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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
FEBRUARY 12, 2014**

DRAFT

Minutes are subject to correction by the Charlotte Zoning Board of Adjustment. Changes, if any, will be recorded in the minutes of the next Board meeting.

MEMBERS PRESENT: Ben Pualwan, Chair; Douglas Webster, Jonathan Fisher, Andrew Swayze, Frank Tenney.

ADMINISTRATION: Gloria Warden, Zoning Clerk.

OTHERS PRESENT: Charles Russell, Gerald Bouchard, Hal Evans, Ben Durant, Anne Wittpenn, and others.

ITEMS HEARD:

- **Continuation: appeal of Hal Evans, 181 Windswept Lane, of the Zoning Administrator's decision that a permit for a Home Occupation is required because their business does not qualify as an Accepted Agricultural Practices exemption. Property located in the Rural Zoning District.**

CALL TO ORDER

Mr. Pualwan, Chair, called the meeting to order at 7:05 p.m.

CONTINUATION: APPEAL OF HAL EVANS, 181 WINDSWEPT LANE, OF THE ZONING ADMINISTRATOR'S DECISION THAT A PERMIT FOR A HOME OCCUPATION IS REQUIRED BECAUSE THEIR BUSINESS DOES NOT QUALIFY AS AN ACCEPTED AGRICULTURAL PRACTICES EXEMPTION. PROPERTY LOCATED IN THE RURAL ZONING DISTRICT.

Hal Evans, owner, Ben Durant, East Shore Vineyard LLC, appeared on behalf of the application.

STAFF NOTES

Mr. Pualwan reviewed staff notes. The appeal hearing was originally opened 01/08/2014, and continued to 01/28/2014 and 02/12/2014, said Mr. Pualwan.

Mr. Pualwan said that since the 01/28/2014 hearing the ZBA has received written correspondence from Stephanie Ann Smith, Department of Agricultural, dated 02/07/2014, clarifying the state's position regarding agricultural practices. Mr. Pualwan handed out copies of the agency letter for review.

EXHIBIT N: the 02/07/2014 correspondence from Stephanie Ann Smith, Agricultural Department, was accepted and entered as Exhibit N.

APPLICANT COMMENTS

48 Mr. Durant said that Ms. Smith's letter stated that without grapes growing at the
49 Charlotte site then the Town's agricultural exemption does not apply. The fact that he
50 would have grapes growing there in the spring opened the interpretation that it did qualify
51 as an agricultural exemption, said Mr. Durant.

52

53 Mr. Durant read the July 11th correspondence from Tom Mansfield, Zoning
54 Administrator (ZA), into the record. Mr. Mansfield made a determination that it was
55 exempt. The Town has a final say - not the Department of Agriculture. The Environment
56 Court would see it that way as well, said Mr. Durant.

57

58 ZBA QUESTIONS/COMMENTS

59 Mr. Fisher asked if the appellant was saying that growing 2-2.5 acres of grapes at the
60 Charlotte site would make the operation exempt. Mr. Durant replied yes.

61

62 Mr. Pualwan said that the appeal of Tom Mansfield's October letter regarding a Home
63 Occupation was what mattered for this Board. This Board can't make a conditional
64 determination of the appeal, stated Mr. Pualwan.

65

66 Mr. Durant replied that if the ZBA looked at an overview of last year's events it was clear
67 that they were given approval by a Town official in July. State statutes were vague
68 regarding an interpretation. He and Mr. Evans went ahead and spent close to \$100,000
69 based on Tom Mansfield's July determination. They asked the ZA for guidance through
70 the process and they went ahead on that determination in good faith, stated Mr. Durant.

71

72 Mr. Pualwan explained that the ZBA always wanted to make a decision that was just. It
73 was clear you got bad advice. The information in the two letters from the ZA was
74 conflicting. A question before the ZBA was if Tom Mansfield's letter could be upheld. A
75 solution may rest between the appellants and the ZA. You made some effort to conform
76 to the agricultural exemption; however that was not the question before the ZBA in the
77 appeal. It wouldn't be legally binding for the ZBA to make a conditional approval of the
78 appeal, reiterated Mr. Pualwan. Mr. Durant said that they made a case at the last hearing
79 and there was no rebuttal then.

80

81 Mr. Pualwan explained that the role of the ZBA was limited. The ways this Board could
82 judicate was very structured. If the ZBA can't make a conditional approval, then the ZA
83 might. An agricultural exemption was ruled by the Town regulations. There was nothing
84 in the letter from the Department of Agriculture that you could bring in grapes from off
85 site and have an agricultural exemption. The letter does reference that you can grow
86 grapes on site, said Mr. Pualwan.

87

88 Mr. Durant stated that that was the problem. There was nothing concrete on this. The
89 state statutes were vague, said Mr. Durant. Mr. Pualwan said that the laws were written
90 vaguely was well known.

91

92 Mr. Evans asked if the ZA's July determination was considered final. Mr. Pualwan
93 replied that it doesn't have the kinds of formal documentation as a decision by the town

94 would have. The ZBA wouldn't decide on anything not directly before the Board, said
95 Mr. Pualwan. Mr. Evans asked if Mr. Pualwan was saying that the proper procedure was
96 followed by the ZA. Mr. Pualwan said that it appeared that it was not treated like a
97 formal decision by the former ZA. It was not posted. It was not clear that to be legal it
98 had to be posted – if posting was a standard by the state. It was not clear a final
99 determination was made. It was clear that you did anything wrong. It was not clear that it
100 was up to the ZBA to hear or decide on if posting, notification of neighbors, etc. was
101 required, said Mr. Pualwan

102

103 Ms. Warden said that the appellant's should get a determination from the state first and
104 then come back to the Town. Mr. Evans said that they did go to the state first. The state
105 said that the Town had oversight and don't bother them, said Mr. Evans. Mr. Durant said
106 that they were told that the state's language was vague and that the town had ultimate
107 authority.

108

109 Mr. Pualwan said that if the appellant's went to the State of Vermont and they said you
110 were exempt, then the Town could not impose a stricter standard.

111

112 Mr. Swayze asked if the State of Vermont had pervasive authority.

113

114 There was discussion regarding authoritative structure, if the Town could overrule state
115 statute, and if the appellant's could have gotten a legal determination from the state.

116

117 Mr. Evans said have a letter from the Assistant State Attorney, Michael Dwayne, that
118 said don't bother us and sit down with Tom Mansfield.

119

120 Mr. Swayze said it was clear you didn't do anything wrong, or unreasonable. In terms of
121 the ZBA it was beyond our scope. Do we uphold the appeal, or not, said Mr. Swayze. Mr.
122 Pualwan said the point for this Board was that the ZBA was limited on what it could
123 make decisions on, said Mr. Pualwan.

124

125 Mr. Durant asked the ZBA to please make a decision. Consider that they did what we
126 thought was right. The law was vague. The letter from the agricultural agency was open
127 to interpretation. They did get an initial determination and did what was reasonable, said
128 Mr. Durant.

129

130 Mr. Fisher said that the problem was at the legislative level. The Department of
131 Agriculture didn't have any power 10-12 years ago to create this law. If there was a
132 question you would get 5 different answers from 5 different people, said Mr. Fisher. Mr.
133 Durant said he talked to his legislator regarding the way he was treated. Missy Johnson
134 felt that this puts a lot of farmers at risk, such as a sugar maple operation. As the political
135 parties in power change then the agricultural agency changes its policies to reflect the
136 power shift. The letters we have gotten from the same agency people changes as the state
137 policies change, said Mr. Durant.

138

139 PUBLIC COMMENT

140 Mr. Russell said he would need to leave and asked if the ZBA was done taking testimony.

141

142 Mr. Pualwan explained that there have been loose references in the regulations and
143 definitions. Mr. Pualwan read Chapter 10 related to light industry into the record. There
144 was a reference of "...where they are grown...shall not be considered light industry." The
145 State of Vermont seems to be leaning toward an interpretation of "grown on site." It may
146 be broader than that, such as, it was where it was actually grown, suggested Mr. Pualwan.

147

148 Mr. Pualwan said the letter to Gloria Warden from Claudine Safar included a language
149 for a conditional approval of an agriculture determination after grapes start growing in
150 Charlotte, which was a condition that doesn't exist right now.

151

152 Mr. Durant asked if it was possible that Tom Mansfield's second interpretation was
153 incorrect. The agriculture agency's determination was issued so far out, said Mr. Durant.

154

155 **MOTION by Mr. Webster, seconded by Mr. Swayze, to close the hearing regarding**
156 **the appeal of Hal Evans, 181 Windswept Lane, of the Zoning Administrator's**
157 **decision that a permit for a Home Occupation was required because their business**
158 **does not qualify as an Accepted Agricultural Practices exemption.**

159 **VOTE: 5 ayes; motion carried.**

160

161 **ADJOURNMENT**

162 The ZBA meeting was adjourned at 7:35 p.m.

163

164 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

165