



TOWN OF HOLDEN

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ZONING BOARD OF APPEALS PUBLIC HEARING, January 5, 2017

Amy Parker and Richard Atkins

Case No. V-1609Appeal

The Zoning Board of Appeals held a public hearing on Thursday, January 5, 2017 at 7:00 p.m. at the Holden Senior Center on the Appeal of a Cease & Desist Order issued prohibiting the operation of a wedding venue for property located at 69 Summit St for Amy Parker and Richard Atkins.

Members in attendance: R. Spakauskas, S. Annunziata, J. Deignan, R. Fraser, and R. Butler.

R. Spakauskas reviewed the procedures for the hearing as well as reviewed the results of the previous meeting held on September 29, 2016, noting at that meeting the board made a motion to deny the continuance in which Atty. Nislick then submitted a written request to withdraw the application without prejudice. The board unanimously voted to approve this request for the application to be withdrawn without prejudice. The Secretary proceeded with the reading of the application to appeal the Cease & Desist Order issued on October 14, 2016.

The applicant's representative, Atty. Bob Longden, then addressed the board regarding the Cease & Desist order appeal and the reasons for the appeal. Atty. Longden reviewed the packet of information he submitted to the Board on January 4, 2016. This document includes information on the history of the farm, affidavits from Amy Parker and Richard Atkins of verbal conversations with the former Building Inspector, Dennis Lipka, expenses incurred for improvements to the farm thus far, Holden Police and Fire Department reports, etc. This complete document is available for review in the Holden Building Department. Atty. Longden stated the applicants took D. Lipka's verbal word to move forward and proceeded to make improvements to the farm for hosting weddings in 2016 as well as booking weddings for 2017/2018.

Atty. Longden went on to say in February 2016, the current Building Commissioner, David Lindberg, became aware of this proposed venue and informed the applicants in writing that they needed to comply with the building permit provisions if they wish to hold wedding events at the farm. In addition, they were not in compliance with the Holden Zoning Bylaws and advised that zoning relief was necessary because the proposed use was not allowed in the R-1 zoning district. Amy and Dick proceeded with the work that needed to be done to comply with code and then applied for a use variance with the Zoning Board of Appeals in order to have proper permitting in place to hold farm weddings at this site. The public hearings for a use variance were held on August 25, and September 29, 2016 with the result of a withdrawn application at the September hearing. A Cease and Desist order was then issued on October 14, 2016 and the applicants are now appealing that order.

The applicants leased their property to host fifty three (53) events at the farm in 2016. Once these events began, the noise complaints from neighbors ensued. However, Atty. Longden noted only 15 Police reports were received and no traffic incidents occurred.

Atty. Longden continued that if the result of this hearing allows the owners to continue having weddings at the Farm, they are committed to work with the Town of Holden and the Zoning Board by building a barned pavilion with solid sides in place of the tent to address any noise issues. A plan noting this proposed change was submitted to the board. They are also committed to holding one wedding per weekend in 2017 and beyond with a maximum of 160 guests. At this time there are forty (40) weddings booked in 2017 and five (5) weddings booked in 2018. In the event the Cease and Desist Order is sustained, the applicants will lose significant revenue for the farm and do not have another plan or source to generate revenue. Atty. Longden also reviewed the serious health issues facing Richard Atkins. Atty. Longden believes the town bears responsibility in this matter and asked the board to wely the equities and fairness of this case and sustain the determination from Dennis Lipka prior to his retirement to allow them to continue to operate and to consider the proposed plan submitted to the board. Atty. Longden also submitted a copy of an on-line petition was submitted to the board with 1,613 signatures and a paper petition signed by 170 people in support of SummitWynds venue.

Holden Town Counsel, Stephen Madaus offered advice to the board regarding this hearing and the matters submitted by Atty. Longden. First, he stated that D. Lipka did not seek advice from Town Counsel whether a wedding venue is a permitted use in a residential zone. Atty. Madaus stated he stands by the opinion from a letter dated March 2016 that it is neither an allowed use nor an accessory use to the agricultural use. In addition, he stated the doctrine of estoppel does not apply to Zoning Enforcement and are not bound by an incorrect zoning determination. Also, the town is also protected by a Massachusetts Act from liability of incorrect approvals by building officials. The Right to Farm bylaw was adopted as a general bylaw does not interfere with the zoning regulation and zoning determination that wedding uses are available in the residential zone.

R. Fraser asked for clarification that this hearing is on the appeal of the Cease & Desist Order only and the proposed plan submitted this evening would be part of a new variance application they would have to submit. R. Spakauskas agreed and stated the results of this meeting can either affirm, deny, or modify the Cease & Desist order. Atty. Madaus stated that 4 out of the 5 board member votes is required to overturn this order.

Patricia Gates, of Mountain, Deerborn LLP, representative for Greg and Maura Goodsit stated the question brought to the board is do you affirm or overturn this Cease and Desist? Since February 2016, the applicants were advised this use was not allowed by the Zoning Enforcement Officer and continued to operate without first obtaining a variance or special permit. The question before the board tonight is simple, do you support the Zoning Enforcement Officer's order or not?

Elizabeth Deluca, of Holland, MA, owner of Red Roof Catering stated the Town of Holden is responsible, for the Town has collected fees for all catering permits issued for weddings held at SummitWynds. Atty. Madaus stated that the Town asked Counsel if they should deny any catering permits received and it was concluded that a zoning violation could not prohibit the town from issuing a permit.

Lindsay Snow, of Leominster, MA committed to her wedding in August at SummitWynds and has placed a deposit, sent save the date cards, travel plans are set, etc. This impacts her life and future plans for her and her fiancée.

Kathleen Hurly of 31 Malden Rd, lives next to HMLD and hears children playing basketball all night in the summer. The kids are enjoying themselves and is very sad to hear the joys are being taken away in the town.

Sara Tindall, Holden resident stated the owners are fully responsible for permitting. Holden has laws that the citizens abide by and verbal agreements are not allowed. These owners have shown that they are not trustworthy and can we trust they will make the changes they propose. As far as Police reports, there were many more calls received than what has been reported. She thanks the town for upholding our laws.

Jennifer, in support of Amy and Dick stated the building inspector went to the property in the spring giving them guidelines on how to bring the property up to code. She believes the Cease and Desist Order should be put on hold until it can be properly addressed. She stated the Town should have contacted D. Lipka for his interpretation on the subject. Pam Harding stated she did contact D. Lipka and his representation was that he did not tell Amy Parker and Dick Atkins to move forward but asked Dick and Amy to gather more information and to talk to him at a later date.

Patrick of West Boylston is a member of the Planning Board in West Boylston and thinks this is an abomination, we have an obligation and it is very clear to him that this cease and desist must be overturned. This venue is a benefit for the town and their intent was not harmful and is only a betterment for the town. Asks that the board overturn this order for there is no harm here.

Jim Bradbury of 52 Heather Circle has heard support for SummitWynds tonight but none of which is living in the surrounding area of this venue. The intent of SummitWynds is to make money and have been doing just that at the expense of everyone around them. He believes there is tremendous harm here and had submitted petitions signed by 170 people noting that the people are indeed affected by the noise.

William of Millbury MA, stated he has sat at many of the houses in the area with a decibel meter and you can barely hear the noise.

Denise Cummings of 1040 Princeton St stated Amy Parker and Richard Atkins received an occupancy permit the same day of their first wedding and is reasonable that they took that to say they are allowed to move forward with this venue.

LynnMarie Panzarino of 115 Putman Rd stated Amy and Dick are bringing business into Holden and are willing to work with the town. She suggested that the board be open-minded about the proposal for new construction to take care of any noise issues.

Alicia of Charlton, MA stated Amy and Dick have volunteered to do a sound study on their own dime.

R. Spakauskas stated the board will take a 5 minute recess.

The hearing continued with a summation from Atty. Longden. He stated the evidence in this matter shows this is an issue of fairness and equity. The applicants went to the town with their plan and received the information verbally from D. Lipka with approval that no zoning changes were necessary to move forward with this venue and did just that. Atty. Longden proposed to the board that if they decide to sustain the Cease and Desist Order, he asked they consider modifying the Cease and Desist by allowing the 40 weddings be held as is booked for 2017. He asked the board to have compassion for the brides that are affected and allow these couples to get married at the farm.

Atty. Madaus stated that a proposal for modifying this order is a very extraordinary issue and would likely be appealed at Superior Court or Land Court by the abutters. R. Fraser asked if counsel would recommend continuing the hearing for 2 weeks for research purposes. Atty. Madaus stated that this enforcement order is clear and does not comply with the zoning bylaws but will leave it up to the board to decide to continue or not.

R. Spakauskas reviewed the procedures once the hearing is closed. R. Fraser made a motion to close the hearing and S. Annunziata seconded. All in favor, 5-0, to close the hearing.

Based upon the comments and evidence from abutters and others, the Board members deliberated among themselves. R. Spakauskas called for a motion to vote. R. Butler made a motion, seconded by R. Fraser to uphold the cease and desist order issued by the Zoning Enforcement Order on October 14, 2016. The board voted to uphold the Cease and Desist Order by a vote of 4 in favor and 1 opposed, as follows:


Ronald Spakauskas – yes

Roy Fraser – yes

James Deignan – yes

Robert Butler – yes

Silvio Annunziata – no



Ronald E. Spakauskas, Chairman