

Hardwick Development Review Board Minutes

Date: March 15, 2016

Location: Hardwick Memorial Building, Hardwick

Re: Hearing for the appeal of the Zoning Administrator's Denial of Permit #2016-002 Wilma and Earl Shatney's application for a Home Occupation in the Compact Residential Zone of East Hardwick.

DRB Members Present: Dan Bandit, Acting Chair; Ruth Gaillard; Helm Nottermann; and Ed Keene

DRB Members Absent: None

DRB Members Recused: Cheryl Michaels and John Mandeville

Others Present: Wilma Shatney, Applicant; Glenn Howland, Attorney for the Applicant; Michael Bielewaski, Hardwick Gazette Reporter; David Gross; Joyce Mandeville; Sue Cross, Acting Clerk; and Kristen Leahy, Zoning Administrator

Dan Bandit, acting chair, opened the hearing at 7:31 pm. He noted the hearing was quasi-judicial, explained the procedure for the hearing and asked all those who wished to testify to be sworn – Wilma Shatney, Kristen Leahy, and Dave Gross (prior to testimony). Kristen Leahy, the Zoning Administrator, stated for the record, that she would be assisting with procedural issues but would not be providing any other advice to the DRB.

Chairman Bandit requested the introduction of any additional exhibits. The packet of information from Attorney Howland was labeled **Exhibit #1**. The packet included the following: "The Appellant's Memorandum", "The Prefiled Testimony of Wilma Shatney," "The Notice of Appeal (22 pages)" and the "Petition to Amend Unified Zoning Bylaw." A letter from abutting neighbor John Mandeville was introduced as Exhibit #2 but was contested by Attorney Howland. Howland objected to the letter being an exhibit since Mr. Mandeville was not sworn in prior to delivering this testimony, he was not present at the hearing and could not respond to questions about his testimony, and Attorney Howland could identify multiple points with which he would disagree. The Chair clarified that Mr. Mandeville's letter will serve to register him as an Interested Party but the letter's exhibit status will be deferred to the Attorney Davies (who is the attorney for the Town of Hardwick).

Attorney Howland and Applicant Wilma Shatney delivered their testimony to the board. Exhibit #1 was delivered officially and Mrs. Shatney verbally reviewed her pre-filed testimony while she was under sworn oath. Attorney Howland asked her to verify that everything in the document was true and that nothing had changed since the drafting of the document (previous week). Mrs. Shatney responded in the affirmative. Attorney Howland also established on the record that there was a petitioned amendment which proposed various changes to the existing Hardwick bylaw.

Chairman Bandit asked why the Shatneys applied for a Home Occupation permit when the Hardwick zoning bylaws do not require such a permit. Attorney Howland stated that any use under home occupation must comply with the Hardwick performance guidelines and therefore it is necessary to obtain a zoning permit for a Home Occupation. If you do not seek that permit,

the home owner would be proceeding at his/her own risk of an enforcement action. Attorney Howland stated his opinion that there needs to be some standards and if it is to be fair, there needs to be a process.

Attorney Howland explained that a zoning application must be reviewed by the zoning bylaws which are in effect on the date that the zoning application is submitted. According to Attorney Howland, when the Shatneys submitted their Home Occupation application on January 5, 2016, both the current Hardwick bylaws and the proposed Hardwick bylaws were in effect. Since the selectboard's public hearing on the proposed bylaw changes had been noticed in December 2015, the petitioned change are in effect until and unless the Selectboard denied the changes within 150 days. The petitioned bylaw amendments were not yet denied by the Selectboard on January 5, 2016 and, thus, should have been utilized in the review of the zoning application. The Vermont Supreme Court has previously upheld a "Vested Right Doctrine" which would indicate that the application must be reviewed with the laws in effect on the day of application - January 5, 2016.

Ruth Gaillard asked if one set of zoning bylaws takes precedence over the other. Attorney Howland responded that if the proposed zoning bylaw is correctly drafted it will take precedent. As the petitioned bylaw amendments included deletions and inclusions, the petitioned bylaw amendments should be the primary guiding doctrine in the review of the Shatney application.

Ruth Gaillard asked if the Selectboard had approved the petitioned bylaw amendments. The information was provided that the Selectboard denied the petition on January 21, 2016.

Chairman Bandit asked how the decibels of noise would be measured. Attorney Howland responded that the trucks will meet DOT requirements and, as such, will meet the proposed performance standards regarding noise.

Ruth Gaillard asked how long the Shatneys had been at the School Street location – 10 years. And she asked how long the trucks have to idle. Wilma & Attorney Howland responded that in the summer the trucks will idle 10-15 minutes and up to 45 minutes in extreme cold. The ages of the trucks were requested and they are reported to be older vehicles.

Chairman Bandit asked what the hours of operation would be and the response was 6-7am until 4:45 pm or so.

Zoning Administrator Kristen Leahy presented her testimony. She agreed that there are two sets of zoning bylaws in play. She spoke with the town attorney and with the attorneys at Vermont League of Cities and Towns and both legal entities stated that an approval of the zoning application could be made contingent upon the acceptance of the proposed bylaw amendments by the Hardwick Selectboard. ZA Leahy noted that the Selectboard did deny the amendments on January 21, 2016 and the date of the denial of the Shatney zoning application was January 22, 2016.

ZA Leahy introduced a page from the current Hardwick zoning bylaw – page 29 which discusses Home Occupations and states that "In accordance with the Act... no provision of these regulations may infringe upon the right of any resident to use a minor portion of a dwelling for

an occupation which is customary in residential areas and which does not have an undue adverse effect upon the character of the surrounding neighborhood or area.” She stated that she had denied the application from the Shatneys based on this aspect of the bylaw, which was included in both the current and the proposed versions of the Zoning bylaw. ZA Leahy also introduced the decision from Judge Durkin, “Docket # 171-12-13 Vtec Shatney NOV (Overturned)” to support her interpretation that this particular home occupation will have an “undue adverse effect upon the character of the surrounding neighborhood.” The decision from Judge Durkin will be Exhibit #3.

Dave Gross of 27 School Street asked to be sworn in and to testify. This was accomplished. Mr. Gross stated that he agreed with the ZA decision and he informed the DRB that Judge Durkin had made his decision from the bench and he quoted from the decision – “The Shatneys are well-intentioned, hardworking people. But they have changed the use of their property from residential to a commercial use as well as residential use. Such change or addition of use is a zoning violation.” Mr. Gross asked to admit the partial transcript as evidence. Attorney Howland did not agree with its submittal. Chairman Bandit will speak with the Town attorney about the legal feasibility of entering this exhibit.

Attorney Howland asked to give further testimony. He drew attention to the proposed bylaw changes. He wished the DRB to notice that the individual sections of Home Occupation and the performance standards were all changed in the petitioned bylaw amendment. He also drew attention to the proposed exemptions from the performance standards, which would include the noise and vibrations of temporary construction vehicles which leave the site (such as trucks). (proposed Section 7.2 changes).

Motion to close the hearing was made at 8:32pm. All members were in favor. The DRB entered deliberative session and did not close the deliberative session.

Respectfully submitted,
Sue Cross, Acting Clerk