

*******DRAFT MINUTES*******

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**Minutes
Farm Sub-Committee
April 13, 2010**

In Attendance:

Nancy Nickerson, Chair
William A. Wadsworth
John W. Vibert
Kathleen A. Eagen, Town Manager
Joseph Swetcky, Director of Finance & Administration
Brandon Robertson, Avon Town Manager

Call to Order.

The Chair called the meeting to order at 5:05 p.m.

Public Comments.

Mary Fey – Mr. Fey informed the Committee that Mr. Simmons was not able to attend the meeting and that he would answer any questions the Committee had regarding the information Mr. Simmons supplied to the Committee. He also said he would bring back to Mr. Simmons any questions or clarifications that the Committee had. He stated that he has visited the farm regularly and found it to be maintained properly and is in good condition. He also stated that he is hopeful that the yogurt business will become profitable for Mr. Simmons in the near future. Mr. Fey stated that Mr. Simmons recently made a payment of \$8,000.00 to the Town and feels that Mr. Simmons will be able to make another payment in the near future. Mr. Fey also stated that he reviewed Mr. Simmons' financial projections for the yogurt business and is assisting him with a marketing plan for the yogurt. The yogurt business is beginning to "take off" and various grocery stores and schools are buying the yogurt. Mr. Fey said that Mr. Simmons is working extremely hard to get the yogurt business off the ground and to become compliant with his lease obligations.

Reading of Minutes.

The minutes of the February 22, 2010 meeting were approved.

New Business.

Agenda Item N-1 "...To Meet with Ron and Frank Simmons to Review the Status and the Compliance of the Lease Dated February 20, 2002 Between the Town of Farmington and Ronald and Frank Simmons..."

Chair Nickerson asked the Town Manager to review the March 4, 2010 and March 11, 2010 letters to Mr. Simmons regarding the status of compliance of his lease dated February 20, 2002 with the Town of Farmington and in terms of the information that Mr. Simmons recently provided the Town. (Mr. Simmons response to letters is attached.)

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In summary:

Article 1: **Premises:**

"....For the purpose of operating a dairy farm with a minimum of fifty (50) milking head and other cattle leased, owned, or otherwise cared for by Lessee as soon as available to Lessee..."

Compliance Requirement:

- 1. Lessee is required to keep a minimum of 50 milking head or other cattle on the premises of the farm at all times.**

RESPONSE:

Mr. Simmons responded that the yogurt business needs fewer milking cows and it is not financially sound to have 50 milking cows for the yogurt business. Mr. Simmons has over 50 cows but not all are milking at this time.

John Vibert, felt that the specific language in the lease does not necessarily say that the Farmer needs 50 milking cows on the premises. Mr. Wadsworth stated that the intent of the lease is a dairy farm and that when the lease was written the "Farm Committee" felt that a farmer would need 50 milking cows to have the dairy farm profitable. It was decided that the Manager would ask the Town Attorney for clarification to determine if Mr. Simmons is in compliance with this section of the lease.

Article 4: **Rental:**

"...During the Lease Term, Lessee covenants and agrees to pay rent to the Town in advance in the manner set forth below. "

"Eighteen Thousand Dollars (\$18,000.00) and payable in bi-monthly installments of Seven Hundred Fifty Dollars (\$750.00) on or before the 5th day and the 20th day of each month. (payments changed to \$1,500 in 2004...)"

"...Notwithstanding the foregoing, Lessee shall at all times remain responsible for payment of the rent to the Town..."

Compliance Requirement:

- 1. Lessee is required to pay a balance of \$20,356.84 for rental payments due to the Town of Farmington by April 13, 2010.**

Response:

Mr. Simmons paid the Town \$8,000 on April 9, 2010.

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Mrs. Nickerson asked the Manager what is the balance due. Ms. Eagen stated that as of April 1, 2010, Mr. Simmons owed a balance of \$21,856. Mr. Simmons balance is now \$13,865.

Article 9: **Maintenance: (g)**

Water Quality

"Lessee, at Lessee's sole cost and expense, shall take all appropriate measure to protect the quality of the water used for drinking purposes and in the milk production process from contamination or impairment of the applicable governmental standards. Such measures shall include, but not be limited to, the regular testing of water supplies, the furnishing of all test results to the town within one day of receipt of such results and treatment as necessary of any conditions which impair the portability of any water supply."

Compliance Requirement:

1. **Lessee is required to set up water testing and to submit water quality reports to the Town of Farmington by April 13, 2010.**

Response:

Mr. Simmons supplied a copy of a water report dated 1/25/10.

Mr. Wadsworth noted that Mr. Simmons is required to submit all water tests to the Town. Mr. Fey stated that he would inform Mr. Simmons that he should make a copy of each water test and forward that information to the Town.

Article 9: **Maintenance: (h)**

Soil Quality

"Lessee shall take all reasonable measures to maintain the soil quality in a manner suitable for future agricultural purposes. Lessee shall test the soil at regular intervals and fertilize and lime or otherwise restore the nutrients in the soil as necessary to preserve and enhance its suitability for such purposes. Lessee shall notify the Town of the results of any such tests and the proposed course of action."

Compliance Requirement:

1. **Lessee is required to set up soil testing and to submit soil quality reports to the Town of Farmington by April 13, 2010.**

Response:

Mr. Simmons responded that he would provide a soil report when weather permits.

The Committee unanimously agreed that it was essential that Mr. Simmons provide the Committee with a soil sample as soon as possible.

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Article 9: **Maintenance (i)**

Waste Oil

"...Lessee shall exercise caution in the storage of waste oil generated from any farm equipment or motor vehicles on the premises. All such waste oil shall only be stored in clean, leak-proof drums, in compliance with all environmental laws or rules governing waste oil storage. Lessee shall keep accurate records of the types of waste oil stored in any drum and shall not mix waste oil with any hazardous substance..."

Compliance Requirement:

1. Lessee is required to submit to the Town of Farmington a copy of records of the types of waste oil stored in any drum by April 13, 2010.

Response:

Mr. Simmons stated that there is no storage of oil. Oil is changed from the tractor and is used to lubricate the bard chain.

Mr. Wadsworth stated that he thought it would be difficult to run a farm without any storage of oil.

Article 14: Environmental Protection: (b)

"Lessee shall, prior to any use of chemicals on the Premises, obtain the Town's prior written consent of all chemicals proposed for use on the premises, including but not limited to, fertilizers, herbicides, fungicides and pesticides."

Compliance Requirement:

1. Lessee stated that he has not used any chemicals on the premises. If that is factual, then Lessee is in compliance with this section of the lease.

Response:

Mr. Simmons stated that there are no hazardous materials or chemicals on the farm or used by the farm.

Mrs. Nickerson stated that the Committee could not confirm that statement until a soil report is complete.

Article 21: **Insurance:**

"Lessee shall maintain, at its sole cost and expense, at all times during the Lease Term, at least the following insurance coverages, and which shall not be deemed to limit Lessee's liability as set forth in any other portion of this Lease:

- a) Worker's Compensation at statutory limit endorsed to include employer's liability coverage of at least the maximum statutory limits for the number of employees to be covered at the premises.

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- b) Comprehensive General Liability coverage, with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- c) Comprehensive Automobile Liability coverage, including all owned, non-owned and hired vehicles, with a combined single limit (or equivalent) of \$1,000,000 per occurrence.

All policies, except for Workers Compensation and Automobile Liability, shall be endorsed to name the Town as and additional insured. Lessee shall provide the Town with certificates of insurance evidencing renewal of such policy at least thirty (30) days prior to the expiration of each such policies. All policies shall require at least ten (10) days prior written notice to the Town of any cancellation or material change in such policies.

Compliance Requirement:

- 1. Lessee's insurance agent should provide the Town of Farmington with a copy of Lessee's required insurance coverage by April 13, 2010.**

Response:

Mr. Simmons supplied the Town with the Comprehensive General Liability coverage and Comprehensive Automobile Liability coverage.

Mrs. Nickerson asked the Manager and Finance Director if the information provided by Mr. Simmons met the lease requirements. Ms. Eagen stated that the Comprehensive General Liability coverage met the requirements but the Comprehensive Automobile Liability coverage had a \$100,000 limit and that it should be a \$1,000,000 limit. The Manager stated that based on the information provided by Mr. Simmons regarding hiring employees he does not need to have Worker's Compensation insurance. The Manager stated that if he hires employees he needs the required Workers Compensation insurance. Mr. Fey said he would speak to Mr. Simmons about his auto insurance limits.

Article 23: **No Assignment:**

"...Lessee may not assign, transfer, sublet or encumber this Lease or its interest in the Premises or grant any license, concession or other rights for third parties to use the Premises, without the Town's written consent, which may be withheld in its sole discretion..."

Compliance Requirement:

- 1. Lessee is required to provide to the Town of Farmington copies of all third party agreements and/or documents (i.e. agreement to house sheep, cows, agreement to sell manure, agreement to sell wood, etc. on the premises. If you do not have written**

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agreements with other (third) parties, you are required to provide the Town any documentation describing all agreements by April 13, 2010.

Response:

Mr. Simmons did not provide the Town with any information.

Article 27: Business Records:

"...Upon the reasonable request of the Town and not less frequently than annually without such request, Lessee shall furnish copies of its business records to the Town, as follows:

- a) **Business Plan**: Lessee shall furnish its business plan, along with any amendments to the Town. The business plan shall be in form and content consistent with sound business planning practices; and
- b) **Financial Statement**: Lessee shall furnish its financial statement upon Lease execution and each renewal. The financial statement shall in form and content consistent with sound accounting principles. In addition, if requested, Lessee shall furnish copies of statements received from its cooperative or agent concerning its operations at the premises.
- c) **Budget**: Upon Lessee execution and at least thirty (30) days prior to any renewal, Lessee shall submit to the Town an annual budget, prepared in accordance with standard accounting principles. Such budget shall include, but not be limited to, items required to satisfy the obligations set forth in this Lease.

Compliance Requirement:

1. **Lessee will provide the Town of Farmington a business plan by April 13, 2010.**

Response:

Mr. Simmons provided the Town with a projected financial statement for his yogurt business.

Mr. Wadsworth stated that he did not consider the information that Mr. Simmons supplied to be a business plan. Mrs. Nickerson concurred. Mr. Wadsworth spoke about the original business plan Mr. Simmons gave the Town in 2001 or 2002. Mr. Wadsworth would like Mr. Simmons to supply a more standard or industry type of business plan. Mr. Vibert stated that based on Mr. Simmons projections the yogurt business appears to be very profitable.

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2. Lessee will provide the Town of Farmington with a complete copy of your 2008 tax returns and a copy of your 2009 tax returns by April 13, 2010.

Response:

Mr. Simmons did not provide the Town with any tax statements.

3. Lessee will provide any documents /agreements with other parties that include any financial obligations of the lessee. For example agreement between Mr. Simmons and Claude M. Brouillard by April 13, 2010.

Response:

Mr. Simmons did not provide the Town with any information.

4. Lessee will provide any documents/agreements relating to grants and loans that have been received by April 13, 2010.

Response:

Mr. Simmons did not provide the Town with any information.

Mr. Vibert asked for some clarification on the lease. The lease states that the lessee is required to submit information on each renewal of the lease. The renewal is five years not every year. Mr. Vibert questioned if Mr. Simmons was required to submit the information now.

Ms. Eagen stated that Mr. Simmons did not provide the information at the last renewal but will get clarification from the Town Attorney on what Mr. Simmons needs to submit based on the lease language.

Agreement dated October 30, 2008

1. "The Town will: (a) remove all piles of manure at the end of the concrete pad/dairy barn and place such in Simmons' "honey wagon" and Simmons shall be responsible for spreading said manure in the farm fields; and (b) remove all debris on the west and south side of the proposed roadway to the cell tower site and remove all vegetation in the area of the proposed roadway as may be needed for the construction of any such roadway."

Compliance Requirement:

1. Lessee will remove all debris on the west and south side of the proposed roadway to the cell tower site, and remove all vegetation in the area of the proposed roadway to the cell tower site, and remove all vegetation in the area of the proposed roadway by April 13, 2010.

Response:

Mr. Simmons did not provide any information.

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Article 8: **Structures, Improvements/No Liens:**

"... Unless otherwise agreed to in advance in writing by the Town, Lessee shall not construct or permit any structure, improvement, installation, alteration or addition in or to the Premises. No such construction work, other than ordinary maintenance of the existing improvements, by Lessee shall be conducted at the Premises until Lessee has received written approval from the Town. As a condition to such approval, Lessee shall submit detailed plans of the proposed construction work and a description of work procedures. Any such alterations shall be performed by licensed contractors, subject to the prior written approval of the Town. Lessee shall obtain and furnish to the Town properly executed mechanic's lien waivers prior to any work being undertaken by any such contractor. The Town's approval of any such construction work or work procedures merely indicates its consent to the proposed activities and does not constitute a representation or warranty concerning the suitability, prudence, effectiveness or propriety of the proposed activities. All alterations, additions and improvements, whether temporary or permanent in character, which may be made upon the Premises either by the Town or Lessee, except furniture or movable trade fixtures installed at the expense of Lessee, shall be the property of the Town and shall remain upon and be surrendered with the Premises as a part thereof at the termination of this Lease, without compensation to Lessee..."

Compliance Requirement:

1. **Based on the inspection, and according to Mr. Simmons the machinery shed located in the far rear of the premises collapsed last winter. Miscellaneous debris and junk is being stored in this shed. Lessee should clean out the machinery shed by April 13, 2010. Lessee and Town shall work together to repair/rebuild or tear down the shed in the spring.**

Response:

Mr. Simmons did not provide the Town with any information.

The Manager stated that if the debris and junk in the shed are removed the Town and Mr. Simmons would work together to repair or tear down the shed.

Article 9 : **Maintenance:**

"... Lessee shall take good care of the Premises and at its sole cost and expense, make all repairs and replacements necessary to preserve the Premises in good working order and in a clean, safe and sanitary condition. Lessee shall maintain, at its sole cost and expense, all building systems, equipment, fixtures and devices within the Premises, excluding the replacement of any roof or septic system. Lessee shall keep the Premises free from any liens or encumbrances arising out of any work performed, material furnished or obligations incurred by or for Lessee or any person or entity claiming through or under Lessee..."

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Compliance Requirement:

(aii) Repairs – Based on the inspection the flappers on the main barn that are used for ventilation purposes need to be repaired by the Lessee by April 13, 2010.

Response:

Mr. Simmons did not provide the Town with any information.

(b) Fences and Gates – Based on the inspection, the Lessee needs to repair/replace the temporary fencing to the north side of the main barn (near the silo). Mr. Simmons stated that he could not repair/replace the fence until the Town re-graded and rolled the area. On March 10, 2010 the Town re-graded and rolled this area to allow for better drainage. Lessee needs to be in compliance by April 13, 2010.

Response:

Mr. Simmons stated that the Town did not re-grade the north side so he did not fix the fence.

The Town Manager stated that she made an error and the Town only re-graded the south side not the north side. The Manager stated that a re-inspection would be done to determine if the repair of the fence should be done after the Town re-grades the area.

(c) Grounds – Based on the inspection the “dry well” was covered with mud and not draining properly. Lessee needs to keep the “dry well” located in the rear of the premises uncovered at all times for optimal drainage purposes by April 13, 2010.

Response:

Mr. Simmons did not provide any information.

Mrs. Nickerson and Mr. Vibert confirmed that Mr. Simmons showed them that the dry well was uncovered when they toured the farm.

(iii) Trash Removal- Based on the inspection, old tires, plastic and debris still remain in the far rear of the premises. According to Mr. Simmons' October 30, 2008 agreement with the Town, Mr. Simmons should remove all the tires, plastic and debris by April 13, 2010.

Response:

Mr. Simmons stated that he would help remove the debris when the weather improves.

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(d) Fixed Equipment -Based on the inspection, a skid steer (junk pay loader) should be removed by April 13, 2010.

Response:

Mr. Simmons did not provide any information.

(e) Manure Management – Based on the inspection and per Mr. Simmons, manure is being transferred daily to the pastures (the gravel pad is working well); however, several piles of manure remain on the east side of the premises (across the street towards Avon) and should be removed by April 13, 2010.

Response:

Mr. Simmons stated the several piles of manure on the east side of the property are on the Avon side and he is compliant with the lease.

Article 10: **No Signage**

"...Lessee shall not have any right to place any sign, monument, advertising, antenna, or communications facility, at any location at or on the premises excluding temporary signs for the sale of farm products..."

Compliance Requirement:

- 1. Based on the inspection, Mr. Simmons has two signs on the premises that read "The Simmons Family Farm." Lessee should remove both signs on the premises by April 13, 2010.**

Response:

Mr. Simmons did not provide any information.

Article 11: **No Storage**

"...Except to the extent specifically authorized in writing by the Town, Lessee shall not permit, nor shall it allow, temporary or permanent storage of equipment, including but not limited to automotive parts and tires, materials or structures of any sort on the Premises, excluding items necessary for the operation of the farm on the Premises..."

Compliance Requirement:

- 1. Based on the inspection, miscellaneous debris is stored in the vegetable barn during the winter months. Sawdust and hay are stored in the back section of the vegetable barn. No fixed equipment is being stored in this barn. Lessee should clean out the debris from the vegetable barn by April 13, 2010.**

Response:

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Mr. Simmons did not provide any information.

The Committee then discussed the information received by Mr. Simmons. Mrs. Nickerson stated that the Committee gave Mr. Simmons a month to be in compliance with the lease and he is still not in compliance with all sections of the lease. Mrs. Nickerson stated that Mr. Simmons' compliance issues are longstanding and that the Town has been requesting his compliance with the lease for a long time. She is especially concerned about the lack of a business plan, lack of sufficient financial information, not being in compliance with all the insurance requirements, and lack of soil samples.

Mr. Vibert stated that the spreadsheet for the yogurt business shows a very positive picture. He thinks that establishing a yogurt business is a positive direction for the farm considering the struggles and the crisis of the overall dairy industry. Mr. Vibert also felt that it was important that the Town receive a soil report.

Mr. Wadsworth stated that he has some key concerns. First, Mr. Simmons is not in compliance with the insurance requirements, and that the Town has not received any information regarding the soil. He also said that Mr. Simmons needs to provide the Town with an "industry standard" business plan and that a financial forecast of yogurt sales is not a business plan. He also stated that it is the Town's responsibility to preserve and maintain the farm, which is a huge asset to the Town. He also stated that the original business plan stated that a viable dairy business would need a minimum of 50 milking cows.

Mrs. Nickerson directed the Town Manager to ask the Town Attorney to clarify *Article 1 "Premises" and Article 27 "Business Records"* of the lease to determine if Mr. Simmons is in compliance.

Based on the information received, Mrs. Nickerson asked the Town Manager to write a follow up letter to Mr. Simmons with an updated status of the compliance of his lease. The Manager stated she would wait to send Mr. Simmons the letter until she received a legal opinion from the Town Attorney on the interpretation of the two compliance issues discussed during the meeting. Mrs. Nickerson stated she would bring a report back to the Town Council at its May meeting. Mrs. Nickerson stated that Ms. Eagen should ask Mr. Simmons to bring any further information back to her as soon as he can to become compliant with all areas of the lease.

E) New Business.

- 2) To Consider and Discuss the Farmington Executive Summary Report that was Completed by Joseph Bonelli, Associate Extension Educator and University of Connecticut Team.

Mrs. Nickerson stated that she found the report very useful and interesting. She felt it offered suggestions that were valuable such as the suggestion that there was a need for a comprehensive business plan and that there was potential for

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additional income from the farm. Mr. Wadsworth noted that the report mentioned the current compost operation and that the collection of soil samples from the fields should be analyzed for fertility. Mr. Vibert stated that the report was not exactly what he thought the Town asked for. The Manager stated that the University of Connecticut would not do an assessment of the current farm operator but only an assessment of the farm property.

Mrs. Nickerson asked Mr. Robertson, Avon Town Manager about Mr. Simmons' lease with the Town of Avon. Mr. Robertson stated that the lease between Mr. Simmons and Avon is not complex and is much different from the lease between Farmington and Mr. Simmons. Mr. Robertson thought Mr. Simmons was in compliance with the Avon lease but would verify that.

Ms. Eagen stated that she would copy the Farm Sub-Committee members on letters she wrote to Mr. Simmons.

Adjournment.

The meeting was adjourned at 6:15 p.m.

Respectfully submitted,

Kathleen A. Eagen
Town Manager

cc: Paula Ray, Town Clerk
Farm Sub-Committee Members

Diane Fisher-Bell by e-mail
Mark Tartaglia - by e-mail
Sara Garguilo- by e-mail

Hinda Fisher- by mail

Deb Bull – by e-mail for the Town's Website