



## Halifax Planning Board Meeting Minutes February 23, 2017

A meeting of the Halifax Planning Board was held on Thursday, February 23 2017, at 6:30 p.m. at the Halifax Town Hall, Meeting Room #1, 499 Plymouth Street, Halifax, Massachusetts.

**Members Present:** Gordon Andrews, Chairman; Larry Belcher, Vice-chairman  
Mark Millias, clerk; Jonathan Soroko, member,  
Karlis Skulte, member (arrived at 6:50 p.m.)

The meeting was called to order at 6:30 p.m. and the agenda was read into the record by Gordon Andrews

MOTION: Mark Millias to accept the agenda as read  
SECOND: Larry Belcher AIF

### **Secretarial: Meeting Minutes:**

Motion to approve meeting minutes of January 19, 2017

MOTION: Mark Millias  
SECOND: Jonathan Soroko AIF

### **Bills:**

Motion to pay bill for Plympton/Halifax Express in the amount of \$80.00 for advertisement Public Hearing Notice, Zoning by-law change.

MOTION: Mark Millias  
SECOND: Karlis Skulte AIF

Motion to suspend the regular Planning board meeting to open the Public Hearing at 6:40 p.m. and move to the Board of Selectman's meeting room, first floor

MOTION: Mark Millias  
SECOND: Larry Belcher AIF

Members moved to the Selectman's meeting room and Gordon Andrews called meeting back into session, advising the audience that the meeting was suspended to open the Public Hearing.

Mark Millias read the Public Hearing Notice (attached) into record and opened the hearing to the petitioner.

Charlie Seelig spoke to the petition for the Board of Selectman: explained the reasoning behind having the article at the town meeting in March, logistics regarding the Mudfest and timing issues. It would be up to the Town's people if they would allow by a Special permit thru the Board of Selectman the outdoor entertainment option, whether it is Mudfest or large concert, any type of outdoor entertainment. Right now it is not allowed in the AR district. There is a dispute if Mudfest is an agricultural event or not, he will not go into the details, but the real basis is before the court. If the by-law is changed, the zoning use will allow outdoor

entertainment, specifically in the AR district. Someone who wanted to bring in an event to a property in the AR district would be allowed only by Special Permit with the Board of Selectman. There would have to be a public Hearing, abutters would have to be notified of the proposed event and the owner would have to show it would not be detrimental to the surrounding properties. The Board of Selectman could put stipulations on the petition. Same process is followed if someone would go to the zoning board.

Reason for doing it now is that traditionally Mudfest is in June/summer if it goes to Town meeting in May and if approved it still needs to go to the Attorney General for approval and may take weeks or months for approval and that would come in after the date for Mudfest. Mr. Bergstrom will come back in spring for permit and go thru same process. If it is approved at Town Meeting, it will be allowed and the Board of Selectman would approve or not approve without legal proceedings, however to do that need to go to Town Meeting.

Mr. Seelig then gave a brief summary about the official warrant and legal changes that need to be made. He also discussed a few of the concerns that hve been brought to the attention of the Board of Selectman regarding outdoor events. If someone wants a concert in their backyard, they would still have to go thru the BOS for entertainment license. Thru the Special permit process that BOS has to deal with parking, sanitary facilities... etc. Right now you can have a wedding, etc... but it cannot be a commercial event.

(Karlis Skulte arrived at 6:50 p.m.)

It is the process of articles (by state law) for the Planning Board to hold a public hearing, the Board in turn will make a recommendation for Town Meeting.

Chairman opened to the audience for questions.

Mr. Goodwin – Aldana Rd. : When you talk about abutters, is that where 100 feet comes into play?

Mr. Seelig: usually abutters within 300 feet or direct abutters would be notified, with the park, not sure how it will work. If in shared living facility... (condo's) if management is notified or everyone living there. The renting, the owner is notified not renters. Will make accommodations if something comes in, to make it as publicized as possible so as many people as possible are notified.

Gail McManus – Redwood Dr.: Curious as the mobile home park is in the process of being sold, when it is sold to the tenants, we will all be owners of the property.

Mr. Seelig: It may be more of a condo type ownership, you may be joint owners, such as a condo association is joint owners, as a whole is notified, such as a management company.

Mr. Brennan – Natureway Cr.: My understanding is someone wants to bring a 3 day music concert to where the horse farm is... is that true?

Mr. Andrews: I will defer to Charlie, no matter what happens with this bylaw they still have to follow the same process. They would still have to go to the Selectman to get that permit. This doesn't blanket give anybody permission to do anything without going thru the steps.

Mr. Brennan: as it stands right now we can hear the announcements from the horse events in the park. If we get three day music events, 3 days a week, people in park are 70-90 yrs. old, we are in bed at 9p.m.

Mr. Millias: Also with this proposed change, it would give the Selectman the ability to put restrictions on it as far as time and volume, with this change it would allow them to make that restriction.

Mr. Seelig: to answer, we had an informal proposal back last spring, it ended up disintegrating, you can't do something like that with a few months' notice. No one has come in since. Only the two for Mudfest.

Mr. Brennan stated that he heard that the owner of the horse farm wants to turn it over to his children and they want to have these 3 day music festivals.

Mr. Andrews: I don't know about that, what we are telling you here, the change that we have in front of us, is to change the bylaw, it's going to clarify it, right now we have a lawsuit going on, and this basically will try to take the question out of it.

Park residents are concerned about police activity, parking, marijuana smoke, traffic congestion.

Mr. Greeley – Holmes St.: Is there a limit to how many times they can have... per week, per year?

Mr. Andrews: Whatever they are going to do, they have to apply thru the Selectman, and ask, this doesn't say someone can only come in so many times. The By-law basically is setting up the ability for somebody to come in and ask the Selectman for a special permit.

Mr. Greeley: If that permit is granted.... And that land for that time was AR acts as Commercial property.

Mr. Seelig: It is an allowed use, other commercial activity right now that can happen in an AR zone. Need to look at the full list of uses. Just because it is listed a commercial zone doesn't prohibit necessarily a residential development from happening. Doesn't change the zoning label, we are changing the allowed list of uses.

Mr. Greeley: if I had a residential property 6-8 acres and use in a commercial sense 2 or 3 times a year, I wouldn't have to buy a commercial piece of property. (inaudible.... Audience talking)

Members stressed that anyone would still have to go thru the process thru the Board. There is no guarantee and the Board would have to be unanimous for the special permit to be approved. The process would also go thru the hearing process.

Mrs. Roy – selectman: Wanted to point out that they don't make the decision on their own, they notify public safety, notify all the departments to get feedback. They do due diligence on whether to permit or not. She also advised that with the prior proposal for a concert they had public safety in, held several meeting and really looked at it as to make a good decision for the community and the abutters. Also pointed out that just because it is issued once, does not mean it will be issued again. She also touched on the Mudfest in the past and found it to work well so far.

L. Borsari – Aldana Rd.: Sounds like you're making a by-law to the whole Town of Halifax of all AR zones, to accommodate one event.

Mr. Andrews: The zoning by law is asked to be changed so that it would be allowed in the AR.

Ms. Borsari: asked if there would be a minimum lot size for such events.

Mr. Andrews again stated that the Selectman would look at the proposal, what the parking would be, restrooms, etc.

Ms. Yunits – Rosewood Dr.: Talk about notifying abutters, we don't want to come up here every time they want an event, we don't want to come up here every week.

Mr. Andrews advised that it would not be happening every week, just want to clarify the ability.

Mr. Millias explained further on how it works currently with the allowed use. Those in the AR would like the use of their property, with this proposal they would be given a chance to use it by Special Permit.

Mr. Seelig explained that emails and phone calls would become part of the "record of the public hearing" and would take them into account when making a decision on a petition.

Mr. Goodwin - Aldan Rd. asked if the Special Permit was a “one time” use.

Mr. Andrews answered that it would be, depending on how it is applied for. It would be in the permit process of what they are asking for would be specified. It could be permitted for multiply days.

Mrs. Roy advised that for the Wal-Mart car show, they sign a permit for the year (season), however with the Mudfest, it has been annually for the events.

Mr. Seelig added that Wal-Mart is also in the business District and they “by right” can have outdoor events/entertainment, do not need a special permit and only need the Live entertainment license, but will follow up on with the Town Departments for any concerns. In addition, Mr. Seelig advised the audience the warrants for Town Meeting will be mailed out (without Planning board recommendation as it is not required) to the residents, and that Town Meeting is Tuesday March. 7.

Dan Borsari – Aldana Road. Asked about the changes of the Bylaw.

Mr. Seelig explained the original didn’t include all the changes necessary for the warrant. It has sense been corrected and will be in full in the warrant. The legal notice advertised was correct.

Mr. Borsari feels the process is broken and needs to be fixed. He recommended to the Board to not recommend this process as it is asking citizens to give up the protection they have. 1) If they issue a special permit would it be in the discretion to issue the permit for a year, or 2 years, in this case what is the longest possible time they can issue a permit for, or is it by event?

Mr. Millias: In this case, it is what they propose or ask for.

Mr. Borsari: so it could be for a year?

Mr. Belcher: Someone could ask for 20 years, it’s decided by....

Mr. Millias: How you mentioned that Mudfest was able to go on, as of right now if we don’t change it they will not be allowed to do it.

Mr. Borsari: No right now they can, the zoning Board approved it.

Mr. Seelig: There is a disagreement as to whether they’re allowed or not. That is what the case is in court, land court. If someone came in today with an AR use, the ZBA decision says its AR use, I think it would be up to BOS, as it is under litigation and will say no, or might say it’s with ZBA, or right now the ruling is, it’s allowed. In either case someone could appeal and end up with another court case. The by-law change would be trying to get the Town to a point of either allowing these types of events or we won’t. Changing the zoning would encompass all the events, we would not be arguing if it’s an Agricultural event or not. Simply get a permit on a regular basis. The court will make a decision and will proceed from there. He then explained the time frame.

Mr. Borsari expressed that they (Nessralla Farm) wants the 61A tax right offs and have commercial events as well, and asked if the taxes will be changed. 61A says if you change the use, you have to file with all the boards, and don’t think it’s right that they have advantages and run commercial events and benefit from being a farm/agriculture.

Mr. Borsari also questioned where the “Town” goes for the definition of places of assembly. Mr. Seelig advised it would be in Chapter 40A, which is the Zoning Law, the distinct uses in the bylaw are listed. Mr. Borsari said it doesn’t specify, he said he got it from 780CMR and wanted to know if anyone has looked at going from AR to Commercial. Mr. Borsari went on to ask of the other change from indoor/outdoor events to indoor/outdoor commercial buildings to not be within 100 feet of a resident, what is the purpose? Mr. Seelig advised that you could not have an event within 100 feet of residential property. Right now it could be, so it would be contradictory with different sections of the bylaws. Mr. Borsari read from

780CMR (places of assembly) groups A1-A5, and stated a few in each, if building in AR zone, used for commercial uses, don't not feel this should be changed. Also asked why the change of the special permit authority from Zoning Board of Appeals to the Board of Selectman. Mr. Seelig advised that the BOS issue the live entertainment license and to avoid one Board saying Yes and another saying No.

Mr. Bosari stated it would be to streamline the process and asked if there would be less hearing to go to.

Mr. Seelig said it should, at this time there is no hearing for Live Entertainment, but have meetings on them but no abutters are notified. With the change in the by-law, Public Hearings would be required.

Mr. Borsari is questioning the intent as it would streamline the process, no notification to the public. He feels it should be with the board of the expertise. Main thing is taking out a step in the process and giving the residents less chance to find out what is going on in Town.

Robert Bergstrom- Mudfest: I just want to point out its allowing farmers to use their land for income. Mudfest is twice a year, it helps them. He gets 25% of the door, the rest is split up for Police, Fire, donated to Hops and fireworks. I just want to make you feel comfortable that if it does pass, it's not giving a green light for anybody to do anything they want. They have to pass several boards, they have their own discretion. Yes or no, it doesn't open the door for concerts, etc., has to pass by the Selectman.

Mike Keogh, Plymouth St. wanted to know if he grows crops does he get tax relief. It was advised to look into the requirements of 61A farm act. (Board of Assessors)

Mrs. Borsari - Aldana Rd. wanted to state she disagrees with Mr. Bergstrom that this is not just about Mudfest, it is a Town wide change and opens it up to anybody to apply. This is all encompassing vote in the AR zone, and puts citizens at a disadvantage. Right now we are protected from it.

Mr. Soroko wanted to know the background on this event - Mudfest, how is it currently allowed on AR land? Other towns promote Agriculture, Woodsman day or a Corn maze, just curious the thoughts of how it is promoting AR.

(on behalf of the board) Mr. Seelig went thru the sequence of events behind the appeal. The Building Insp./Zoning Enforcement Officer (ZEO) determined it was not allowed in the AR district. Mr. Bergstrom in turn went to the ZBA to appeal and reverse the decision of the ZEO. The ZBA agreed with Mr. Bergstrom that it was an allowed use, that it was an Agricultural use related to the Farm and overturned the determination of the ZEO. It was not just a commercial event without an Agricultural component to it. The Building Inspector with the support of the BOS appealed the decision by the ZBA. That is where it stands right now.

Mr. Soroko: In terms of decision of that, how was that determined.

Mr. Nessralla: It's an agricultural, when you do tractor pulls on Agricultural land, this is an Agricultural town. Things were founded on farms, tractor pulls encouraged farmers to get an extra income. It's not being done on 5 acres, it's on 55 acres. The whole farm is for Mudfest is for that day. 61A and Mass General Law it is allowed and how I took my interpretation for it to be allowed. One day in June and one Day in November. Not asking to be commercialized, it's not going to be a commercial property, its Agricultural, and for those 16 hours that property, is turned into Mudfest other than that its agricultural it is under 61A, and we're surrounded by 254 acres on left and 300 on right.

Mr. Borsari: The question that you asked.... We asked town counsel, event that you have on AR, the opinion was that the event had to be in co-commitant and attendance to agriculture, has to be directly linked and associated with farming, the Act of farming. The board voted to allow Mudfest. It is allowed right now and I respectfully disagree with Mr. Nessralla, this is not about Mudfest, the change affects the whole town.

The Hitching Post, Sun Tavern, they were all houses once. Other people in town have ideas, we have to think long and hard before we vote away our protection. Don't agree to vote away our protection.

Mr. Soroko: Agriculture is a big part of this town and area. They do have tractor pulls, technically agriculture. This is a modern version of it. The understanding of deeming it agricultural, I could see that if it is, there shouldn't be a need for a by-law change. They would just need an entertainment permit, so if this is not all about Mudfest, if the horse farm wants to do an event ... Woodsman Day which is chainsaws, ax throwing, rolling logs, tractors... that is agricultural events. Those events are noisy, create traffic, only trying to let the body know that even with the old by-law in place there is still going to be potentially noise, potentially traffic. I know the selectman and all the boards get recommendations from the Police, from the Fire Department, all the committees to make sure they are in agreement, it isn't going to affect Halifax at any point in time. It is up to the Town of Halifax to decide on Meeting night on March 7 whether or not they can or can't have a Special Permit.

Mr. Borsari: But the difference is we keep going back to Mudfest, this is not for Mudfest, if this is changed, a person with 3 or 4 acres in a residential zone, could they have a restaurant, a pool hall in between all that.

Mr. Millias: this is not changing the use of the property in this way...

Mr. Belcher: this isn't giving you a complete change from residential to commercial forever, it's a Special Permit.

Mr. Borsari: if you want a special permit for a year or two years could you do it?

Mr. Seelig: Understanding you are reading a voluminous list of places of assembly, but in the zoning by-law the state categories and zoning allowed in various parts of the town. Example restaurants are listed as a separate thing, not under a generic thing, so to make the claim that places of assembly or live entertainment are going to be allowed in the AR by Special Permit thru this change I am going to disagree with that interpretation. This is the reason why we have specific uses in specific zones.

McManus- Redwood Dr. stated that she is fine with Mudfest and giving them a Special Permit, but does not want a change for the whole town. Farm down the street, maybe during the day have tractor pulls, fine, but this guy wants out and his kids want to do festivals... loud music all the time.

Mr. Belcher: If they do this and deemed AR, they can still do it. Again it would be up to Board of selectman.

Discussion again about the vote and what the change will do, it will give the right for anyone to hold events ... changes the scope of the venue. Agricultural use across the state what it is, and what it is not. Just because they don't have a farm in the AR zone doesn't mean they couldn't take advantage of this change in the by-law. A "farm" is not a requirement, someone can still go to the Board of Selectman for an Entertainment license and Special Permit for an event. You cannot have spot zoning, it is not allowed (State Law). Can't pick a particular parcel and specialize it. It's all or nothing type of situation. Town Meeting will have the final say.

Mr. Skulte again reiterated that this is a part of the procedure and it is decided/voted on it at Town Meeting. It was asked about how many events could be permitted.

Mr. Seelig advised an example, but all those who want to have an event, in that sense there is a practical limit, in a Residential zone, may allow once or twice a year... will not let them have events every week, if they believe it would be detrimental to the neighborhood.

Mr. Andrews asked for any other comments. Mr. Millias advised that by not voting in the change the people are protecting themselves, but also taking away the ability of those who own property to do something they may want to do with it.

The Planning Board will take into consideration all that was discussed tonight, will close the public hearing and have another meeting on March 2, at which time will make a decision at 6:40 p.m. Will discuss between themselves and vote on a recommendation for Town Meeting.

Motion to close the Public Hearing

MOTION: Larry Belcher  
SECOND: Jonathan Soroko AIF

Motion to re-open the regular Planning Board Meeting

MOTION: Larry Belcher  
SECOND: Jonathan Soroko AIF

Mr. Andrews advised that he will not be at the meeting next week (March 2) but could call (remote)in for the vote. Members discussed the AR district cannot have commercial events, this would allow ... by special permit to have events. It was also briefly discussed that by only allowing the Selectman to act on such a petition, would give less interaction with the people of the town. The board did have some concern that the Board of Appeals would not be involved with the decision process. However the BOS would probably go to all departments for determinations, opinions, concerns and comments. The members discussed how this by-law change would take out the Board of Appeals in the process. It was also discussed that if one board says yes and another says no, then it may create a bigger problem, legally. Maybe have Zoning Board give a determination and then go to the BOS. It was also advised that the BOS can put on restrictions for any event.

Mr. Andrews asked final thoughts or opinions of the board. Members felt they had discussed enough to consider all the information for a recommendation at the next meeting.

**Adjourn:**

Motion to adjourn meeting.

MOTION: Larry Belcher  
SECOND: Jonathan Soroko AIF

It was unanimously voted to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

**Date Approved:** \_\_\_\_\_

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Terri Renaud  
Planning Board Secretary