

**Bolton Zoning Board of Appeals
Regular Meeting Minutes
September 10, 2019 7:00 p.m.
Bolton Town Hall, 222 Bolton Center Road**

Members Present: Chairman Mark Altermatt, Robert Peterson, John Toomey and Jonathan Treat and Alternates Anne Decker, Joseph Hriczo and Letrisa Miller (seated for William Pike), and six members of the public

Staff Present: Zoning Officer Jim Rupert

1. Call to Order: Chairman M. Altermatt called the meeting to order at 7:04 p.m.

2. Public Comment: No public comment.

NEW BUSINESS

1. Application of Andrew Ladyga-1225 Boston Turnpike-to appeal the decision of the Zoning Official for violation of Section 8C.2.b of the Bolton Zoning Regulations regarding operation of businesses without approval from the Planning and Zoning Commission

J. Rupert provided background information. The property is in a rural mixed use zone. In addition to the farm stand there are two separate tree businesses with a presence at that location. Employees are reporting there in the morning and returning the equipment in the evening. Section 8C.2 .b requires a special permit for this type of use. J. Rupert met with Mr. Ladyga twice to explain the special permit process. Mr. Ladyga stated that he was using the equipment when it was not being used by the tree companies. J. Rupert noted that just because a business has a different business address it doesn't mean that that is the only address that they are operating their business from. J. Rupert issued a cease and desist order. Compliance was made on a prior greenhouse violation and is no longer an issue.

Andrew Ladyga, the owner of Lyndale Farms spoke on his own behalf. He is re-establishing the farm and farm stand. He currently does not own all of the equipment that is necessary to run a farm. He is partnering with other local farmers to barter work. He stated that the tree companies have their equipment on the farm for farm use and that the companies are helping with the farm business in delivering firewood, moving trees, etc. under a lease agreement. The tree companies are not planning to move their businesses to the farm location.

M. Altermatt asked what type of equipment is being stored and if Mr. Ladyga was using the equipment. Mr. Ladyga replied that he is using a bucket truck, log splitters, excavators, water tanks, etc. M. Altermatt also asked if J. Rupert and Patrice Carson had explained the process to comply. Mr. Ladyga replied yes.

M. Altermatt noted that the P&Z commission may have been able to make some modifications to the zoning if there had been discussion with them.

J. Rupert felt that Mr. Ladyga did not go forward with the P&Z because he was using the appeal process as a stall tactic to get through the summer. Mr. Ladyga stated that he didn't want to have to get the equipment off of the property during the farming season.

J. Rupert also noted that just like every other board and commission there is a public comment section that Mr. Ladyga could have taken advantage of. He could have come to a P&Z meeting under public comment although they may not have talked to him because of the violation.

L. Miller asked if there was a yearly lease with each of the companies and if a copy of the leases could be provided. Mr. Ladyga replied yes to both questions. The monthly lease payment is \$500.00 to each company which includes the use of 10-20 tree company employee hours per week. 15-20 pieces of equipment per company are on the premises. The equipment is not specified on the lease. Vegetables are also offered as payment. Mr. Jeff Daigneault stated that the percentage of use by the farm versus the tree companies is 50/50 or 40/60 and that the chainsaws and bobcats are used every day.

M. Altermatt clarified that the equipment is leased to Mr. Ladyga as he sees fit but the owners of the equipment can also use it as they see fit. Mr. Ladyga replied yes and the tree companies can store the equipment in his heated buildings. M. Altermatt mentioned that there may still be a problem as the equipment mentioned is stretching the rules of farm equipment and that this seemed like a very odd lease agreement for the amount being paid. Mr. Ladyga stated that he wouldn't be able to afford it any other way and that if the equipment was leased by him from a retail business this would not be an issue.

J. Rupert feels that the property has become a storage facility.

Jeff Daigneault volunteers at the farm and spoke on Mr. Ladyga's behalf. He stated that the tree company employees are not there every day and that they ask for permission to use the equipment before taking it. He has personally used every piece of equipment on the farm and use may increase as the season progresses.

J. Treat asked several farming related questions:

How many acres are owned? Mr. Ladyga replied that there are 2 plots, one 16 acres and the other of 5 acres with a total of 3 or 4 acres currently being farmed.

Is any of the land leased? Mr. Ladyga replied that hay is cut on the property.

What equipment at the farm is not owned by tree companies? Is any 3 point? Mr. Ladyga and Mr. Daigneault replied that there is a rototiller, chain saws, 2 diesel tractors, disc harrow, plow, hand tools, etc.

Do you buy fuel without excise fuel tax? Mr. Ladyga answered that they purchase their fuel at the local gas station.

Do you belong to any farming organizations? Mr. Ladyga noted that he belongs to the Farm Bureau.

Do you go to farmers markets and what crops are you growing? Mr. Ladyga noted that they sell their produce at the farm stand only. They grow a diverse selection of crops including tomatoes, kale, cabbage, peppers, okra, eggplant, pumpkins, sunflowers, mums, hay and lettuce. Mr. Treat questioned how the use of arborist equipment is necessary for 3-4 acres of hand-picked vegetables. He noted that just because you can lease equipment it doesn't mean that you need it. He then congratulated him for undertaking a small farming operation.

How do you use the boom truck? Mr. Daigneault uses it to set leads for tomatoes, to cut overgrowth and to patch the barn roof.

Do you foresee this being a profitable undertaking? Mr. Ladyga felt that it could be profitable but the leases are invaluable. Mr. Treat noted that if the tree company help takes the trucks and leaves for the day it plays a role in their business.

M. Altermatt said that it seems clear that there are benefits of the lease agreement going back and forth although the arborists seem to be using the farm for a staging operation and if Mr. Ladyga made a list of equipment that was needed on the farm would a bucket truck be on your list of necessary items as a fledgling farmer? Mr. Ladyga replied yes because the potential to grow his farm is there. Mr. Altermatt asked if this appeal does not go in your favor would you go before the P&Z to explore other resolutions? Mr. Ladyga was not sure what further steps he would take.

M. Altermatt noted that Mr. Ladyga was initially notified on May 2nd of the violation with an invitation to speak to Mr. Rupert but did not appeal until the cease and desist order was issued. Mr. Ladyga acknowledged the zoning violation.

J. Treat noted that on 6/27 Mr. Ladyga received a letter stating that he had 15 days to appeal. J. Rupert noted that the actual appeal timeframe is 30 days but that the 15 day statement gets people moving. The appeal was not filed until 7/30, well beyond the 30 day limit. Mr. Ladyga stated that between 6/27 and 7/30 is the most important time in farming and they would have been put out of business. Mr. Altermatt stated that he can't dismiss the fact that the violation letter seemed to be ignored.

J. Rupert noted that if Mr. Ladyga had applied for the proper permits and came before the P&Z commission this could have been resolved. The appeal of the decision could have been avoided. If he went before the P&Z commission while the equipment was still on the premises they could not hear it as he would be in violation. If the equipment was hidden in the buildings, that is not valid. J. Rupert received complaints from the public notifying him of activity on the farm. If Mr. Ladyga leased equipment from a retail facility, they would not be taking it back and moving it every day. J. Rupert realizes that farming is difficult and he is glad that the farm stand is in operation but his role is to enforce the rules set forth by the P&Z Commission.

R. Peterson asked how much of a hardship it would have been to remove the tree equipment from the property so that the P&Z commission could make a determination. J. Rupert said that was discussed. It is a 30-60 day process. R. Peterson then asked if he removed the equipment would he be allowed to have it returned? J. Rupert said that there was no way to know. It would

depend on Mr. Ladyga's presentation and the determination of the P&Z commission. Mr. Rupert and Ms. Carson would have helped him with his application and the process of going before the P&Z commission.

There were no further questions from the board or the public.

R. Peterson made a motion to close the public hearing. J. Treat seconded. All were in favor. A brief recess was taken.

M. Altermatt called the meeting back to order at 8:32 p.m.

M. Altermatt noted that the options are to approve or deny the appeal. There are 5 voting members. 4 out of 5 need to agree.

M. Altermatt does not feel that Mr. Rupert's decision can be overturned. The 2 tree companies are being allowed to use the property as a staging area. J. Treat and L. Miller were in agreement. The leases do not seem valid as there is no specific equipment listed. The bartering seems to be a service for a service and not a lease.

J. Toomey felt that the way the business is being operated is innovative but does not follow the regulations of the town. And unfortunately, the lease agreements have not been shared with the board. Perhaps the regulations should be changed to permit this sort of arrangement.

Proposal-Deny the appeal as the board is convinced that the decision of the Zoning Official is valid.

J. Treat made a motion to deny the appeal of the Zoning Official's decision regarding a violation of Section 8C.2.b of the Bolton Zoning Regulations-Operation of businesses at 1225 Boston Turnpike without approval from the Planning and Zoning commission. R. Peterson seconded. The motion passed unanimously.

2. Approval of Minutes from January 15, 2019

R. Peterson moved to accept the minutes as written. J. Toomey seconded. The motion passed unanimously.

3. Correspondence: None

R. Peterson was thanked for his many years of service to the Town of Bolton. All commission members showed their appreciation with a round of applause.

4. Adjournment

R. Peterson moved to adjourn at 8:47 p.m. J. Treat seconded. The motion passed unanimously.

Respectfully submitted,

Leslie J. Brand

Leslie J. Brand

Please see minutes of subsequent meetings for any additions or corrections hereto.