

TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Meeting Held in the training room of the Bolton Public Safety Center - 15 Wattaquadock Hill Road

April 11, 2017 at 7:00 PM

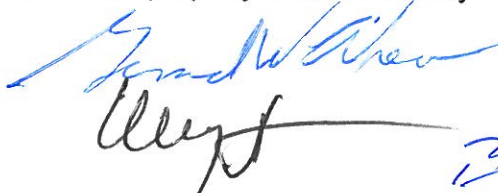
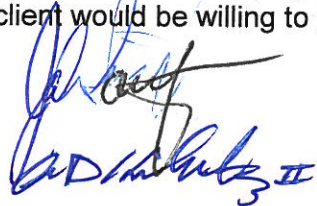
Members Present: Gerard Ahearn (Chairman), Andy Kischitz, Bradley Reed, Jack Sargent, and Kay Stoner (Members), Bryan Holmes (Associate)

Also Present: Erica Uriarte (Town Planner)

Call to order: 7:00 PM

Hearings

- In accordance with Massachusetts General Laws, Chapter 40A, Section 15, the Board of Appeals held a public hearing to hear and act upon appeals filed by the Bolton Pan Neighborhood as persons aggrieved by the Building Inspector's Rejection of Request for Zoning Enforcement at 401 Main Street and the issuance of Building Permit BP-2016-0166 for a temporary modular building at 401 Main Street.
 - Attorney Adam Costa from Mead, Talermin & Costa, LLC representing the Bolton Pan Neighborhood submitted a chart to the Board of Appeals as a visual aid to show the various court cases that had been agriculturally exempt/not exempt through the appellate court. Costa presented the chart as a spectrum spanning left to right from traditional agricultural uses to less traditional agricultural uses. Costa brought attention to the fact that the traditional uses tended to be exempt and the less traditional uses tended to be nonexempt. The more traditional exempt uses included the raising and stabling of horses, public stable and riding academies, cut your own Christmas trees, etc. Less traditional nonexempt uses included veterinary services, pet kenneling and grooming, landscaping, etc. Costa believed the most relatable court case to Cultivate Counseling, LLC was Skydell v. Tobin, 2010 WL 1367288 (Mass. Land Ct.) (2010) where a landscaping business was nonexempt although the nursery stock had been grown on-site. Costa reiterated that the intertwinement of counseling and farming as one use would be creating new law. He believed it to be a case of the tail wagging the dog.
 - Attorney Robert Ancil from Perkins & Ancil P.C. representing 401 Main Street responded to a question from Erica Uriarte, Town Planner, regarding Steege v. Board of Appeals of Stow, 26 Mass. App. Ct. 970 (1988) in which a horse riding academy had received agricultural exemption. Uriarte had asked what the difference was between riding a horse and using a horse for therapy. Ancil replied that the difference was the clientele; rich kids versus kids with mental illness. There is no apparent difference in the use.
 - A resident read emails (released as public record) written by Andrew Lapin to the Town of Bolton. The resident questioned whether agriculture was the primary use of 401 Main Street based on the descriptions of the business submitted to the Town. Lapin had indicated in one of the emails that agriculture would be an aspect of the counseling business with some of the counseling occurring inside office space. Based on her review of the emails, she also indicated there had been confusion whether the property would be owner occupied. She also researched assisted animal therapy in which she found that animals were only considered adjunct to the counseling.
 - Andrew Lapin responded saying the thrust of his counseling center was equine therapy. As part of the proven EAGALA therapy model, it requires a farmer that is certified as an equine therapy specialist. The private offices at 401 Main Street are used for agricultural based therapy activities (i.e., spinning wool, hatching chicks).
 - Public comments were made regarding the Declaration of Homestead that was filed by the Madera's for 401 Main Street yet the Madera's did not live on the property. Attorney Ancil responded saying that his client had not broken any laws. He indicated that his client would be willing to move to the property tomorrow if they had thought home



10/16/17
Bryan
Brad Reed

occupation was an option. However, he believed Cultivate Counseling, LLC did not meet the requirements of home occupation.

- A public comment was made that Cultivate Counseling, LLC was a business that belonged in the limited business district.
- A mother of a client from Cultivate Counseling, LLC believed the counseling center was a farm. She reiterated that the counseling was unique and without the animals there would be no counseling. She indicated that there was no counseling on the weekend. She also stated that given the opioid crisis in Massachusetts, there should be more support for this type of therapy to sustain animal and human life.
- A resident living in Bolton for 22 years went to 401 Main Street for a site visit as recommended by Attorney Anctil at a previous meeting. When visiting the property he observed a farm with farm animals and that it was well maintained; better than most of the farms he had witnessed in Bolton. He went back for a second visit and decided to become a client and found the property to be very peaceful and healing. He also questioned why Attorney Costa had not researched the other care farms in Massachusetts. He believed the neighbors were in fear of what could happen versus what is happening and suggested the Bolton Pan Neighborhood Group visit the site.
- Attorney Costa reiterated that researching the other care farms in Massachusetts was not applicable since no case law had been established that allowed the agricultural exemption to apply to care farms. Care farms may be regulated in other towns by local zoning which is not be applicable to Bolton. Costa believed that the counseling center was a separate use from the farming and it was a case of the tail wagging the dog.
- The Board of Appeals received a letter from Bolton's Agricultural Commission. Gerard Ahearn asked Teresa Sauer, the Commission's Chairman, to read the letter out loud. The letter was in support of Cultivate Counseling, LLC and indicated that the Commission deemed the counseling center agriculture since it met the requirements under M.G.L. Chapter 40, section 3 and the definition of agriculture under M.G.L. Chapter 128, Section 1A. Sauer also reiterated that farming is hard and care farming is another form of agriculture that makes it financially possible to be a farmer.
- The Board of Appeals received a letter from Bolton's Economic Development Committee. Andy Kischitz read the letter out loud on behalf of the Committee. The letter was in support of Cultivate Counseling, LLC as a commercial farm business. Members of the Committee visited the site where they toured the farm with Andrew Lapin and Debra Madera. If the property failed to operate as a farm, the Committee was concerned that the property could be subdivided into house lots adding more children into the school system.
- The Board of Appeals received a letter from Bolton's Historical Commission. Gerard Ahearn read the letter out loud which expressed concerns relating to an old greenhouse that had been removed from the property prior to receiving a demolition permit.
- A resident suggested that the root of the issue relating to the counseling center was that no one lived at 401 Main Street contrary to many other farms in Bolton.
- Andrew Lapin and Debra Madera indicated that a caretaker does live on the property 24/7 and is responsible for caring for the animals.
- Jack Sargent suggested several outcomes encouraging a comprised decision. He suggested that Cultivate Counseling, LLC establish as a home occupation which he believed would resolve the issues. The Board of Appeals could also look to condition their decision to reasonably regulate the counseling center. Otherwise he believed one side would leave unhappy and further appeal to land court.
- John Tremblay of 5 Long Hill Road (Bolton Pan Neighborhood) suggested that he would support a home occupation where the owners lived on the property with their children. He felt that the owners would be more inclined to protect the quality of the aquifer/well water if their children were drinking the water. Tremblay also believed that 401 Main Street could not be subdivided due to the wetlands on the property.

- Bradley Reed questioned what vehicle the Board had to condition the counseling center. The Board was not authorized to issue a special permit.
- Attorney Costa stated that the town could have applied reasonable regulation initially to the counseling center prior to the appeals. He indicated that many towns often do not know how to procedurally regulate uses that are exempt because it is not defined in their bylaws.
- Attorney Anctil encouraged the Board to condition the counseling center (regulate number of cars, hours of operation, number of animals, buffers, etc.). Anctil reiterated that his client was more than willing to work with the neighborhood and would adhere to conditions voluntarily. His client had mitigated many of the issues already.
- Bradley Reed questioned if such an agreement could be binding and whether it could be recorded at the registry of deeds. Attorney Anctil believed an agreement could be recorded. However, Reed felt there was not sufficient time to work out such an agreement that evening. Reed felt that the Board would lose leverage once they made a decision regarding the appeals.
- Several residents welcomed Cultivate Counseling Center, LLC as a home occupation as long as it met Bolton's Zoning Bylaw.
- **Jack Sargent motioned to close the hearing. 2nd by Bradley Reed. All in favor 5/0/0.**
- Based on the comments and evidence received, the ZBA members deliberated among themselves before Gerard Ahearn called for a motion.
- **Jack Sargent made a motion, seconded by Bradley Reed, that the Zoning Board uphold the Building Inspector's decision to issue Building Permit BP-2016-0166 for a temporary modular building for agricultural use at 401 Main Street. The motion, as seconded, proposed the following reason for the decision: Section 250-20 of the Code of the Town of Bolton allows for temporary trailers for dwelling, commercial, business or industrial purposes for a period of one (1) year. All in favor 5/0/0.**
- **Jack Sargent made a motion, seconded by Bradley Reed, that the ZBA reverse the Building Inspector's January 9, 2017 Zoning Determination to apply the agricultural exemption to Cultivate Counseling, LLC at 401 Main Street. The motion, as seconded, proposed the following reasons for the decision:**
 1. The counseling business (Cultivate Counseling, LLC) is the primary use of 401 Main Street, not agriculture. The primary revenue generated from 401 Main Street is from counseling and not farming.
 2. A counseling business is not allowed in the Residential Zoning District in accordance with Section 250-12 of the Code of the Town of Bolton.
 3. The counseling business is a separate and distinct use from farming. The agricultural exemption provided under the Dover Amendment does not apply to the counseling business.
 4. Counseling is not an accessory use that is customary to agriculture. There are no known court cases that support treating counseling as accessory to agriculture.
- **The ZBA voted as follows: Members Jack Sargent, Bradley Reed, Kay Stoner and Andy Kischitz voted in favor. Gerard Ahearn voted no/against. The Building Inspector's January 9, 2017 Zoning Determination with respect to Cultivate Counseling, LLC's use at 401 Main Street pursuant to the Dover Amendment's agricultural exemption is reversed with a vote of four (4) in favor and one (1) opposed.**
- **Jack Sargent made a motion, seconded by Bradley Reed, that the ZBA reverse the Building Inspector's January 9, 2017 Zoning Determination to allow the proposed congregate living use at 401 Main Street. The motion, as seconded, proposed the following reason for the decision: Section 250-12 of the Bolton Zoning Bylaw does not allow congregate living housing in the Residential District. All in favor 5/0/0.**

- Gerard Ahearn motioned to authorize Erica Uriarte, Town Planner, to draft the decisions along with input from Ahearn (representing the Board) and Town Counsel. 2nd by Jack Sargent. All in favor 5/0/0.

Business

- None.

Administrative

- None.

Gerard Ahearn motioned to adjourn meeting at 9:56 pm. 2nd by Kay Stoner. All in favor 5/0/0.