

HALIFAX BOARD OF SELECTMEN  
SELECTMEN MEETING  
WEDNESDAY, JANUARY 16, 2019 – 10:00 A.M.  
SELECTMEN MEETING ROOM

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Meeting came to order at 10:00 a.m. with Selectmen Kim R. Roy and Thomas Millias present.

The following business was discussed:

**GENERAL MAIL / DISCUSSIONS**

Consent Agreement – Scott Clawson/Fieldstone Farms

Roy began by saying that they are here to talk about Scott Clawson's consent agreement with the town and his wish to add additional shows. Also to talk about a longer term strategy should Clawson decide to sell the property or leaves the operations go to another family member or go to a third party. She said that they are here with Attorney Mayo and Attorney Kwesell to see if the Town can do something with the consent agreement or find some other mechanism for regulating the horse shows.

Seelig said that Garron (not present) talked with him this morning and he voiced that he is not in favor in increasing the number of horse shows and dates from thirty to thirty-three. He felt given Clawson's previous record (gazebo issues and water testing issues w/BOH) he does not want to reward Clawson. Millias said that is his sentiment also and continued to say that they are freshly off the new consent agreement that we spent a lot of time and effort on where we came up with thirty shows and now he is asking for more show days. He further said that who to say that he will not be back next year asking for more. Then there is the impact on the abutters as their quality of life suffers a little bit. Millias is not inclined in voting yes on extra days and then there was the question this could this impact the whole agreement making it null & void.

Attorney Mayo said under the terms of the agreement the Board has no obligation or the discretion to grant any more days than the thirty stated in the agreement. He further said that the agreement is a valid judicial decree and order that would prohibit the BOS from exceeding the Judge's order to allow Clawson more than thirty days. Contradictory to what Mayo just said Millias said Clawson's lawyer was trying to convince the BOS that the language did not imply that.

Mayo said if the Board was to exercise some discretion and allow Clawson and increase in days could potentially open the Town up to having a third party protest the Board's decision.

Roy said that she would be more inclined to grant the days because she wants to separate Clawson from the people who run the shows because it is a good thing for the community but she understands and respects where they are coming from.

Millias said his lawyer comes in comes at the eleventh hour on the absolute last night the BOS can vote with these nice people and Clawson was not even there, to plead their case. This was a set up from the beginning and that alone turned Millias off. Millias said the funny thing is when these people left they knew what we were dealing with and he said not to take it personally against their organization this is our dealings with Clawson.

Kwesell said that the purpose of a consent agreement is to limit discretion. She asked if he was claiming there is language in the agreement that he can increase it at his own discretion. Mayo does not think he is claiming there is language but is saying that the BOS has the discretion to change it.

Seelig said Clawson's lawyer, Phil Taylor, got confused because there is language that says the number of 'shows' can be increased. He explained that right now he has six and he can go to seven but if he asked for eight shows it still will be within the thirty days.

The show days are limited there is no sentence attached to the show days as opposed to the shows that says the Board can add at the discretion increase in the number of days.

Roy asked Mayo that what he is saying is that the Board does not have the power and Mayo said under terms of the consent decree the Board does not have the authority without going back to the Judge. If the Board was to exercise discretion notwithstanding what this agreement says then the Board would be opening themselves up to a third party action. That is his take on it and whether or not that will happen he cannot say.

Seelig said that Attorney Taylor will be coming in next Tuesday to meet with the Board. The Board could say yes and then have to go court on it or they could say no. Millias said he want to keep the discussion short when he comes in next week therefore he not going to get into as to why the Board thinks they can say no.

Mayo suggested if Clawson has some flexibility, if this is a more valuable show maybe he can adjust his schedule or cancel something else on the back end. He pointed out that the BOS was very accommodating when the consent agreement was re-written. Millias and Roy could not agree more and Millias added not to mention he kept on revising it. He further said on top of all this is the issue with the gazebo where it was not done right from the beginning and numerous permitting issues over the course of the years and he put in water and electrical connections for thirty trailer sites.

Mayo said as it stands right now in the terms of the agreement, the Board does not have the discretion but they could always move the court to further amend and modify the consent agreement to allow him thirty plus days.

Kwesell said that she got the feeling/reading from the Judge's comment on the agreement that he was not on board with amending the agreement. Mayo said that the Judge was in agreement with it because the agreement from 1993 was still in effect and he saw that it was valuable and it applied therefore did not question it.

Millias again pointed out that it has only been 2.5 years after amending the agreement and now he wants to do it again and then next year he will be in asking for more and so on and if we do now then the BOS establishes precedence with Clawson coming back saying well last year you gave me three why can't I add more this year.

Seelig said right now we have a consent agreement that in essence bypasses our by-laws in terms of zoning for that one property for that one use that is specific to Clawson and not to fieldstone farms but at some point Clawson will retire and he may have a family member take over the operations or it could be purchased by a third party. Fieldstone might be mentioned but is Fieldstone a corporation or is it Clawson all the time. Seelig said that he and Mayo have talked about this and at some point the Town will be in a place that the current consent agreement does not apply and we will be dealing with a party who is not in the consent agreement. He further said given (a) the town's by-laws (b) whether horse shows fall under agricultural or not and (c) interest in working with whomever is there and the abutters the Town needs to come up with a good strategy to have in place to deal with this situation.

Millias asked what do they have to do statutory and what is allowed to establish this agricultural use. He also asked should they look at our by-laws to see if there is anything they can do at Town Meeting to add some protection - that is if the town is in favor of going that route.

Kwesell said after speaking with Seelig about this she said there are only a couple of ways to transfer the agreement to someone else without doing a zoning by-law change and both ways will need a willing applicant. One option would be that the Town file another lawsuit and quickly go to a consent agreement and the other would be a Host Community Agreement between the Board of Selectmen and the owner of the property. Kwesell said to achieve a HCA there is usually something obtained from the Town such as a license or special permit.

So perhaps the Building Inspector issue a determination that horse shows are not agricultural use and appeals to the ZBA. The ZBA then overturns the Building Inspector and a HCA is entered between the Board of Selectmen and the property owner.

There is a little bit of uncertainty meaning that the Building Inspector has to truly believe this is not an agricultural use and the ZBA has to be on board with a HCA. But above all we have to have an applicant who is willing to do this.

Mayo said in order to get to that point there first needs to be a by-law in place that the Building Inspector would refer the equine activity is subject to and Kwesell said that he could say it is commercial in a residential zone. Mayo said that did not matter because the commercial use would be raising horses for farming and Seelig said there would be no question for training, raising and boarding of horses.

Mayo stated that in any case they would have to craft a by-law that is valid and enforceable. Kwesell said so if for some reason the Building Inspector determines it is a commercial use which is not allowed in the agricultural/residential zone he then could issue a determination. Again the property owner would go in and ask for a determination and for all this to happen we need to have a willing participant or have a violation.

Kwesell agrees with Mayo that we would have to have a violation because that would give us a much stronger case to have a zoning by-law. But again she said if we do not have a willing applicant and we have zoning by-law that says horse shows are not allowed and he has a horse show then the town can go after him for enforcement. Because we do not have that willing applicant we are not going to go straight to a consent agreement.

Roy said that the Board met with a company and they really liked them and thinks they could do well for the Town but she thinks they probably would not want to invest millions of dollars to invest in the property and then jump through hoops for us to establish this agreement not knowing that they can use the property for what they want to use it for.

Millias said that BOS sort of indicated to them that they would be in favor of providing the same terms that now exist so they could probably make their determination on what is in the palace now in terms of show dates.

Kwesell there is a third option she wanted to throw out there and that is some kind of amendment to the outdoor entertainment zoning by-law somewhere on the lines of what Seelig had crafted with Bergstrom. They could create tiers in the by-law; such as tripling the acreage because she thinks there is a lot of acreage here. So based on the acreage of the property we could increase the days to let say thirty between April and October. Seelig and Kwesell would have to look into how other properties could be affected and how that will affect the community as a whole because there could be a twenty-five acre property where the town does not want horse shows at all therefore the by-law would have to be clearly defined. She was trying to figure out if they could narrow it with regard to the activity but then we get into the question is it agricultural or is it not. And she does not think we could narrow it down to just horse shows but maybe perhaps narrow it by the size of the property.

Again Kwesell said the best option is a HCA with willing participants (Building Inspector/Enforcement officer, ZBA, BOS and the applicant).

Mayo suggested writing a by-law specific to equestrian use that is not incidental to farming because in his opinion agricultural use is limited to the raising of livestock including horses and the keeping of horses as a commercial enterprise performed by a farmer on a farm or in conjunction with the farming operation so in essence farming has to be what is generated or kept on the farm.

He said if we are talking about equestrian use and if this use is not incidental to his farming operation we need to create a by-law so that the town has something to enforce the property owner not specific to Clawson but to anyone who is looking on the same lines as Clawson's operation. What Mayo is saying is issuing a special permit that is not agricultural in nature but a separate independent commercial operation.

Kwesell thought they should limit the land because we would not want horse shows on as little as two acres of land.

Mayo said that even the definition of horse shows in the agreement says *shall mean a judged horse show conducted on the premises for which horse not stabled on the premises has been invited and are in fact present to compete under the rules of the American horse show association*. The point he is making is that the horses for the shows are coming in off site and are not Clawson's horses but are international horses. He does not see a judge saying "this is farming". Millias agrees and would like to craft something that they can put their teeth into.

Kwesell read the whereas clause in the agreement that said *whereas the above uses are permitted by the Town of Halifax zoning by-law* and she said that is this going to come back at us because there is no by-law. Mayo said this agreement is specific to Clawson and he does not think that clause will come back to hurt the Town in any significant way.

Kwesell said that the Town has alleged that although the conduct of horse shows is permitted such horses shows are subject to reasonable regulation so can they argue that the by-law we are creating as applied to Clawson would be a reasonable regulation? Mayo said that the by-law will be of general application whether it applies to this agreement or not.

Kwesell said that if the Town does not let him do horse shows this agreement is null and void and is allowed to precede on with court hearing but there is really no way for him to change this unless there is a zoning b-law change or a special permit contingent on a HCA signed by the Board of Selectmen or both.

Millias asked if the HCA would have to go before Town Meeting and Kwesell and Seelig both said no.

Mayo said that he is comfortable with what they have discussed here today in terms of enforcement of the existing agreement and potentially moving forward on a new by-law.

Seelig said the combination of what Mayo and Kwesell have provided today has given him and the BOS a path. Again Seelig said it is not so much about Clawson but he is the one who has the agreement and we want something in place for the future and wants to make it a solid as possible. Roy added that having something in place will be beneficial to Clawson and make it easier should he sell the property.

Seelig said that they will try and put something together to place a by-law Article in the warrant for the Town Meeting in May.

### **MEETING ADJOURNED**

There being no further business, the Board adjourned the meeting at 10:36 a.m.

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Thomas Millias  
Clerk

/pjm