard to whether the secondary activity is incidental to the primary agricultural use, MDAR guidance states that “the less related the activity is to agriculture, the less the activity ought to be considered agri-tourism [and thus allowed]. (ALM 10-05). In my opinion, in order for a secondary activity to be incidental, there must be some reasonable relationship between the secondary activity and the primary agricultural use.

Question No. 2

The Halifax Town By-law, “Chapter 137 RIGHT TO FARM”, specifically section 137-1 & 137-2. Do these sections make it possible for farmers to use their land in this capacity?

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Answer No. 2

These provisions are not part of the Town's Zoning Bylaw. Therefore, in our opinion, these provisions are not relevant to the question of whether Mudfest may be allowed as an agricultural use or as accessory or incidental to a primary agricultural use that is exempt from the requirements of the Zoning Bylaw that would otherwise prohibit the Mudfest use.

Question No. 3

Under Town By-law Section 137-2, Definitions, one of the bullet points states the following: "Conducting agriculture-related educational and farm-based recreational activities, including agritourism provided that activities are related to marketing the agricultural output or services of the farm;". Question: would this particular section satisfy the use of the land for the Mudfest?

Answer No. 3

These provisions are not part of the Town's Zoning Bylaw. Therefore, in our opinion, these provisions are not relevant to the question of whether Mudfest may be allowed as an agricultural use or as accessory or incidental to a primary agricultural use that is exempt from the requirements of the Zoning Bylaw that would otherwise prohibit the Mudfest use.

Question No. 4

It was brought up that there was a case law – Nissenbaum vs. Boxford Board of Appeals. Question: does this have any correlation to the use in this matter?

Answer No. 4

We understand that this question refers to a matter in the Town of Boxford, Massachusetts involving local regulation of farmstands. In our opinion, this "case law" is not relevant to the issue of whether Mudfest may be allowed as an agricultural use or as accessory or incidental to a primary agricultural use that is exempt from the requirements of the Zoning Bylaw that would otherwise prohibit the Mudfest use.

We hope this is helpful. Please contact us if you have any other questions regarding this matter.
Rich

I think that pretty much spells out what we need to do as a Board. In my opinion, the Building Inspector should certainly have declined the application based on the Halifax Zoning Bylaws and again we are given criteria whether or not we can determine whether or not this is secondary or incidental use of Nessralla Farm for Mudfest. Why don't we start there, that is the best I can suggest. Does anyone have any input from the Board?

Mr. Parcillin, it seems to me like we have two questions to answer. Whether or not it is subordinate and whether or not it is incidental. It seems as though from what we have talked about already, that it is a secondary activity, clearly. You've got the primary funds that they are making and it would enhance that so it is definitely subordinate in my opinion. So what we need to figure out tonight is there a reasonable relationship between Mudfest and the primary use of the Farm. If that is the case, and this is a little bit like what we talked about last time. I think that there are connections, we just have to figure out if the connections are reasonable connections. If that is the case then I think this would allow for this.

Chairman Gaynor asked the opinion of the Board. Mr. Durgin and Mr. Joy agreed

Mr. Borsari, we don't know the profit and loss and all of that, but we can just look at the incidentals.

Chairman Gaynor, at this point then, I would like to get some information from the property owner. Kozhaya or whomever, if we need to make the correlation or we need to determine if there are such correlations can you help us out with that.

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Mr. K. Nessleralla, it started off 3 or 4 years ago. It increased our business. In the springtime it helps us out and also in the fall. By having the Mudfest there, we have a few excavators there. When the trucks go through the mud the excavators, we have a lot of rocks on the property, the help us out by digging up the rocks.

Chairman Gaynor, Now not to interrupt you, but do you have to excavate that whether you have Mudfest or not. Do you always have activities... how does that work?

Mr. K Nessleralla, the way that Mudfest is going right now is they go about 2.5 or 2 feet into the ground. We don't have that capability of digging them out. By having those excavators there, they are helping us dig that and helping us to turn the soil over by breaking the hard pan, by breaking the soil, we can only get about 8 inches into the ground. Those excavators can go 3, 4 even 5 feet into the ground. You see the boulders that now they are doing rock climbing. With those boulders being out of the ground, it is no longer going to break our machinery. Our machinery is farm machinery not excavators. We have AE Wood come in and pull those rocks out. A couple of people broke their axles because they are hitting boulders. By them taking them out, it is helping us out. \$150.00 per hour, we can't afford that. Mudfest brings business into our farm when we have a concession stand with butternut, winter squash, honey, hotdogs and hamburgers, pumpkins, flowers. A few other people have concession stands there as well that sell a variety of other foods. We benefit from renting the land to Mr. Bergstrom; we get a rental fee from him. Plus we sell a little bit of our product that helps us go through the winter. In the springtime we do the same thing and it helps with you know...

Chairman Gaynor, do you feel that because of Mudfest you may get customers that you wouldn't normally have?

Mr. K Nessleralla, we have customers come in from CT, ME, RI, all over the place that never even know where we are. We have customers that because they heard of Mudfest, they come to us and they spend their money at our place.

Chairman Gaynor, is it that contributing to the sale of corn and the product from the farm?

Mr. K Nessleralla, in the springtime we get flowers in the fall we get winter squash and things like that.

Chairman Gaynor, does anyone else have questions for Mr. Nessleralla.

Mansur Nessleralla, those fields, and I am the one that is running the equipment in there, are unbearable to plant and we have gone three or four years not using those fields because the rocks are so bad. With getting AE Wood in there and there are machines that once they go over the rocks it breaks it, they pull them out for us and they are all sitting there on the side of the field? We cannot do it if we cannot get those rocks out of there. It will sit idle for a long time and we've been at it for, more than 20 or 25 years and the rocks sit on the side of the field whether it is by hand or by machine. When we get Bergstrom in there with all of these machines they are like how do these people farm these fields. When you break the machine and you are half way through the job and you have to go and buy the parts and fix it and they are not on hand, you are screwed for the day. With the excavators there, and you have to see it to believe it, it is only those two fields, it makes it easy to rip it up so we can plant it.

Chairman Gaynor, how many acres are we talking there?

Mr. K Nessleralla, probably about 10 acres.

Chairman Gaynor, and how many does Mudfest utilize.

Mr. K Nessleralla, they use that part of the field, so it would be 10 acres.

Chairman Gaynor asked if anyone else had any questions or opinions.

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Mr. Joy, I think that tilling the land is huge. It is making your property more productive. You are doing it in the spring and in the fall so you are getting a good punch to go in and get more land and you can start putting it into production. I think it is definitely a tie in.

Mr. K Nessralla the equipment that we have is no pro like excavators. Excavators can of the ground that tractors a get things out and plows can't.

Mr. Borsari, do they put the boulders back?

Chairman Gaynor, where do the huge boulders go? Do they go into one section?

Mr. K. Nessralla, we have a wind row and they go over there. We make a wall out of them.

Chairman Gaynor, the big boulders that I personally have seen, Dan, just in the last two years, they did what they call a crawl where they go up and over them and have actually made it an event out of these big huge boulders. There is this big huge section over to the side and they line them up. Some of them go really high and other go pretty low and they are all independent suspension, you can see one wheel up high and one low...

Mr. Borsari, I guess my problem with that is once you clear the rocks, they are clear.

Mr. Durgin, it is the same thing with going around your yard and picking up stones. The next year you go around and pick up more stones, where do you think the stones come from.

Chairman Gaynor, they have been tilling and turning it for 20 years and they are still doing that every year and there are still more stones coming up, if I am correct.

Mr. Borsari, I just wondering what they were doing with the stones because it can't be a continual problem with them.

Mr. K Nessralla, you can have some if you want.

Chairman Gaynor called on Resident Will Wall, Ocean Avenue, Halifax

Mr. Wall, I wanted to add, because no one mentioned, if you don't till land regularly, you don't realize that rocks float on dirt. So if you till 10 inches of soil down and clean out all the rocks, come from deeper and keep floating to the surfaces so there is always rocks. The deeper you can dig down to get those rocks out, the longer that field stays productive. It is a never ending supply of rocks floating to the top of those fields.

Chairman Gaynor called on Mr. Bergstrom, big trucks run agricultural tires and tractor tires and these events were created back in the 70's. The farmers doing little events like this between themselves. Between me and him or you and him and gaveling and throwing tractor tires on your big truck and just enjoying yourself and the crowds just blend in. Now they know where Nessralla Farm is. I think it is such a great thing. It has helped him out, people get to play on a cornfield, nobody gets to do that! It is not very often that you get to experience everything that you get to experience. It just goes back to the 70's, I want to point out that they run agricultural tires, tractor tires, they are farm equipment vehicles. Some of them have farm axels; farm this, just farm vehicles.

Chairman Gaynor, Dan, you have anything to say to that.

Mr. Borsari, I spent the last week really trying to hang my hat on something that justifies this. Mr. Bergstrom did try to have another huge, multi day festival on another farm so if the standard that we are going to use is that they just make money that is really not what Town Counsel said. My problem with the whole thing is, I think it is a fine thing for where it is, it happens to be out in no man's land but other farms are not and we are going to have to have to justify to everyone in town that if we allow something that... I mean look at the opinion of the Atty in the definitions. The farther away from Agriculture it is, it should not be allowed. It is pretty clear what we are being told. It has to be subordinate and incidental or how are we going to deny anyone else in town.

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Chairman Gaynor said he has the exact same question. Atty Hucksam in a phone conversation had made it clear that he has an awful lot of other Towns besides Halifax that ask that very same question. With their own particular issue, whatever it would happen to be. He was quite clear, as we mentioned at the last meeting, I think it was you and I that had discussed this thing with anyone who fits the definition of a farm with acreage over 5 acres, the example was would be able to do this because we used the words set precedence. It is Atty Hucksam's legal opinion that with the Zoning Board of Appeal there is no precedence. You can't set precedence. And he said, he answers these questions to towns all over the place and as we stated each application that comes to the Zoning Board of Appeals is judged on its own merit. So each individual case, such as the one you were describing, we would sit here and we would discuss the same criteria. If in fact it was the same use, if in fact it was incidental and subordinate, if the use was that that met the definition of a farmer, we would still have to judge each individual application on its own merit. Basically, correct me if I am wrong, the bottom line is that there is no precedence. He was quite clear about that. That is the function of the Zoning Board of Appeals. We do judge each case on its own merit.

Mr. Borsari, so hypothetical, somebody has a farm and is charging \$10.00 - \$15.00 to dispose of your tires on the corner of your farm next to some people's houses. He says, I will do it for \$5.00 and he gets \$200.00 or \$300.00 and that is enough for a load and he sends them out to be recycled. Then we say you can't do that. He says why? Farms have tires, so what is the difference.

Mr. Parcellin, the difference is, they would have to come up here and explain to us, I am just quoting from the paper, the reasonable relationship between the secondary activity of collecting tires and how that relates to the primary agricultural use which is what they just did. I feel fairly confident in what they just told me. I don't know how anyone else feels, but it would be pretty hard for someone to come up collecting tires or even having a concert to be honest with you, arguing to us that a reasonable relationship between their farming and having 400 people pound on dirt for two hours for a concert would be a reasonable relationship. Getting rocks out, using the trucks to come in there and this is just my opinion I am not putting my words in anyone else's mouth, you can at least make a connection somehow that that is the case. People can come up in the future and apply to overturn his decision in the future which almost always will be that you can't have this in AR district. And they can make the case that this state law will absolve them of having to meet the Zoning Bylaw. We are still going to have to go through this Zoning Bylaw and vote whether we think their specific activity and that specific application would meet this criteria and we are going to have to go through this every single time. So this one decision would not allow them to skirt coming up here and going through this entire process. Which if they were stacking tires on the corner of their lot I don't see how that could possibly be a reasonable relationship between a primary use and a subordinate use which is what the requirement is and I think that is why I am a little more comfortable with this. It seems like yes it is not a primary use, but it seems to me like there is a reasonable relationship probably between what they are doing using the land in this way, you know, trying to help their business in the future both farming and agritourism which is mentioned. So that is why I think it is a little different.

Chairman Gaynor, I think also too on any Special Permit, there is a criteria that the Board feels the applicant has to meet in order to grant any Special Permit and that would be, using the tire example, first of all it wouldn't be detrimental to the established character of the neighborhood. I think that would be a huge problem. As far as this particular permit goes, I personally think that the farm itself has demonstrated over the last four years at twice a year as reported from the Chief of Police, that other than the first year of cars speeding up and down and I believe there was one

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other point where they regulated the starting time of Mudfest. It was tweaked one year because it was too early.

Mr. Borsari, I don't think that has anything to do with it.

Chairman Gaynor, Well it does Dan because it comes into the detrimental character.

Mr. Borsari, well it's easily fixed.

Chairman Gaynor, yes it is easily fixed, it was easily fixed and they demonstrated that. It doesn't derogate from the intent of the bylaw which I think is what Atty Hucksam was putting up in front of us there, whether or not it did just that. Does anyone else have any questions or statements?

Anyone else in the audience

Mr. Charlie Seelig, Is the Board planning to possibly grant a Special Permit

Chairman Gaynor, Possibly, no our vote is an appeal

Mr. Seelig, because the Chair mentioned a Special Permit for this event

Chairman Gaynor, we wouldn't be issuing a Special Permit, no

Mr. Seelig, what other Special Permits would you be issuing for other activities in this particular zoning.

Chairperson Gaynor, I don't know Charlie. The only one we would be apt to issue on would be the one on the application that is in front of us.

Mr. Seelig, you just told me that you had issued a Special Permit.

Chairman Gaynor, on an application that would be put in front of us.

Mr. Seelig, on an application for what?

Chairman Gaynor, for Mudfest.

Mr. Seelig, OK then a Special Permit is allowed in the AR for this type of activity. I am seeing one member say no and your say yes. Did you ask Counsel if you could issue a Special Permit for this activity in agricultural residential.

Mr. Borsari, it is not allowed.

Mr. Parcellin, there is no Special Permit being asked for.

Mr. Seelig, the Chairman is going back and forth indicating that a Special Permit might be asked for, a Special Permit might be asked for in the future, or other activities on this parcel or activities on this parcel that may be agricultural in nature.

Mr. Parcellin, I think he is referring to the appeal of the decision of the Building Inspector

Mr. Seelig, I want to be sure I am getting it straight because if you are making a decision I want to be sure of what kind of decision you are making.

Chairman Gaynor, the way I look at it we have two choices. One is to uphold or firm up the Building Inspectors Appeal or not uphold or overturn the Building Inspectors Appeal.

Mr. Seelig, when you asked Town Counsel as to _____ the Building Inspector / Zoning Enforcement Officers decision, what did he say.

Chairman Gaynor, I read that out loud. He said that, In our opinion based upon the facts we have been provided, Mudfest is a commercial outdoor amusement or recreation place or place of assembly and therefore is prohibited in the AR zoning district pursuant to Section 167-7.C. of the Zoning Bylaw. However, in our opinion, Mudfest could be allowed as an accessory or incidental use to the primary agricultural use of the subject property if the Zoning Board of Appeals finds that Mudfest is both subordinate and incidental to the primary agricultural use. In order for Mudfest to be allowed as an accessory or incidental use, there must be some reasonable relationship between Mudfest and the primary agricultural use of the subject property.

Mr. Seelig, and did you ask Town Counsel if the Zoning Enforcement Officer erred in his decision.

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Chairman Gaynor, no he said he was perfectly within his right based on the Halifax Zoning Bylaws

Mr. Seelig, so Town Counsel did not indicate that he erred in your concerns in reversing your decision.

Chairman Gaynor, yes

Mr. Seelig, You were discussing incidental. At what point would Mudfest no longer be an incidental use.

Chairman Gaynor, you want me to give you a hypothetical...

Mr. Seelig, no I want you to give me a time. We know we had an even there. How many days during the year would it have to be held for it to no longer be incidental.

Chairman Gaynor, by definition it would have to become the primary subject of the income to the property and no longer would become secondary and that's part of the Zoning Act Section 3.

Mr. Seelig, do we know how much money the farm revenue it compared to the Mudfest revenue on a daily basis? Whether you would be able to determine at what point Mudfest would become primary.

Chairman Gaynor, I believe the Zoning Act states 25% as a suggested. I don't think it's specific to a dollar amount.

Mr. Seelig, do we know how many days it would take for Mudfest to reach that point.

Chairman Gaynor, no, and the Board had received input from the property owners that they can only do this twice a year because of the planting season and whatnot, it cannot be done more than twice a year.

Mr. Seelig, I understand that right now that is the case, what happens when that is not the case in the future.

Chairman Gaynor, well then I think that changes the conditions of the application that is being submitted. And if it became a primary use instead of a secondary use then I think it should be denied.

Mr. Seelig, ok but the problem with this is that you all made a decision that says that this is an incidental use and have place so far, until you make a decision I guess, no restrictions on how expensive that incidental use could be.

Chairman Gaynor, yes, right now we do not have any restrictions doing exactly that.

Mr. Seelig, you may want to talk with Counsel sometime in the future about Agricultural properties and incidental uses and how expensive those incidental uses can be to the farming activity there because I understand that he indicated that the Boxford case wasn't relative but there are other cases across the state where farming are trying to increase revenues through incidental uses through for example having weddings on a farm. Not in Agricultural but there is a lot of argument about what is Agritourism.

Chairman Gaynor, at the last meeting I think that Rob said that weddings specifically enumerated...

Mr. Piccirilli, but again it is all under the agricultural, if they are deeming it agricultural. If it is off

Mr. Seelig, I also know that back in April, it was noted to Mr. Bergstrom, that there was a zoning issue with this event. He declined to take any action between then and the fall. For instance he could have proposed a change in Bylaw to allow this event, in the AR without worry that it was going to be connected to an agricultural event or incidental truth to do that. The idea that we have to make a decision now because the event is coming up. He was notified back in April of the Zoning issue. It is in the Board of Selectmen Meetings Minutes for April and he could have asked for a change in the zoning. Mr. Nessralla could have asked for a change in the zoning as a

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property owner and no one did that so the idea that because we are hitting a certain date in the calendar a decision has to be made about this, sorry simply procrastinating and waiting for that one to force a decision to be made that is not a good way of working it. The only other thing is, the basis for it connecting to a churning the earth this decision's appeal that's going to be where you are hanging your hat, Is that this event churns the earth and therefore it is connected to the Agricultural use. Any farm, any farm at all has to do that type of work. Whether it is a yearly basis or a periodic basis whether they have a Mudfest or not. That is part of the normal going on in there. To say, well, this is connected to that where this where we don't have that type of activity or all these other farms in Halifax have this or somehow manage to operate, I think it is a very small hat to hang your hat on at this appeal.

Mrs. Roy, I just had a couple of questions. One, I am not a farmer. I did not know that you had to go 10 feet deep to till the soil. That is news to me. That is pretty deep. My second question is, where this is not a Special Permit, if this is approved, I know you said you don't set precedence but this event never has to come before the zoning board again, is that true?

Chairman Gaynor, well again I think it is like Charlie had mentioned. At this point we have set no conditions or restrictions. We have in the past, it has been the practice of our board, say in law apartments, they have to come back at a specified period of time to review the different criteria, the different outdoor hotdog stands, you have to come and review.

Mr. Durgin, They all have Special Permits though. They can set restrictions. We are only overturning or upholding.

Mrs. Roy, right, so this wouldn't have a permit. My other question is, I know Peter you alluded to the 400 people dancing in the field.

Mr. Parcellin, I brought that up just because someone brought up having a concert in a field.

Mrs. Roy, right, so my question is, in your opinion that would not qualify for an event.

Mr. Parcellin, it would be pretty hard to make the connection.

Mrs. Roy, how come. What is the difference between that and tilling the land?

Mr. Parcellin, getting boulders out 10 feet into the ground, or 6 feet or whatever it was.

Mrs. Roy, I don't know the normal practice, again, I am not a farmer.

Mr. Parcellin, me neither.

Mrs. Roy, I kind of just want you to understand that someone could come in and make that as a whatever cropping needs to be, I don't know what crops require what depth, you know...

Mr. Seelig, and also I think you are leaving Rob with a difficult situation in that you are not setting precedence. Yes, in many ways you are because Rob will know ahead of time that in many ways this type of activity will be approved by the ZBA.

Chairman Gaynor, well, may be approved.

Mr. Seelig, well you are going to be in a very difficult situation in that as much as you are not setting precedence, if you decide to reject an appeal and your own decisions appeal, the court will look at the previous decisions you have made. And you will have to differentiate why you said yes to this activity and no to another one. And again, if you set criteria you are going to be in a bad place.

Mr. Borsari, Charlie actually hit on my main concern. And we will have no standing to stop anybody in court because we allowed it for one farm and now not for another. I am not a lawyer and I didn't want to go there but I have been reading and we will have no leg to stand on to stop anybody else. I have been looking for a nail to hang my hat on all week to this. Now I am very familiar with planting and farming on a pretty good scale and you only want to go 8 or 9 inches when you till. That is how those plows are designed. Nobody goes 10 feet deep and you move the boulders once and they are gone. There is actually new studies' coming out now that you don't till

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at all because it wrecks the soil but they are thinking that tilling is actually bad now. So it's not reasonable to say that we have to move the boulders every year. You can clear the field once and the field is clear. Everybody knows that is how it works.

Mr. Parcellin, can I just point one thing out. So we are in a difficult position making this thing. We are also in a difficult position because it has happened eight times already. They have been granted this without having anything sent up to us about this and now we are in this position where it has happened for years and years and we either need to uphold a different decision that has been happening for quite a while now or shut down something within weeks from happening that we just got thrown at us,

Chairman Gaynor, I think we also discussed too last time whether or not it would be reasonable or not to assume that if the permit was granted 8 previous times over the course of 4 years that you would have to start at the beginning of the spring in order to get the permit when the last 8 times it was brought up in front of the board and the permit was just signed.

Mrs. Roy, We did not know that there was a Zoning issue and I explained that to the Board. We had no idea that there was a Zoning Issue.

Chairman Gaynor, We had a Building Inspector back then that is now on the Selectmen.

Mr. Seelig, once the matter was brought up in April; the applicant had plenty of time to request changes in the Zoning Bylaws. The applicant denied to do that. The best thing if the town wanted to allow these events in the AR zone would be to change the bylaw and not go through this particular procedure. We could issue Special Permits and go through that criteria and go through ZBA or whatever other entity the town wanted to rather than have to go through Rob, have the decision made and then have the decision reversed or not.

Chairman Gaynor, Mr. Bergstrom, why wasn't this done during the spring?

Mr. Bergstrom, because I was told on a side note that we were ok. Due to it being farmland, and it is an incidental and an accessory that we were fine. I have spoken with lawyers and they have said we were fine also. Getting this denied is opening up a whole other door too. I know why everyone is dancing around and everyone is dancing around because of that concert. These guys look at it individually like they look at Mudfest, individually. They come to their conclusions individually but the other events that they try to do once again falls on the Board, the appeals of everybody's decision. I am praying for something that is in black and white that I can do. If it doesn't go through then that's a whole other can because I was a very big part of that music thing too. I don't want to go down those roads. You guys are dancing and hovering because you are afraid of this and you are afraid of that. All it is is individually....it is agricultural. They want agricultural tires, this event; truck mudding stuff was created on a corn field by farmers. If you can't get a connection with it then you can't get a connection with it. It is just ludicrous. It is a dance that we are doing. In April, I was told that I was fine for this year.

Mr. Piccirilli, who told you that you were fine.

Mr. Bergstrom, you said I was good for a year.

Mr. Piccirilli, I never said you were good for a year, I said that afterwards you would have to address it.

Mr. Bergstrom, yes, that was after this year. You said I was good for this year.

Mr. Piccirilli, I never said that.

Mr. Bergstrom, that was in June so I assumed that meant a year from June, 2016 is 2016.

Mr. Borsari, Mr. Bergstrom, Charlie is familiar with years ago there were other issues with where a farm was trying to create; Mr. Millias is very familiar with this, a motocross track. This was another issue, so it is not just the concert. This decision is actually the same decision that was made by Mr. Millias years ago. We are actually overturning what has been upheld before. Charlie

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is familiar with it, Mr. Millias is familiar with it and I was shocked as a citizen 3 or 4 years ago to see that Mudfest was allowed on a farm. Because the town has been through this.

Mr. Bergstrom, because it is fun. He can sell produce to the people.

Mr. Borsari, Yes but you read what Town Counsel has said, it has to attend and concommit.

Which means it has to be directly related and has to be naturally associated with farming and I have a real problem with running pickup trucks through the mud or whatever they are doing. That activity doesn't say anything about he is making money and it doesn't say anything about what he is selling. That is not something that we are going to be able to defend if someone else wants to do something. This is my concern. I have nothing against the Mudfest, I applaud how they run things, it's not that and I hope people understand what my concern is and I think this opinion kind of backs up what I was trying to say last week. You had made a comment that really stuck with me. If we had known about the Zoning issue, this never would have been allowed. You actually said that last week. We wouldn't be here.

Chairman Gaynor, I don't know if that was my point or not.

Mr. Borsari, Oh, I thought you did say that but maybe I misconstrued.

Mr. M. Nessleralla, Are we picking on Clawson tonight or are we picking on Nessleralla Farm?

Mr. Borsari, any farm

Mr. M. Nessleralla, he is directing things about another farm and we are supposed to be here for our permit. We would rather be judged ourselves. We have done it four years. We are not Clawson. What he is doing with that track is permanent. What we are doing is lasting one day, not even. We dig it up and we plant it right afterwards. It's not like we are putting a track down and putting up lights. What are we doing? It is one day twice a year. If you want to pick on Clawson then this meeting should be for Clawson, not for us. And if he has a problem with it because he abuts Clawson, he also shouldn't be taking it out on us.

Mr. Borsari, I don't.

Mr. M. Nessleralla, if you have a problem with this because you live next to him. You have been all over this and you are not biased you should not be on the board. That is my opinion. From the get go you haven't been biased. I don't know how he can be on the board.

Mr. Piccirilli, listen I need everyone to know that I made my decision based on facts. It's in the bylaw, you said yourself it is based on facts. You need to decide whether you are making your decision based on fact or your opinions because at some point this board is not going to be here and there is going to be a different board with different opinions. So I just want everyone to be on the same page and let it be known that my decision was made on fact and fact only.

Mr. Parcellin was your decision based solely on the bylaw or did you incorporate all of this.

Mr. Piccirilli, it was based on the bylaw and I did look at the rest and I tried to come to a decision on whether it was incidental.

Mr. Parcellin, so you did look at the history

Mr. Piccirilli, yes.

Chairman Gaynor, and you see no correlation.

Mr. Piccirilli, I based mine on facts, I can't put opinions into it.

Chairman Gaynor, is there a reasonable connection to it. You see no reasonable connection.

Mr. Piccirilli, I am here for zoning and to uphold the zoning bylaw. If I throw my opinion into everything that is the zoning bylaw, we are going to light em up because then it is going to be based on my opinion not the zoning bylaw.

Chairman Gaynor, Mr. Millias do you want to jump in. You are the only one that hasn't!

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Mr. Millias, I was involved in a little of the research and I witnessed a lot of it. But honestly I would back up the Zoning Enforcement Officer. No one had ever previously asked for a Zoning opinion. This time around there was a request for a Zoning Opinion.

Chairman Gaynor, so the permits from four years ago, twice a year were just signed without any research being done.

Mr. Millias shouldn't have been signed.

Mrs. Roy, I am a member of the Board of Selectmen and I am obviously not a Zoning expert and maybe I should have questioned that but I wouldn't have even thought of asking that question. He was there as far as an entertainment thing. What happened was, this is not about Mr. Clawson, but this is how this whole thing came about. We were at your meeting that is when Rob looked at it and realized as the new Building Inspector that there was a problem with the uses.

Mr. Piccirilli, you did ask for my determination at that time.

Mrs. Roy, when that was determined I apologized as one member of the Board of Selectmen for not questioning Zoning.

Chairman Gaynor, so it was never even determined if it was allowed in an AR district or in a farming, AR area. No one ever checked. It was just automatically signed. I guess what I don't understand is, how is that not setting precedence.

Mr. Seelig, because if you make an error, once you are aware of the error you are not to continue to make the error.

Mrs. Roy, I admit I made an error by not questioning that, as one member of the Board.

Chairman Gaynor, so again if the same Judge goes back and goes back on your past decisions and what not, they could turn around and say, this is what you did for the last four years twice a year and determine ...

Mr. Seelig, everything is going to go into the record but once you are aware of an error you are bound not to keep making it. They wouldn't allow that with anybody.

Mr. Parcellin, so April is what we have been hanging our hat on with letting them know. The Determination letter was September 14th.

Mr. Seelig, yes but Mr. Bergstrom was at the Selectmen's Meeting in April when he was notified that this was a Zoning issue.

Mr. Parcellin, but it couldn't have been appealed until it was denied correct.

Mr. Seelig, yes, and Mr. Bergstrom didn't ask for a determination until months later. Why didn't Mr. Bergstrom request that determination?

Mr. Parcellin, so if he didn't ask for the determination, what would have happened

Mr. Seelig, he was notified by the Board at that time in April that there was a Zoning issue. The Board in fact, when Mr. Bergstrom came in this fall or late this summer, the Board said you are going to have to go through Zoning and get that straightened out.

Mr. Parcellin so was it just a conversation in April or was there an application.

Mr. Seelig, no there is no application as he didn't come in for the permit. He didn't come in for the permit until late summer, early fall, but the Board and Mr. Bergstrom both acknowledged that he would be coming in for a permit this fall.

Mr. Bergstrom, Mudfest was brought up during the concert conversation in April and then we had the one in June which I realized that Mudfest couldn't go through, yes we would have to change the zoning and all that but as my research was showing me about farming and all of that and accessories, I didn't think it was a process or anything like that. After calling the Farm Bureau and Mr. Mitchell I didn't think I had to go through changing the zone and proving that it is farmland and a whole different guideline. I have a whole lot of places that adopt this as a temporary special event. It is temporary changes the special use of a building, property or public way to the person

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allowing the use of it. I was wondering if Halifax can look into something like for Town Meeting. Boston Ma does it. They shut down roads and have festivals and stuff like that. If it is good enough for Boston, I think it can be good enough for Halifax, I am just saying.

Mr. Seelig, we have shut down roads before for road races, but it's a different subject.

Mr. Bergstrom, I am just saying that if you adopted it, it would help the situation.

Chairman Gaynor, if I understand your point also, so I can get clear on it, there would be no way in other words there could be a change in our zoning bylaw if in fact the denial in the proper came up in September, there is no way this would have gone out before October.

Mrs. Roy, that is the past, you really just have to look at right now. Coulda, woulda, shoulda, you know. What we did incorrectly, we know, but as soon as we found out we were like, Mama Mia, we were wrong.

Mr. Parcellin, can I ask you just an opinion question from your perspective.

Mrs. Roy, yes.

Mr. Parcellin, what would be something that you think is incidental.

Mrs. Roy, I don't know the first thing about farming.

Mr. Borsari, A farm stand, storage tanks for fuel, aerial tanks for spraying. I researched this a little bit. These uses are directly related to farming. Incidental uses have to be directly related to farming. I am trying hard to hang my hat that I can say this is related to farming. I think that they run it fine and this is not a reflection on them. It is all farms. These uses have to be directly related to farming

Mr. Parcellin, I think that they have to have a reasonable relationship

Mr. Durgin, I am having trouble with what you call a reasonable relationship. You could say that a concert is related to farming because of Farm Aid.

Mr. Borsari, but it's the act of farming

Mr. Durgin, but if we are going to stretch for a reason I think that is as good of a reason as any.

Mr. Parcellin, but are we supposed to stretch, that is the question.

Mr. Borsari, it specifically said that you shouldn't.

Mr. Parcellin, well, no, it says that the activity ought to be considered. I understand what you are saying but I think it is specifically vague and it is difficult.

Mr. K. Nessleralla, we have the corn maze going on and we invite a band that could sing at the corn maze, multiple bands. Is that allowed or is it not allowed.

Mr. Parcellin, start asking questions.

Mrs. Roy, I think you would need an entertainment license.

Mr. K. Nessleralla, No, why is that we had Bluegrass on the farm that was allowed for three years.

Mrs. Roy, but I think he got an Entertainment permit for that.

Mr. K. Nessleralla, he got an Entertainment permit for that part ok. Now we do the corn maze, we hire a band to sing. Is that allowed or is that not allowed.

Mrs. Roy, I don't know that you hired a band. I suggest that you get an Entertainment permit.

Mr. K. Nessleralla, I am just saying, we hire a band, is it allowed or is it not allowed.

Mr. Seelig, you should be obtaining a live entertainment permit.

Chairman Gaynor, it is no different than if you had a live band playing in the backyard at a graduation party.

Mr. K. Nessleralla, what is farmland used for other than agricultural. Do they hold rallies on it? Do they hold farm Aid? Was it held on farmland? If I wanted to go out tomorrow and do tractor pulls and invite everyone in the state of Massachusetts, to come to my farm to do tractor pulls, what do I do then?

Mrs. Roy, I don't even know what a tractor pull is.

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Mr. Parcellin, I think you might have the same problem.

Mr. K. Nessralla, I don't need a permit to go have tractor pulls on my farm.

Mr. Seelig, you need to have one for live entertainment. You are charging admission. You are not just raising crops.

Mr. K. Nessralla, this Mudfest has been proven for the last 6 times.

Mr. Seelig, no one is disagreeing with how well this is run.

Mrs. Roy, no one is disagreeing with this is not a good event.

Mr. K. Nessralla, then why don't we change the bylaw?

Mr. Seelig, I suggested that.

Mr. K. Nessralla, I didn't know that we had to do that until September. Why don't we change the bylaw so we can have people with a certain amount of acreage can do that. Other than sitting here and arguing this thing back and forth. Change the bylaw

Chairman Gaynor, well I think that has to be done.

Mr. K. Nessralla, it has to be done.

Chairman Gaynor, or at least entertained.

Mr. K. Nessralla, instead of putting somebody in hot water or putting us in hot water, change the bylaw and get it right.

Mr. Piccirilli, well I think that suggestion was made.

Mr. Seelig, in April because I am looking at the minutes and they would either have to be rezoning the land to Industrial Conservancy which is where the outdoor entertainment events can be held or else the use table would have to be changed to allow an event like this on AR land by Special Permit. It was brought up in April. It is now October, 6 months later. Plenty of time.

Mr. Bergstrom, I just have one more thing right in Halifax, right in the Right to Farm Act. It says that the words farming and agriculture, do you have it in front of you or anything like that? It just basically says that derivatives shall include but not be limited to, its stuff in black and white. Its stuff like that. It's here. I actually don't understand this.

Mr. Parcellin, we actually asked about that as far as the Zoning Bylaw as far as the argument that we are having over the subordinate and all this stuff, only deals with Zoning Bylaws. So, that is the only thing it won't do. The other stuff doesn't really apply to us.

Chairman Gaynor, that is what our Atty said. I read that out loud.

Mrs. Roy, so to answer, the only thing that would be close is the whole tilling thing. Again I am not a farmer so I don't know about the whole tilling thing, but if you want my opinion, I think that is the only thing that has been talked about.

Chairman Gaynor, as far as relating it to a reasonable relation to farming. I didn't hear anything from the Board other than it promoted...and both Mr. Nessralla's said that it promoted customer awareness, increase of the sales of the crop, so it did aid through the income produce generated through the property. By the sale underneath the tent on the property selling everything that's available. Even if you go there today you will see the tent set up. In answer to your question I think there was both that Town Counsel said should be taken under consideration. On the Board does anyone else have any more questions? I think if we are ready to vote we should do that. Let's make it clear what we are voting on.

There are two ways the Board can vote. One is to uphold the Building Inspector's decision. Two is to not uphold or overturn the Building Inspector's decision. A YES vote would be to overturn the Building Inspector's decision. A NO vote would be you are denying the appeal and it would be upholding the Building Inspector's appeal.

So the decision was made by the Building Inspector not to allow it. What is in front of us is an appeal of that decision. So if we vote yes we will be overturning the decision of the Building

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Inspector. If you vote no then you are overturning, wait no, you are upholding the decision of the Building Inspector.

Mr. Parcellin, depends on what the motion says, I think.

Chairman Gaynor, let's get going. I will accept a motion for Petition #857 if someone has one. We will make it clear in the motion. Also in the motion if there are conditions you feel you want to add, we can do that also, but I need a motion on Petition #857. As far as I can read it, the Petition is to reverse the Building Inspector's decision. I do know that personally I had never brought into question all of the idea if all of the conditions could be set by the Zoning Board on this. I never asked. I never thought of asking Atty Hucksam. For example, an overturn of the Building Inspector's denial with conditions. I never asked him that. I agree with Charlie, I don't see why we couldn't.

Mr. Seelig, I don't know that you could. Please excuse the interruption. It is a simple yes or no. You are either overturning or not overturning. The applicant went to the Zoning Enforcement Officer and said this is what he wanted to do, outlined it and that is exactly what the decision was made on. I don't think that you can then place restrictions on it because then it is a different application.

Chairman Gaynor, I think we should go directly to one of you guys and put a motion on the table. If there is any further discussion we can discuss it further.

Motion to overturn the Building Inspector's Decision.

Motion: Peter Parcellin Second: Gerald Joy

Further Discussion from the Board:

Mr. Parcellin, I think that the fact that it is a subordinate use is...we don't have the specific facts but I want to make it abundantly clear to everybody. I don't think there has been a question with the two events per year that we are deciding on has any real primary purpose on the farm to exist. I think the question is what is happening is a reasonable relationship to the primary activity to the farming and a secondary activity to the Mudfest. I think there has been some connection. I think the question that we need is how that connection is reasonable and because of that are they able to override the bylaws of the town based on their farming. I don't know if it is as cut and as clear as we would like it to be and I think a corn maze would have generally no effect on the farming but I think, and I am struggling with this but I do think as a Board we should vocalize our support or not support for a change of the bylaw going forward so that we don't have to deal with this again.

Mr. Joy, I do think that there is a connection. I feel that the land is put to use. He has got land that is not in use right now or part of it is not in use and it is making it more available for crops. So, I think in this particular case it does have a connection. Although slight, it is a connection on tilling the land.

Mr. Durgin, it's a slight connection but how often do these boulders work their way up. Is Mudfest always in the same area or do you move it around the farm to get at different areas?

Chairman Gaynor, we are not asking questions unless it is a rhetorical question, that is it.

Mr. Durgin, because I am struggling, I am having a lot of trouble trying to decide which way. I spent a lot of time trying to research and I still am undecided so, I mean moving it to different parts of the farm to excavate these boulders.

Mr. Bergstrom, what we do is basically the same area, but it travels go up back and forth to the other areas. You'll see what you think is a little rock and they will politely ask seeing as the excavator is there, can you get that one out.

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Mr. Durgin, I would think that if you run over the same area you are picking out the boulders.

Mr. Bergstrom, it is pretty clean there, but every year we do find more and more. They do come up.

Mr. Durgin, so when the excavator is there, on other parts of the farm if you see other parts of boulders sticking up a little bit, you pick those up also.

Mr. Bergstrom, yes because if you start poking around in that little spot you see on the top you can find more rock when you start digging around. It helps them out. There are some monster rocks that we have pulled out that aren't even near our event area.

Chairman Gaynor, you don't see the connection.

Mr. Borsari, no, if they are having boulder problems it is because they are running vehicles over them and they are kicking them up. They are talking about boulders.

Mr. M. Nessralla, I see this first hand every year and I find it appalling that somebody is arguing about what I see. I have to take my backhoe up there and muscle some of these rocks out of there. It could take me a half hour; it could take me an hour and a half. The excavator comes down and pops them up. When you drop the harrow on the field and all you hear is somebody beating on it like with a cymbal and you are looking at those rocks and you break the barns and you have to go back and fix it that's my job. I don't think any of you have ever run a bigger piece of equipment or knows or how you can make a decision on that. Maybe you should go down there and work for me for a week and then you can figure it out. It's not as simple as it sounds.

Mr. Borsari I think that using the backhoes and the excavators is the incidental use.

Chairman Gaynor, that is the question.

Mr. Durgin, right but if he gets the equipment down there free of charge, to pick these boulders up, he would have to pay for them otherwise so it is kind of an incidental use.

Mr. Borsari, again we are going to have to justify saying no to somebody at some point. We are stretching this to what I think is unreasonable.

Mr. Durgin, what is reasonable.

Mr. Borsari, well, everyone has their own opinion.

Chairman Gaynor, and whether we vote yes or no, in favor of this or not, I do think the Board should move forward with some kind of bylaw changes as a Board to submit for some kind of consideration down the road.

Mrs. Roy, we are not, and I am only speaking for myself, but my Board will not pursue that but you guys should if that is what you want to do.

Mr. Durgin, also in MGL Right to Farm there is a lot of stuff I don't quite understand, but it says no Zoning Ordinance or Bylaw shall regulate the use of land for the primary purpose of primary agricultural provided that during the month of June, July, August and September of every year during the harvest season the primary crop raised on the land of the owner comes into figures and percentages... does it fall under that or not, don't know. I don't understand it, so can we or can we not regulate it.

Chairman Gaynor, I do want to clarify too what we need for five members voting. We need four out of the five to vote in favor in order to uphold the motion that has been made. Charlie if you don't mind me asking, on the Special Permit, it is 4 out of 5 members but we are not voting on the Special Permit. So is this a majority or a 4 out of 5.

Mr. Seelig, my personal opinion would be, as I am not Counsel or anything, seeing as this is a reversal of a decision, my guess is 3 out of 5.

Secretary Wong-Ryan read the section from the Appeals stating that it was a 4 out of 5 vote on a concurring 4 out of 5 member board.

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Chairman Gaynor, the motion on the floor is to overturn the Building Inspector's decision. A yes vote would overturn the Building Inspector's decision. I am going to call for a voice vote.

Dan – No

Gerry – Yes

Bob – Yes

Peter – Yes

I vote Yes, The motion passes

AIF – 4-1-0

To overturn the Building Inspector's Decision

Chairperson Gaynor and the secretary reprised the applicant of the procedure following approval of the petition, both verbally and handing "Recording a Decision with the Registry of Deeds" form to the applicants.

Peter Parcellin made a motion to adjourn the meeting. Seconded by Robert Durgin. AIF 5-0-0

Respectfully submitted,

Zoning Board of Appeals, Secretary

Robert Gaynor
Zoning Board of Appeals, Chairman
