

MEMORANDUM

TO: Town Council Steering Committee

FROM: Eric M. Trott, Director of Planning and Development EMT

DATE: February 24, 2022

SUBJECT: Cassidy Hill Vineyard

This memorandum is in response to the email that was submitted to the Steering Committee by Brian Murray on February 7, 2022 regarding the enforcement activities with Cassidy Hill Vineyard. I will address my comments below on the details that were included with Mr. Murray's email as they appear in the communication, including the topic headers he used.

Also, I have attached copies that provide some background on the matter:

- An outline (dated – September 13, 2021) that served to guide the discussion at a meeting with Town Staff (Police, Town Engineer, Wetlands, Zoning, Sanitarian) where the matters involving the Vineyard were reviewed. This provided the basis for a multi-code jurisdiction approach that was shared with the Planning and Zoning Commission (PZC) and Town Attorney.
- An outline, titled 'Cassidy Hill Winery, Discussion Outline, Possible Solutions' that evaluates the numerous issues pertaining to the Vineyard's special permit compliance that was presented to the PZC on October 25, 2021.
- A memorandum (Dated – December 13, 2021) that provided an update to the PZC on the status of the situation involving the Vineyard.

Complaint Process:

Several complaints were filed with the Land Use Office throughout the month of August and into October of 2021 by Mr. Murray and other residents on Cassidy Hill Road regarding concerns with the operation of the Vineyard and its compliance with a special permit that was issued by the Planning and Zoning Commission in 2010. Mr. Murray filed the first complaint and amended the original complaint two times. The concerns and accounts indicated by Mr. Murray are consistent with the various complaints that were filed by him and others.

There Were Multiple Violations on a Special Permit Not Active:

The items listed by Mr. Murray detail the variety of issues that Staff became aware of from the complaints filed. They were also verified after research of the office files was conducted and after Land Use Staff met with the Chipkins in the Land Use Office and on the Vineyard property.

Mr. Murray requested a copy of the Special Permit approval letter and the associated conditions with the Vineyard's outdoor events application, which was provided to him. Mr. Murray indicates that Planning Staff misled him by not stating that there was an administrative flaw with the Special Permit approval. This involves the fact that the site plan that was subject

of the Special Permit approval was not filed in the Town Clerk's Office in a timely manner. This was revealed subsequent to his request, by Mr. Murray himself. During the months of August and September, Staff was conducting a detailed fact finding mission to gain as much information about the permit issuance, neighborhood concerns, and overall operation that was being conducted at the Vineyard in order to formulate a series of recommendations to the PZC and the Chipkins. Mr. Murray essentially did some research himself and assisted Staff in understanding this further dilemma with the Special Permit, prior to Staff determining it.

The Town Attorney advised that since the recording sheet, referred to as the 8-3d form by reference to the CT General Statutes, was properly filed in the Town Clerk's Office and the fact that the site plan mylar was not filed in the Town Clerk's Office, does not make it an invalid approval. The remedy is to simply file a copy of the previously approved site plan in the Town Clerk's Office. The Chipkins are pursuing this remedy to address this administrative flaw with the approval, which is not a fatal one to nullify the approval.

Zoning Regulations Noncompliance:

Mr. Murray lists a variety of points and his opinion on how the Vineyard does not conform to the Zoning Regulations (bulleted below). Staff responds to those opinions below **(in bold)**:

- The outdoor special permit never had a final plan filed and is not an active permit (Zoning Section 7.03.08 Paragraph D). **It is correct that a mylar copy of the site plan was not filed in a timely manner in the Town Clerk's Office. However, it is incorrect to refer to it as 'not an active permit'. The permit has an administrative flaw that is addressable and is being corrected, which will allow for the original approval to be in full compliance with the filing requirements of the CT General Statutes. This has been verified by the Town Attorney.**
- They had weekly music events. All live music in town requires an additional special permit that expires and has to be renewed every 3 years. (Zoning Section 4.06.07). **This matter was reviewed with the Town Attorney to determine the most prudent approach to evaluate the current Vineyard activities. The PZC determined that it would be open to considering an amendment to the original Special Permit (once a mylar site plan is properly filed) pursuant to Section 6.03.02.o of the Zoning Regulations. This was the section of the Zoning Regulations that the Chipkins applied for their outdoor wedding facility – as an 'accessory assembly use'. This would enable the PZC to consider alterations of the original proposal of the Chipkins, which was for an outdoor wedding facility. The current use proposed is to conduct an assembly of patrons who essentially bring their own food, chairs, blankets – purchase wine on site, and listen to live music. This is functionally similar to the assembly of wedding guests, who eat food and drink beverages provided by a caterer, and enjoy music provided by a band or DJ. A new Special Permit application pursuant to Section 4.06.07 of the Zoning Regulations is not required. However, the PZC can consider the provisions of**

this section when they consider an amendment to the original special permit. The Town Attorney agreed that this is a rational approach for the Commission to consider an amendment to the original Special Permit.

- They served wine by the glass which requires a food service permit, They didn't have one even after Eastern Highlands told them to get one (Per EHHD letter which notified Cassidy Hill on 6/2/2020). **It is Staff's understanding that this is accurate. It has also been confirmed by our Sanitarian that the Chipkins are now in compliance with the food service license requirements of the Public Health Code. These matters are under the jurisdiction of the Eastern Highlands Health District.**
- They have a valid special permit for a farm winery designation (Zoning Section 6.03.02). Based on current zoning regulations their current state liquor license **is not valid** because Class 2 liquor licenses defined by (Zoning Section 5.08.02) are not valid in residential zones. (Zoning Section 5.08.03). **Staff has had recent discussions with a State of CT Liquor Control Agent about the status of the Vineyard and the complaints that have been filed with their Office. Staff also spoke to the Agent about the license classes that are contained in our Zoning Regulations. According to the Agent, the State Liquor Commission previously had license classes (1-5) that related to different types of sales/production/distribution of alcoholic beverages. It was brought to Staff's attention that the State no longer utilizes these classes and only use a manufacturer, wholesaler, and retail permit. The classes in the Zoning Regulations were adopted at a time when the State recognized those classes, in order for our Regulations to be consistent with the State's licenses. Since the State no longer recognizes them, the PZC can amend the Regulations accordingly to reflect the current license types. Staff will confer with the Town Attorney on how to best clarify the Regulations. A 'winery' is a Special Permit use in the General Residential Zone pursuant to Section 6.03.02.o of the Zoning Regulations. This is the section that the Chipkins referenced when they requested their permit. The State of CT has issued a 'Farm Winery' license. It would not be reasonable or prudent for the PZC to allow a winery operation in one section of the Regulations and disallow it in another. This matter will be addressed with the PZC.**

The Liquor Control Agent informed Staff that the Chipkins will be subject to enforcement by the Liquor Control Commission because they do not possess a live entertainment license associated with the Farm Winery license. The Chipkins would be eligible to file one with the Liquor Control Commission if they are able to successfully obtain an amended Special Permit to allow outdoor musical entertainment. The State requires that the Chipkins post legal notices and a sign on their premises prior to final consideration by the Liquor Control Commission. If a petition is filed by 10 or more citizens indicating concerns with the issuance of the license, then a public hearing is held by the Commission to consider those concerns, as well as any permit that is issued by the Town.

Inconsistent Enforcement of Regulations:

- Mr. Murray indicates that a motocross track event and wedding venue use was quickly shut down because they did not have valid special permits. **These are two unique and independent enforcement matters. The motocross track event is one that was only brought to the attention of the Town after the event already occurred in 2021 and once prior in 2020. No complaints were brought to the Town's attention previously on this event. The Land Use Department did not initiate enforcement action, since the event is governed by a Town Ordinance that requires a Special Event license to be issued. The owner of the property was alerted to the requirement and a license will be pursued if the event is considered for 2022. The Inland Wetlands Agent is working with the property owner to address regulated activities in the wetlands currently.**

The wedding venue matter was one that was subject to involvement by the Land Use Office. This matter was not necessarily addressed in a quick manner, but it was corrected in a far more rapid pace compared to if it had to go through a full enforcement process and included formal litigation, which is always a possibility. The owner of a property was conducting an unpermitted event facility on their property. Complaints were filed by neighbors about noise and traffic. Land Use Staff communicated the concerns with the owner after determining that the complaints were in fact valid and that the use was not permitted in the Zoning Regulations. The owner attempted to facilitate a Zoning Regulation Amendment with the PZC to enable the use to be allowed in the General Residential Zone. The Commission did not agree and the owner ceased the event facility use.

This provides a parallel example with Cassidy Hill Vineyard and how Land Use Staff worked to address the concerns of the neighbors, pursued compliance with the owners, examined possible options, and enabled a fair and rational process to evaluate those options. This process eventually brought the matter into compliance. This occurred without litigation, costly Town Attorney fees and significant time devoted by Town Staff, and afforded a prudent due process. This same due process has been conducted with the Chipkins and the citizens who have complained about the Vineyard. Land Use Staff has in fact been consistent with sound enforcement practices that have been implemented for many years.

- Mr. Murray suggests that special treatment was given to the Winery because they held an event on Labor Day weekend, within 30 days of the first of multiple complaints, and no enforcement action was taken. **It is not legally prudent to issue a Cease and Comply order to a property owner when an investigation is not complete and all the facts are not possessed and carefully evaluated. Land**

Use Staff began an investigation after the first complaint was filed and continued the fact finding through August and September, which included face to face meetings with the Chipkins in the office and on the property to carefully understand all that was involved. Additionally, after the initial round of facts were collected, they needed to be evaluated and recommendations needed to be prepared with other Town Staff for the consideration of the PZC and the Chipkins. Since the Special Permit was issued by the PZC, it would be inappropriate for Staff to issue enforcement activities on a matter that was under the PZC's jurisdiction without first discussing the matter with them.

The matter was discussed with the PZC at the following meetings: September 13, 2021; October 25, 2021; December 13, 2021. Copies of the minutes are attached. The Commission agreed with the approach that was taken by Land Use Staff. The Commission did not want Staff to pursue enforcement actions, but instead work with the Vineyard to bring them into compliance. Since this is a Special Permit compliance matter, not a typical zoning enforcement matter that is administered by the Zoning Enforcement Officer, the PZC has discretion on how it would like it to be addressed. Land Use Staff has complied with that direction and has created a fair and reasonable due process approach.

- **Mr. Murray requested that I pursue formal enforcement action against the Vineyard and that I was told that I need to follow our standard enforcement policy and further indicated that I refused. He additionally indicates that the well-defined enforcement (policy) was not followed. The PZC is the zoning authority in the Town of Coventry and Land Use Staff serves and takes direction from the PZC, especially in enforcement matters. The Commission made it abundantly clear on how they wanted the matter to be addressed and Staff complied with that.**

The situation with the Vineyard is a unique one in which the owners did not end up pursuing their initial goal of conducting a wedding facility as an accessory use to the winery, despite going through the process of obtaining a permit and changing the Zoning Regulations to allow that use in the General Residence Zone. Over a ten year period, the owners gradually introduced a relevant use of assembling guests on the property to listen to music and purchase wine. This use slowly grew in scale and popularity for many years without the Town Staff being aware, due to the property being in a very remote location. Also, complaints were not filed in the Land Use Office about the use being out of compliance. Typically, owners who receive Special Permit approvals pursue Staff permits and execute their use in a timely basis. Permit conditions are noted and applied with the Staff permits. This was not the case with the Winery, which is unusual and not the standard in what Staff encounters.

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It is also important to note the Cassidy Hill Vineyard is a successful business in the town One that attracts visitors and tourists to the town and supports economic vitality in the community and the region. Land Use Staff also performs economic development duties as well as assists in guiding zoning enforcement activities. It is a very difficult balance when both are involved with an existing business. It is important to be sensitive to the needs of the business as well as the citizens that have raised concerns. Staff believes it is critical to provide a fair, reasonable, transparent, and responsible process when a business is out of compliance with any regulation. It would be contrary to good economic development practices to pursue enforcement as the first option and attempt to close a business operation without the allowance for a due process and without all the facts.

I am hopeful that this memorandum, and the associated attachments, help the Steering Committee understand the complexities of the matter and that Land Use Staff and the Commission are working diligently to address the concerns of the citizens as well as the needs of an existing business.

Please don't hesitate to let me know if there any questions.

Thank you.