

**Town of Cornish, New Hampshire
Zoning Board of Adjustment
Case 20-01
Public Hearing
September 21, 2020**

The Cornish Zoning Board of Adjustment met on Monday, September 21, 2020, at 6:30 pm in the Cornish Town Offices. Members present were Caroline Storrs, Chair, Bill Balch and Jason Bourne, Karim Chichakly (via Zoom), Kate Freeland (via Zoom), Michael Fuerst (via Zoom); and Stuart Hodgeman, alternate. Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Board was authorized to meet electronically.

Also present were Barbara Cieslicki, petitioner, Scott Baker, Peter Burling, Everett Cass, George Edson, Bill Gallagher, John Hammond, Lyle Parry, Colleen Salinger, Bill Wall, Kathy Wall; and Heidi Jaarsma, Recording Secretary.

Attending via Zoom were Ellen Arnold, attorney representing Colleen Salinger, Todd Currie, Lisa Geberth, Dale Lawrence, Chloe Jaarsma, Charles Plimpton, and Donna West.

Caroline Storrs called the meeting to order at 6:31 p.m. Ms. Storrs authorized the Board to meet electronically. Since she had hosted a wedding at Langwood Farm, Ms. Storrs recused herself and passed the gavel to Jason Bourne. Michael Fuerst recused himself due to a conflict. Stuart Hodgeman recused himself as an abutter. Jason Bourne, acting chair, appointed voting members: Bill Balch, Karim Chichakly, and Kate Freeland. Bill Balch read the notice.

Case 20-01

Barbara Cieslicki has made a request for an Appeal of Administrative Decision concerning Article IV, Section 3, of the Cornish Zoning Ordinance. The applicant proposes to appeal the Town of Cornish Selectboard's decision to issue a Certificate of Zoning Compliance for agritourism to Colleen Salinger on property located on 301 Lang Road, Cornish Tax Map 8, Lots 8 & 20, in Cornish, New Hampshire.

Twenty-four certified letters were sent. Nineteen receipts were received. The notice was posted at the Cornish Post Office, the Cornish Town Offices, the Town Hall, and the 12% Solution. Notice was posted in the legals section of the *Valley News* on September 14, 2020.

Background

Barbara Cieslicki shared the basis for her appeal. She requested that the ZBA exclude the special events business at Langwood Farm from the Certificate of Zoning Compliance for Agritourism issued by the Selectboard to Colleen Salinger on October 28, 2019. Ms. Cieslicki stated that the events do not meet the requirements of agritourism and are not accessory uses. She pointed out that Lang Road is the most rural of Cornish's zoning districts and asserted that such a business would only be allowed in the Village Zone. Ms. Cieslicki reported that the special events business is currently operating in the barn at Langwood Farm, and in commercial

tents with associated parking for 60 vehicles with an overflow lot of indeterminate size across the street.

Ms. Cieslicki asserted that the special events business was not agritourism. She gave examples of appropriate agritourism activities on a tree farm: woodsmen contests, tree sales, wreath sales, sugaring demonstrations and sale of maple syrup, tree species identification walks, tree fruit picking, tree fruit pressing, tree fruit sales, hiking, learning about tree farm management, and wood carving activities. Agritourism, she continued, was not a tool for legalizing a special events business: meeting, weddings, graduations, luncheons did not qualify as agritourism events. The special events are a stand-alone commercial operation. Ms. Cieslicki continued that Ms. Salinger's events are not open to the public and asserted that agritourism events legally must be open to the public. Ms. Cieslicki said that agritourism is not an invitation-only event activity. She stated that agritourism is not a legal means of commercializing the rural district and that *enjoyment of the farm environment* (RSA 21:34-a) must be related to an activity that is an accessory use to the farm environment. When enjoyment of the farm alone is a legal use for agritourism, any event could qualify as agritourism: gambling, car races, sports events, and other activities that are not accessory uses to the farm operation. Ms. Cieslicki stated that this would result in the commercializing of the rural district in Cornish. She added that the health and safety of event participants was jeopardized. For the past five years, Ms. Cieslicki continued, Ms. Salinger has had an unregulated commercial business for which the Town of Cornish could be liable. No Cornish citizen should want to open the door to these activities. She spoke to the jarring disruption that these activities cause to the Lang Road neighborhood. Lang Road had been transformed to a noisy, heavily trafficked road. The quality of life on Lang Road had been transformed during these events. The special events at Langwood Farm often involve vendors, staff, music, tents, and catered food. Forty to ninety guest vehicles drive above the speed limit on Lang Road to these events, Ms. Cieslicki reported. She stated that the heavy traffic associated with the operation of the special events business is detrimental to the safety of children, adults, horses, dogs. Ms. Cieslicki told the Board that alcohol consumption must also be considered. Additionally, the special events often produce loud music. The sixty-vehicle parking with overflow, Ms. Cieslicki posited, exceeded the size of most parking lots in the Upper Valley. Moreover, she added that the parking lot may be illuminated in the future. Ms. Cieslicki relayed an anecdote where passersby compared cars parked in the field to a Market Basket or Walmart parking lot. Ms. Cieslicki stated that allowing commercial activities not permitted by law or the zoning ordinance affected property value, safety, and general quality of life. Ms. Cieslicki said that Ms. Salinger's failure in compliance has caused unnecessary hardship.

Ms. Cieslicki relayed a conversation she had with Sean Jasper, New Hampshire Commissioner of Agriculture. She reported that he had stated that weddings, luncheons, parties are not agritourism and that the purpose of agritourism was to make more money from the farm for the farmer. Ms. Cieslicki asserted that Ms. Salinger chooses not to realize income and that when the income from the agritourism vendors exceeds the income of the tree farm in any given year, those events cease to be agritourism.

Ms. Cieslicki cited *Stephen E. Forster dba Forster's Christmas Tree Farm and Gift Shoppe v. Town of Henniker June 12, 2015* and stated that the case dealt with almost identical facts and legal issues as the appeal before the Board. She summarized the case, which culminated in the

NH Supreme Court upholding the Superior court decision that weddings and like events are not accessory uses to the petitioner's farm and that hosting such events was not a permitted use in the farm's Rural Residential District.

Ms. Cieslicki also cited an article entitled *Weddings are not Agritourism* from the Iowa State Center for Agricultural Law and Taxation which referenced the Forster decision.

Ms. Cieslicki requested that the ZBA make the following findings:

1. *Ms. Salinger operates a Special Events Business in a Rural District on a Tree Farm located on Lang Road in Cornish, NH. The Special Events and activities she operates are operated on behalf of others and are not her personal events and activities and may not be so construed.*
2. *Those Events and Activities include, but are not limited to, weddings, graduation parties, reunions, meetings, parties, luncheons, and dances.*
3. *All Special Events Activities and Events Ms. Salinger operates on her Tree Farm must meet the requirements of New Hampshire Agritourism Law. That statute states that "Agritourism means Attracting Visitors to a Farm to Attend Events or Activities that are Accessory Uses to the Primary Farm Operation." If that legal requirement is not met, an event or activity is not Agritourism.*
4. *By virtue of the fact that the Special Events Ms. Salinger operates are not related to the Operation of her Tree Farm in any way, they do not qualify as Accessory Uses to her Primary Tree Farm Operation and, therefore, are not legally compliant Agritourism on a Tree Farm.*
5. *Because Guests are invited to private events and are not visitors attracted to her Tree Farm to attend activities and events, the special events Ms. Salinger operates are not legally compliant Agritourism on a Tree Farm.*
6. *The Agritourism Law references "Enjoyment of the Farm Environment" as an example of Agritourism. All Agritourism activities and events must meet the agritourism statutory requirements, requiring them to be an accessory use to the primary farm operation which visitors are attracted to attend. Enjoyment of the farm environment is a consequence of a legally compliant agritourism event or activity. Enjoyment of the farm environment in and of itself is not legally compliant agritourism. Otherwise, it would be permissible to operate any commercial activity or event on any Cornish farm at any time as long as participants were enjoying the farm environment.*
7. *Because Ms. Salinger's Special Events Business does not meet the New Hampshire agritourism law requirements, enjoyment of the farm environment is legally irrelevant to decision making in this matter.*
8. *In requiring that agritourism events and activities be accessory uses to the primary farm operation, New Hampshire agritourism law is ensuring that agritourism activities and events are consistent with the meaning and intent of the Rural District and is clearly supporting the preservation of the rural quality of life on the farm and the quality of life in the Rural District. Agritourism is not, therefore, a legal means of commercializing the Rural District.*

9. *Ms. Salinger's Special Events Business events and activities are not consistent with the objectives of the Rural District in which they operate as is required by Cornish Zoning Ordinance Article IV.B. Evidence of this includes the music heard sometimes over 1 ½ miles from her property line for prolonged periods; the excessive personal and commercial vehicle traffic sometimes driving over the speed limit; the potentially impaired driving related to alcohol use; the dust, noise, and vehicle pollution; and the eventual possible light pollution. Such violations are not the result of legally implemented agritourism.*
10. *Cornish Zoning Ordinance Article IV.B states that "All uses shall be consistent with the objectives of the districts in which they are located." By its immutable, essential nature, Ms. Salinger's Special Events business is not a use consistent with the objectives of the Rural District.*
11. *New Hampshire case law precedent (Stephen E. Forster dba Forster's Christmas Tree Farm and Gift Shoppe v. Town of Henniker) and Mr. Shawn Jasper, New Hampshire Commissioner of Agriculture, also support the finding that Ms. Salinger's Special Events Business is not agritourism.*
12. *Agritourism was created specifically to augment farmers' incomes so that they would not have to subdivide and sell their land in times of financial need. The purpose of agritourism events and activities is always to make more money from the farm for the farmer so that the farm is a more viable way of making a living. The preceding is not the reason for or purpose of Ms. Salinger's Special Events business because she chooses not to realize income from it.*
13. *Based on the preceding findings, it is clear that Ms. Salinger's Special Events business is not legally compliant agritourism but rather an invitation-only commercial business operating illegally in a Rural District.*
(from 9/21/2020 submission by Barbara Cieslicki)

Ms. Cieslicki requested that the ZBA take the following actions based on the above:

1. *Amend the Certificate of Zoning Compliance for agritourism issued to Ms. Salinger to specifically exclude her special events business and any other activities she permits to operate on her land that do not comply with the New Hampshire agritourism statutory requirements.*
2. *Order Ms. Salinger to cease operating her special events business and to cease permitting others to operate events and activities on her land that do not comply with New Hampshire's agritourism statute.*
3. *Based on Ms. Salinger's at least five-year history of disregard for the zoning laws, review on an ongoing basis activities and events she proposes to operate or permit to operate on her land for compliance with the agritourism statute and prohibit the operation of non-compliant activities and events.*
4. *Specify the consequences for violation of a ZBA order in this matter and the means for enforcing that order.*

(from 9/21/2020 submission by Barbara Cieslicki)

Jason Bourne reviewed the role of the Zoning Board. If the Board were to find that the administrators had made an error of ruling of law, then the decision would be reversed. Ms. Cieslicki asked for clarification. Mr. Bourne state that she had made a number of requests which asked for additional conditions, which the Board could not make.

Mr. Bourne opened the hearing to the Board for any questions. Stuart Hodgeman asked if Ms. Cieslicki's appeal covered just weddings or if it also included the events that invite neighbors. Ms. Cieslicki stated that she was fine with events for friends and neighbors, but that it would be unacceptable for Ms. Salinger to call five thousand people her friends. Ms. Cieslicki added that she had helped host Ms. Salinger's first barn party and that she had no problems with personal parties. Ms. Cieslicki continued that she did have a problem with Ms. Salinger being able to do whatever she wanted. Ms. Cieslicki said that anything not related to the tree farm operation should not be allowed.

Mr. Bourne noted that Ms. Cieslicki had made reference to the legal requirements for agritourism and asked what her source had been. Ms. Cieslicki distributed copies of RSA 21-34-a to the Board. Upon a review of the statute, Mr. Bourne stated that the phrase that jumped out was 'not limited to'. He asked Ms. Cieslicki where she had come up with the statement that the weddings do not meet the legal definition of agritourism. Barbara stated that the NH Commissioner of Agriculture and the NH Courts agreed with her. She asked what a wedding, luncheon, or dog trial had to do with tree farming and stated that none of those uses are accessory to the Tree Farm. Mr. Bourne asked what Ms. Cieslicki meant about a special events business being allowed in the Village District. Ms. Cieslicki replied that she had lumped together all of Ms. Salinger's activities as special events. Mr. Bourne referred to Article IV.B and asked if Ms. Cieslicki could elaborate on the special events business being allowed in a Village District. Ms. Cieslicki stated that she did not think the Board of Selectmen had made a mistake by issuing a Certificate of Compliance for agritourism, but that every single thing Ms. Salinger has done at the tree farm had not met the legal definition of agritourism. Ms. Cieslicki stated that if Ms. Salinger was allowed to do this, it would get worse and that letting Ms. Salinger get away with these activities would set a precedent. Any farmer in Cornish could say they wanted to have agritourism on their farm. Mr. Bourne asked if he had understood Ms. Cieslicki correctly that the Board of Selectmen had not made a mistake by allowing agritourism. Ms. Cieslicki replied that what Ms. Salinger was doing was not legally compliant agritourism.

Karim Chichakly stated that it seemed that Ms. Cieslicki's issue was calling special events agritourism. He added that he did have questions related to standing and timing. Mr. Bourne suggested that those issues could be addressed during the closed discussion.

Kate Freeland stated that her interpretation of accessory use was very different from Ms. Cieslicki's. The special events on Ms. Salinger's property did not take precedence over the primary use of the property. The farm is a tree farm 365 days a year. Karim Chichakly stated that an accessory use must be incidental and subordinate and customarily associated with the principal use. He added that the accessory use should be minor in relation to the primary use and bear a reasonable relationship to the primary use. Moreover, the accessory use has commonly been established as reasonable associated with the primary use in the local area. Ms. Cieslicki

concurred with Mr. Chichakly and made reference of the Commissioner of Agriculture and the NH Supreme Court.

Public Discussion

Colleen Salinger stated that Langwood Farm has been a tree farm for a long time. An integral part of the farm are open fields that she keeps mowed. Those fields lend themselves to visitors to the property. She spoke of the importance of open fields to the forest ecosystem and to the community. She asked Ellen Arnold, attorney, to continue on her behalf.

Ms. Arnold reviewed the creation and protection of agritourism and described the events at Langwood Farm as permitted agritourism activities. Ms. Arnold reported that the Planning Board had approved a site plan on 9/17/2020 with conditions that dealt with many of the issues raised by Ms. Cieslicki. She added that Site Plan Review was a more appropriate forum for dealing with such concerns.

Ms. Arnold noted that one Board member had raised procedural issues to Ms. Cieslicki's appeal. Ms. Arnold stated that it would have been helpful to have had a sufficiently filed appeal that laid out the grounds and considerations. Ms. Arnold said that the issues of the timeliness and sufficiency of notice are key to the system of justice.

Agritourism attaches all of the relevant legal provisions. The property, Ms. Arnold asserted, is primarily used by agriculture as defined by the law. She reported that Ms. Salinger had invested tremendous time and effort into improvements to the property, and that those improvements have been enjoyed by the community. The driving force of agritourism, Ms. Arnold stated, was not only to provide economic support for farmers but also to preserve, create, and support open space and natural space, which was exactly what has been going on at Langwood Farm. Agritourism, Ms. Arnold continued, only applies to properties where the primary use is agriculture. As Ms. Cieslicki had pointed out RSA 21:34-a, section b, defines agritourism and provides that agritourism is an accessory use to an agricultural operation. Ms. Arnold stated that the Henniker case cited by Ms. Cieslicki was heard in 2015; the current law was specifically adopted in September 2019 in response to the Henniker decision. Ms. Arnold asserted that references to *Forster v. Henniker* were irrelevant. Ms. Arnold informed the Board that weddings at the Forster Tree Farm had since been approved as an allowed use. Ms. Arnold stated that the Planning Board decision limited non-private evening events to four per year, which had been at the proposal of Ms. Salinger. In addition to the limit to number of events, timing, signage, and limits to music were also part of the Planning Board decision. The Planning Board, Ms. Arnold stated, has the authority and responsibility to mitigate the impact of a proposed use. Going back to agritourism, Ms. Arnold noted that current law does state that agritourism cannot be limited where the primary use is agriculture. She stated that agritourism is key to preserving the open space of our state, that there is no doubt that Langwood Farm is an agricultural use, and that through section 5 of RSA 21:34-a, agritourism becomes an accessory use. Marketing includes, specifically, agritourism. Ms. Arnold reported that Section 5 is intentionally very broad so that it can change over time. While existing operations may be altered or expanded to meet changing technology and needs, towns do have the authority to regulate significantly expanded operations for the purpose of impact and mitigation.

Ms. Arnold reviewed agritourism provisions in 672:1 which deals with municipal planning and zoning. Both the farm and zoning statutes recognize agritourism as traditional, fundamental, and accessory. Even the items listed are broad, and the law was adopted in order to encourage these kinds of uses. Ms. Arnold offered to answer any questions.

Karim Chichakly stated that it was not the change in the law allowed Forester to open and have weddings again: on-farm weddings and events were added to the Henniker Zoning Ordinance prior to 2019. Ms. Arnold replied that laws regarding agritourism began to be changed in 2016. She made reference to a list of at least 24 farms offering weddings in New Hampshire. Karim asked about weddings as an accessory use. Ms. Arnold stated that 'including but limited to providing a meal, overnight stays, enjoyment of the farm environment' are all defined as accessory uses. She added that the identification of agritourism as accessory to agriculture found in 21:34-a was restated in zoning statute 672:1.III.D. Mr. Chichakly asked if that list of uses met the demand of being accessory to the farm use and asked Ms. Arnold to read the list of farms in NH that host weddings, which she did.

Everett Cass stated that the fact that farms are hosting weddings shows that the state is accepting this. The law was vague and written for a reason so that people could do different things and supplement their income. He added that Ms. Salinger may not need the income, but that was no one's business: she had the right to use her property. Mr. Cass emphasized the importance of the phrases 'not limited to' and 'enjoyment of the farm environment' in the statute. He stated that the agritourism supports both economic viability and long-term sustainability of farms and cannot be unreasonably limited by municipal zoning. Mr. Cass posited that the statute did not give municipalities the power to limit agritourism unreasonably.

George Edson said that he was disappointed by a number of points made by Ms. Cieslicki. He asserted that Ms. Cieslicki had used information erroneously, particularly with regard to the Henniker case. Mr. Edson stated that most people knew the law had changed since the Henniker decision. He felt that many of Ms. Cieslicki's points were quoted out of context, and he felt that the Board was not getting the whole story. Moreover, Mr. Edson stated that the quoting the Commissioner of Agriculture was very problematic. Mr. Jasper was not at the meeting to speak for himself, and the Board did not know what Ms. Cieslicki had told him. Mr. Edson felt that much of what Ms. Cieslicki had said was opinion. He also emphasized the phrase from the statute 'but not limited to,' and asserted that Ms. Cieslicki was using a tree farm as a whipping boy. Tree farming is a part of farming and the limiting of activities to apple trees and maple syrup, etc. was in his opinion incorrect. Any agricultural activity should be treated the same way: a dairy farm did not need to serve milk; a tree farm did not need to do maple syrup. Mr. Edson felt that the definition of agritourism had been met.

Bill Gallagher stated that in his opinion, Barbara Cieslicki was very unfair to the Board with her presentation. A lot of what had been said was hearsay. Mr. Gallagher added that Ms. Cieslicki's reference to case law was obsolete. He stated that the Board of Selectmen had done the right thing, the Planning Board had done the right thing, and that the Zoning Board should deny the appeal.

Peter Burling stated that he did not want to comment on the reason for the appeal. He sympathized with Ms. Cieslicki's comment about speed on Lang Road, but he did not feel that the events were responsible. He continued that by way of history he and Jean Burling saw themselves as part of a community that preserves the agricultural history and environment of the area from Squag City to the top of Lang Road. He felt very strongly that Colleen Salinger was doing the same thing. Mr. Burling stated that he loved giving people a place to enjoy Cornish at its best in Trinity Church. Ms. Salinger has done the same with Langwood Farm.

Bill Wall said that what goes on at Langwood was a very important part of his and his wife's lives. He added that the Legislature has gone out of its way to allow uses such as Ms. Salinger's. He felt that Attorney Arnold had made an excellent presentation and encourage board to deny the appeal.

Colleen Salinger stated that she loves the place where she lives. She described herself as a serious NH tree farmer, which takes time, energy, and expense. She described the restoration of the barn and maintenance of the fields and trails. Ms. Salinger stated that she is able to invite people to enjoy property and land. People, many from cities, love being able to come to the farm. She noted that evening wedding events are limited to four per year, and she felt that as a neighbor and a citizen, that was a reasonable use of agritourism. She presented seventeen letters of support.

Charles Plimpton, neighbor, stated that the events at Langwood do not create any disturbance to his life. He felt fortunate to be Ms. Salinger's neighbor and acknowledged everything she has done for the community.

Karim Chichakly asked Ellen Arnold if it was true that in the rewriting of the 21:34-a, agritourism is for marketing and sales purposes. Ms. Arnold stated that agritourism is listed under section of law that defines agricultural marketing activities and she read through the allowed agricultural uses given in the statute. For the purposes of that section, Ms. Arnold continued, marketing includes agritourism. Mr. Chichakly asked how weddings related to marketing. Ellen Arnold answered that a wedding would be included in the definition of agritourism as 'enjoyment of the farm environment.' She added that Ms. Salinger is subject to the conditions of the 9/17/2020 Planning Board decision: there will only be four non-personal evening events per year, no more than 150 people per event, required signage, and music ends by 10 p.m. Mr. Chichakly stated that he was trying to understand connection between marketing of the tree farm and weddings. Ms. Arnold said that it falls under the definition of agritourism. Jason Bourne read the statute aloud.

Closed Discussion

Karim Chichakly suggested that the Board needed to discuss two procedural issues, timing and standing. Karim Chichakly asked when Barbara Cieslicki was made aware of the existence of the certificate of zoning compliance. Barbara Cieslicki answered that she first heard of the existence of the certificate at the July 16, 2020, Planning Board meeting. Bill Lipfert, Chair of the Planning Board, had informed Ms. Cieslicki that the application file included the Certificate of Zoning Compliance. Karim Chichakly asked Ms. Storrs when Ms. Cieslicki first contacted the Zoning Board. Ms. Storrs stated that she believed that it was after the Site Plan Completeness

Review on August 20, 2020. Karim Chichakly calculated that Ms. Cieslicki had taken thirty-six days to file the appeal and that a decision needed to be made if that had been a reasonable amount of time. Barbara Cieslicki stated that she had asked Ms. Storrs if she could file an appeal, and Ms. Storrs had indicated that the appeal could be filed. Ms. Storrs reported that she had contacted the New Hampshire Municipal Association (NHMA) and Town Counsel regarding the reasonableness of the timing. At issue was the fact that the Selectmen's minutes indicated that a Certificate of Zoning Compliance had been discussed on October 28, 2019 but the minutes did not indicate that a certificate of Zoning Compliance had been issued. Because the minutes did not indicate the issuance of a certificate, Ms. Storrs continued, there had been no public warning of the issuance. Ms. Storrs stated that the next time the Certificate of Zoning Compliance was mentioned in the minutes of a public meeting was July 16, 2020. Both the NHMA and Town Counsel had deemed the timing of the appeal reasonable. Karim Chichakly made a motion that the Board find that the application for appeal had been filed in a reasonable amount of time given that the petitioner only learned about it on July 16, 2020. Bill Balch asked for clarification, and Jason Bourne reviewed the timeline. Bill Balch seconded the motion. Ms. Cieslicki stated that she would like refund of the fees, and Mr. Chichakly noted that she was out of order. Jason Bourne called for a vote by roll call. Voting in the affirmative were Bill Balch, Jason Bourne, Karim Chichakly, and Kate Freeland. With none voting in the negative, the motion carried.

Karim Chichakly reviewed four factors that may be used to determine standing:

1. The proximity of the challenging party's property to the site for which approval is sought;
2. The type of change proposed;
3. The immediacy of the injury claimed; and
4. The challenging party's participation in administrative hearings.

He asked Ms. Cieslicki to speak to the proximity of her property to the site. Ms. Cieslicki stated that she lived about a half mile down Lang Road. Jason Bourne asked Ms. Cieslicki how she had been harmed by the decision and asked Ms. Cieslicki to speak to actual harm, not potential issues. Ms. Cieslicki said that her house is close to the road and there was loud noise and excessive traffic. When the cars went up and down the road there was sound and dust pollution. Many parties have been excessively noisy. Ms. Cieslicki added that the times when events were occurring were when she had been impacted. Jason Bourne asked about the frequency of events in a typical year. Last year, Ms. Cieslicki recalled that there had been three events in one weekend. She added that the events were ridiculous in a rural neighborhood designated a scenic road. Karim Chichakly asked when the three events in one weekend had occurred. Ms. Cieslicki answered that it had been last year. The events were getting more frequent, louder, people were getting ruder, and it was impacting her life. She asserted that it seemed like an unregulated commercial activity. Mr. Bourne asked Ms. Salinger if all of those events that weekend were commercial. Ms. Salinger stated that she allows four wedding per year and that she would never have two events in the same weekend. She suggested that there may have been people hiking, but she was not sure what events that Ms. Cieslicki was referencing. Karim Chichakly noted that the site plan review had restricted evening events to four per year. The Board asked what extent has Ms. Cieslicki been involved in administrative

hearings. Ms. Cieslicki stated that she had attended two Planning Board hearings to keep abreast of what was going on.

Karim Chichakly suggested discussing the type of change. Jason Bourne said that the proposed use per the zoning certificate is agritourism. Karim Chichakly stated that the Board understood that agritourism meant the special events. He felt the proximity and the type of change both have impact on the injury claim. Kate Freeland stated that events have been occurring for at least five years and that the granting of the Certificate of Zoning Compliance did not change what had been happening at Langwood Farm. Karim Chichakly suggested that owner had asked for the certificate to show it was in compliance.

Ellen Arnold stated that there was no change in activities proposed. The application for the certificate of compliance was borne from the discussions between Barbara Cieslicki and Colleen Salinger. Jason Bourne stated that one point he had been considering was that there did not seem to be any change. The ordinance has both a tree farm and agricultural use as permitted in a Rural Zoning District. Both uses fell under agriculture as defined by the RSA as well. Mr. Bourne added that he was puzzled as to why there needed to be a certificate of compliance at all. Karim Chichakly said that the issue was whether weddings are agritourism. The certificate did not specify special events. As a Board, Mr. Chichakly continued, members needed to determine if the Administrator had made a mistake in law by issuing a certificate of compliance. Karim Chichakly noted that the Certificate of Zoning Compliance was incomplete, but that the Selectboard minutes did discuss traffic and noise. Mr. Chichakly also noted that the Planning Board minutes consider weddings. Kate Freeland stated that she did not feel the Board should be considering the meaning of the RSA with regard to the certificate of compliance. Mr. Chichakly disagreed. Jason Bourne stated that there was nothing in the town ordinance that would be more restrictive, so the board was left with the state definition of agritourism, which is vague. Jason Bourne suggested that to determine if the administrators made an error of law, the documents must be reviewed. Karim Chichakly stated that the Board still had to resolve the issue of standing. Kate Freeland felt that the timing was relevant since the change in use had taken place five years ago. Colleen Salinger stated that she had been doing these activities for more than five years. When her neighbor complained about it, she did some research and found that what she had been doing all along was agritourism. She met with Board of Selectmen who had asked her to apply for a site plan review. She felt that the conditions made by the Planning Board did address the complaints. Colleen Salinger said that agritourism was an allowed use.

Karim Chichakly moved that the petitioner does not have standing because the applicant lives half a mile away, and with regard to immediacy, the use been ongoing for quite a while. Mr. Chichakly added that a mitigating circumstance was the Planning Board decision, which addressed the concerns regarding the impact of events. Bill Balch seconded the motion. Kate Freeland asked if all four points need to be met to determine standing. Jason Bourne stated the four factors are considered when a non-abutter files an appeal. Ellen Arnold clarified that not all four factors must be met; they are factors which the Board may consider. Jason Bourne called for a vote on the motion by roll call. Voting in the affirmative were Bill Balch, Jason Bourne, Karim Chichakly, and Kate Freeland. With none voting in the negative, the motion carried 4-0, and the Board found that the applicant for the appeal did not have sufficient standing for the appeal as an aggrieved party 4-0. Jason Bourne stated that at this point, since the applicant did

not have standing as an aggrieved party, the appeal could not continue. Mr. Bourne added that the case had not been closed, but vacated. Barbara Cieslicki asked for clarification. The Board explained that if the petitioner was found not to be an aggrieved party, then the appeal could not move forward. Mr. Chichakly stated that it helps if the petitioner is an abutter, but that was not the only consideration. Bill Balch discussed the wording of the decision. Karim Chichakly stated that there is no approval or denial, so there would not be a decision. Jason Bourne stated that the decision effectively meant that the Board would not hear the appeal. Barbara Cieslicki stated that it was unfortunate that she had to go through all this and not be taken seriously and that it was unfortunate that the audience had not taken her seriously. If they had been intelligent people, Ms. Cieslicki continued, they would have taken her seriously. She stated that she was aggrieved and that it was very unfortunate that the Board did not see it. Jason Bourne explained that there was a difference between feeling aggrieved and the legal definition of aggrieved. He added that the Board had to balance the possibility that by hearing a case, it could go to a higher court which could jeopardize the town. Ms. Cieslicki stated that she sincerely hoped everyone would read the statement she had submitted. Jason Bourne reiterated that the outcome of a successful appeal would have been to revert to the prior state. Barbara Cieslicki stated that her contention was that it should be compliant agritourism. Jason Bourne noted that the hearing had been vacated and ceded the chair back to Caroline Storrs.

Approval of Minutes

Caroline Storrs asked that “in her time on the board, no application had ever been made to change an expanded cottage industry. This was the first and only time that the Board had been asked to change the definition.” be added to the minutes. There was a discussion of the passage of the amendment to the zoning ordinance and Caroline Storrs made a motion to amend the minutes with the inclusion of the text, above. Karim Chichakly seconded the motion, and the vote of the Board was by roll call. Voting in the affirmative were Bill Balch, Jason Bourne, Karim Chichakly, and Caroline Storrs.

The Board discussed of the definition of agritourism and the possible amendment to the zoning ordinance. Michael Fuerst stated that agritourism is an accessory use and that the Selectboard has the power to decide whether a use qualifies as accessory in the ordinance as it is now. Karim Chichakly suggested that agritourism should be allowed by special exception. Jason Bourne asked whether agritourism could be unpacked from agriculture.

Election of Officers.

Caroline Storrs made a motion to nominate Jason Bourne as Chair. Jason Bourne suggested that Karim Chichakly serve as Chair. Mr. Chichakly pointed out the he is an alternate and therefore cannot serve as an officer. Ms. Storrs said that she would be happy to move to an alternate position. There followed a discussion of the need to make the transition to sharing information by email. Bill Balch, Clerk, was in agreement. It was suggested that the recording secretary could notice applications, while Bill Balch remained clerk

Adjournment

Jason Bourne made a motion to adjourn. Bill Balch seconded the motion, and Jason Bourne called for a vote by roll call. Voting in the affirmative were Bill Balch, Jason Bourne, Karim Chichakly, Kate Freeland, Michael Fuerst, Stuart Hodgeman, and Caroline Storrs. With none voting in the negative, the motion carried 7-0, and the meeting was adjourned.

Respectfully submitted,
Heidi M. Jaarsma, Recording Secretary