**Minutes**

**Appeals Board Meeting – Hastings Community Center**

**Monday, April 10, 2023**

**6:00 PM**

Present: Chris Devries, Kris Gould, Toby Veno

Devries called the meeting to order and determined that there was a quorum for voting purposes. He outlined the order of events for the review of the Administrative Appeal submitted by James Tyrrell to appeal a Planning Board decision on 1/24/2023 to approve an Application for Land Use Authorization for a café at 627 Main Street.

Tyrrell introduced himself and noted that his appeal is related to rules that he believes were not followed by the Planning Board and is not about the Fairgrounds café itself. Tyrrell outlined the numerous reasons for his appeal. First, the Planning Board did not receive the application in the timeframe required by the Land Use Ordinance; he noted that the application was received by the Town on 12/28/22 but that the Planning Board did not receive notice of it from the CEO until 1/19/2023. The Planning Board reviewed it on 1/24/2023. Tyrrell cited the ordinance section that requires that the Planning Board receive the application 14 days before reviewing it. He reviewed emails sent and recollections of conversations from the 1/24/2023 Planning Board meeting about the untimely receipt of the application from the CEO. He points out numerous items that were not reviewed by the Planning Board in detail (septic capacity, clarification on number of employees, hours of operation, and potential additional uses such as a gallery) as a result of getting the application late.

Tyrrell also pointed out that there were errors in the final Notice of Decision that needed to be corrected and that it was not signed in a timely manner or by everyone that voted to approve the application. He questioned the validity of the approval. Tyrrell also commented that he understands that a public hearing is not always required but believes that a hearing should have been held in this case; 20 abutters would have had to be notified. He believes that the Planning Board set a bad precedence that could subject the town to claims of discrimination if a future applicant is a protected class and is not treated the same.

Devries asked for clarification on the waiver requests for parking. There was discussion about using email (without a signature) as a matter of record and the policy related to this. This led to conversation about standing to appeal. Devries inquired how Tyrrell was particularly impacted. Tyrrell noted that he has future interest in an abutting property and also that a municipal officer may appeal as he is charged with protecting the residents of Fryeburg.

After continued discussion Devries made a motion that the applicant has standing to file this appeal. The motion was seconded by Veno and passed 2-1 (Devries against).

The co-owner of Fairgrounds Café, Vic Sunshine spoke. He conveyed that he could answer any questions and expressed some dismay that the town seems to not be business friendly and that it is punitive to the business to have to go through these processes. There was discussion about the timing of the appeal and initial planning board approval and its impact on the proposed business.

Patrick Emery, chair of the Planning Board confirmed that the application was not received in a timely manner. He also noted that he requested that there be a public hearing but that there was a 2-3 vote. There was a lengthy discussion about the process of remanding this to the Planning Board and the next steps of the Appeals Board.

Kimberly Clarke spoke and argued that the information submitted in the appeal in not relevant and that the proposed use is not a change of use and that no mistake was made under the Land Use Ordinance. She noted that the Planning Board had opportunity to table the application if they felt that they needed more time to review the application, but that they didn’t and proceeded with the review and approval. She noted that the approval was not arbitrary and was based on the ordinance.

Stephen Chase commented that, per social media and signs on the subject property, the café had been planned for long before the application was submitted so time constraints should not be a topic of discussion. Tyrrell stated that the bank had been discontinued for over 2 years and that the use category changed (from 5.B.3 to 5.B.8). Parking was discussed.

Devries again brought up the next steps moving forward. He commented on this being the fault of the town, and not the business owners. The timing of submitting a new application to the Planning Board, vs waiting for a potential Appeals Board mandated remand to the Planning Board was discussed. Tyrrell indicated that he would withdraw his appeal if a new application was received by the Planning Board.

Devries made a motion to table the Appeal until April 17th. The motion was seconded by Veno and passed unanimously.

Devries made a motion to adjourn which was seconded by Veno and passed unanimously.