

**TOWN OF WOODSTOCK
TOWN DEVELOPMENT REVIEW BOARD
Wednesday, March 23, 2021
ZOOM MEETING/CONFERENCE CALL
DRAFT MEETING MINUTES**

MEMBERS PRESENT: Don Bourdon, Kimberly French, Wade Treadway, Brad Prescott
MEMBERS ABSENT:
OTHERS PRESENT: Neal Leitner, Al Alessi, Larry Nile, David Grayck, David Nixa, Jay Morgan, Tom Meyerhoff, Gina & Walter Beinecke, Matt Lombard

I. Call To Order 7:30 pm

II. Public Hearings

Continued Business from the February 23rd TDRB meeting:

T-5084-20; John Holland, Site Plan Review, Accessory on Farm Business

Don Bourdon reintroduced the project with background from the last few meetings. The board reviewed attorney David Grayck's information from his memo on AOFB, John Holland also provided a response to the memo.

Grayck stated the memo was an attempt to provide an analysis of the AFOB provision, and its utilization of both ACT 250 provisions and required agricultural rules definitions and to try and offer a logical analysis which starts with the term farm, farming, the wrap rules, and then qualifying products and principally produced. He stated without a flow that the statute is circular.

Don Bourdon noted that John Holland sends the board an 11-page response, however Grayck did not receive a copy. Don Bourdon gave an overview of the memo from John. One point mentioned was regarding TDRB and if they can set requirements on hours of operation, limits of customers, noise limitations, or traffic.

John Holland stated he believes the board has a right to set performance standards, but he asked if this project is exempt under 44-13, in his position he believes it is. Holland said the attorney added two performance standards that do not appear in Woodstock bylaw or performance standard set by Vermont. Holland said 6 pieces of the statute were ignored, he then said he addressed the entire statute in his memo line items A-F, as well as answered the attorney's questions on what products will be produced on the farm, both processed and featured. John Holland then stated if the board needs help, they should hire a non-partisan counsel.

Grayck stated he attempted to layout a starting place for the board's analysis. Grayck also noted there is a lot of complexity in this statute, he also said the Woodstock bylaw amendment that the board adopted is pretty clear that the board can set reasonable conditions and requirements as allowed. Grayck then pointed out Section 809-B.

Don Bourdon stated that accessory use or accessory structure was looked at as being subordinate to the primary use on the property or structure. Bourdon also noted the principal use for this project is the farm and the focus of the AFOB is to be subordinate to the farm. Don Bourdon asked if David Grayck had a definition for accessory. Grayck said he did not but noted a bylaw that states zoning cannot regulate a farm structure, but zoning can regulate an AFOB. Grayck essentially said the business activity is supposed to be

an accessory to the farm, and the meaning of farm is that you are engaged in farming per Act 250 and subject to wrap rules. John Holland noted that the statute clearly states under definitions AFOB means activity that is accessory to the farm and comprises one or both of the following; processing or featuring activity. Holland then said they purposely built the structure for both things. Holland then went on to say it states regulations should not have the effect of interfering with the intentional use. Holland said performance standards should be uniform across like businesses and not specific to AFOB.

Larry Niles then said it easy to be a farm, but what is the scale of the restaurant. Larry believes that the scale aspect is defined in accessory and said “AFOB means activity on farm and comprises 1 or more of the following” and that is the key to defining the scale. John Holland said he believes there are things that limit the scale, water source and wastewater are two things that limit scale, he spoke of having to build a pond specifically for the fire prevention lines, which also required a permit. Holland said he would like to talk about performance standards and work with the board on this.

Al Alessi said on the Peacefield website they are advertising special events for up to 125 people and questioned how that falls into accessory and falls under agriculture. John Holland then replied the information on the website is incorrect, as the IBV has a limit of 110 people, but the space and water system is only set up for 80. Al then said he wonders how 80-100 people fall into accessory.

David Nixa a new resident of Pomfret Road as of January. He stated he read past meeting minutes for information on the current topic. Nixa states that he moved to the Pomfret Road from the Village due to traffic and events at the Inn, and to be in a quiet environment. Nixa said he is not opposed to it but is concerned about scope and scale. He states in the October meeting it was stated the max amount of people would be 60 people, then in the February meeting the max amount was 88, August being around 99 people, so he does not see this in line with 60 people as stated in October. Nixa said it seems it has grown from a very local farm friendly limited operation to something significantly larger as a restaurant. Nixa then asked about hours and alcohol at the bar, is the alcohol coming from the farm? Nixa said there was also nothing mentioned regarding music and when he lived in the village the Inn would sometimes have weddings with music until midnight, despite the 11 pm curfew. Nixa then said it is his understanding that 50+% of the menu comes from the farm but sees 42% not available to be produced on the farm, items such as tuna, crab, shrimp, halibut, and alcohol. Nixa believes the scale and scope are “overwhelming”. John Holland then said the numbers vary by regulations, but he said there are only 60 chairs, and the number of meals is accurate, however not all seats will be filled at the same time. Holland then clarified AFOB two uses allowed, the first having a limitation of 50% of annual sales that are principally produced on the farm, is just limiting the storage, preparation, and sale of qualified products, he noted he believes this is in there to prevent an AOFB slaughterhouse. Holland went on to say there are no limitations (processing center) on serving features agricultural practices or qualified products. Holland said the alcohol will not be from Peacefield Farm, and it will also be a limited menu. Holland then offered to show Nixa around and provide him with printed information.

Tom Meyerhoff then said if there are 60 chairs with 3 turnovers, that is easily 180 dinners, then asked about using a tent and how often the tent would be used, and what drinks can be serviced outside in the tent. Holland replied there is no tent going up and that the only outdoor intention is 16 seats on the patio.

Jay Morgan said at the time the farm was sold there were restrictions on the deed, and he asked if the board had studied them. Don Bourdon replied the board is mindful of the conservation restrictions and easements with the land trust. John Holland said that every structure built on the farm must be run by the land trust and said the land trust was very helpful in establishing and reactivating the farm.

Wade Treadway asked how the scale is of what is being proposed in comparison to P&P or The Worthy Kitchen. Matt Lombard said he does not know what those establishments do per night but said 3 turns would be impossible for him and it is hard to measure against Worthy Kitchen. Matt stated that currently they reserve 45 dinners per night, which is not even a full turn on all 28 seats, currently he is open from 5:00-8:30 pm.

Grayck said he wanted to clarify that whether the activity is accessory is an essential legal element to the analysis, and the statute requires that the activity is accessory to a farm. He said the board must decide whether the activity is accessory and if it is accessory does it compromise one or both of the following and refer to the definition of accessory use and accessory structure on page 2 of the bylaws to obtain guidance on what the word accessory means as it is used in the bylaw. Grayck also said the number of meals, number of patrons, the dollar sales, the capacity of the water system is all evidence as to if something is or is not an accessory, but it does not eliminate the requirement that you decided as an essential legal element whether the activity is accessory.

Don Bourdon asked the board if they feel like they have enough information for an assessment. Brad Prescott said he thinks there is a significant amount of information submitted, but he did agree that legal counsel may be the best option moving forward. Kimberly French also said that each meeting there is new information which is a lot to process and believes outside counsel would be helpful for the accessory aspect. Wade Treadway also agreed.

Don Bourdon recommended this goes to recess to avoid a 45-day window for approval. John Holland asked for an April 23rd decision. Brad Prescott noted that outside legal counsel may have questions, due to the carrying pieces of information so a decision by then may not be possible.

Don Bourdon then asked about Act 250, John Holland replied it is not a requirement. Holland noted he no longer has a residential component to this but had an early idea with Vermont land trust about that, he said this now sits under the agency of agriculture.

Grayck then said he wanted to have on the record that whether or not a project review sheet or a district commissioner jurisdictional opinion specific to the project as proposed, specificity to whether it needs Act 250 permit, whether Linda Madison or the assistant coordinator in the Act 250 office issued a project review sheet and/or a jurisdictional opinion and if such project review sheet or jurisdictional opinion has been issued that it will be filed with the TDRB, otherwise there will be a request for the project review or jurisdictional review.

Don Bourdon then asked John Holland for the Act 250 project review sheet.

Hearing no further comment, the board unanimously voted to close testimony on this item.

T-5111-21; Eden Piconi; Site Plan Review: Accessory On-Farm Business

Neal Leitner asked if Eden Piconi was present, there was no one present other than neighbors Gina and Walter Beinecke who said they believed the Piconi's were putting their house for sale because they do not believe they will be able to successful with AOFB. Don Bourdon said there has been no withdrawal of the application. Neal Leitner stated he would contact Eden Piconi. David Grayck said that what Mr. & Mrs. Beinecke want to make sure of is that in the course of checking with Mr. & Mrs. Piconi, if they decide to

move forward with the application, there will be a hearing on it, if they are not sure of it, their request is that it be withdrawn without prejudice to their right to refile so there are no concerns about triggering any deemed approval deadline or having to maintain items on the agenda. Alternatively, if they are sure they are not pursuing the project they want that to be stated on the record or have the record cleared.

Brad Prescott asked if you could have an initial application without testimony from the original applicant. Don Bourdon said that the original applicant must be represented. Neal Leitner noted that for example with Village Development Review they will not decide without the applicant present, and then if the applicant is not available, they will postpone until the next meeting. Neal Leitner said for this specific application he will get a written response.

Grayck said if there is another hearing and the Piconi's do not show, he will request the board denies the application due to failure to appear.

III. Approval of Minutes:

The minutes of February 23rd, 2021 were approved as submitted.

IV. Adjournment:

Meeting adjourned at 9:55 PM