

**Town of Fayston, Vermont**  
**Development Review Board Minutes**  
**Tuesday July 5th, 2023 at 6:00PM**  
**In-person at 866 North Fayston Road and Via Zoom**

**DRB:** Shane Mullen (Chair), Ky Koitzsch (Ky), Pete Ludlow (Pete), Daniel Young (Dan) Mike Quenneville (Mike)

**Zoning Administrator:** Jason Wilson

**Public:** Via Zoom: David Earl, Allison Hyde, Anne Marie Furey, Peggy Lord, Susan Koeplinger, Kelly Elwell, Kim Hall, Sara Gee, Karen Sauther, Asah Lauren, Lulu Kalman. In person: Mary Westhelle, Joan Crossen, Dick and Laura Kingsbury, Jim Westhelle, Jan Tierson, Christine Tierson, Katie Westhelle, ML McLaughlin, Hannah Skalecke, Simon Skalecke, Michael River, Laura Gailiunns, Craig Dahlgren, Robert Westhelle, Daniel Seff, Eliza Graves, Lisa Schermerhorn, Shannon Sumner, Brian Tillman, Laura Mongeon, Kelly Schiavone, Constencie Gomez, Lucia Gomez, Corinthia Richards, JB Weir, Katie Babbock

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1. **Meeting called to order by Shane at 6:02 pm.**
2. **Agenda Modifications & Announcements.** No modifications.
3. **Approval of 6/5/23 minutes.** *Pete moved; Mike seconded. All in favor, none opposed. Motion carried. Minutes approved.*
4. **Identification and Acknowledgement of Interested Parties of Today's Schedule Hearings.**

Interested parties:

Susan Koeplinger: here on behalf of Katie Westhelle

*Ky moved to make Susan an interested party, Pete Seconded. All in favor; Motion carries.*

Katie Westhelle: applicant

Craig Dahlgren: applicant's husband

*Ky moved, Pete Seconded to make Katie and Craig an interested party. All in favor; Motion carries.*

Shane explained the process of the hearing. The oath was administered to the applicants/applicants' representatives and interested parties who are present, they all affirmed the oath.

## **5. Application #3813 Earl, Appeal of Home Occupation Permit #3810**

Permit Grantee: Katie Westhelle

Appellant: David Earl

*Daniel Seff* of MSK Attorneys in Burlington made a brief presentation on behalf of the appellant. The permit Katie Westhelle was granted was a home occupation permit. Mr. Earl is appealing this permit to this body. He submitted a notice of appeal that outlines that the nature of the business on the applicant's land does not qualify as home occupation. The primary definition of home occupation states the business must not take up more than 40% of the primary residence. Home occupation has been defined as something that takes place inside a house. This business is being conducted outdoors (horseback riding, animal feeding etc). In 2017, in Fair Haven, a similar permit was applied for a dog breeding business. This was appealed based on the fact that the business was conducted outdoors. Another precedent existed where a court rejected a trucking business. Mr. Earl is not opposed to this type of business; however, he does not believe this is a home occupation and does not qualify for this type of permit. We request that the board reject the permit.

*David Earl* spoke. Me and my wife, Allison Hyde, moved to Fayston in 2019. She is a pediatric ICU nurse in NYC, I run a business in CT. We have a newborn and two dogs. We are living here part time and love the area. This is not personal. We understand Katie's goals but feel we must protect our privacy and safety. Allowing a business like this is dangerous on the road. We are concerned about increased car traffic often at high speeds. This road is not suitable for a pickup and dropoff business. Many cars go past our house, and we don't know who these people are. It is a risk to our privacy. This is a dead-end road with (4) houses, there are no speed limit signs. There are (32) passes by our house for eight campers per day. Road damage is a concern on this private road which we all (the neighbors) are responsible for.

*Shane (to all):* Please remember that our decision is about the home occupation permit and how it meets or does not meet the Fayston Land Use regulations. The nature of the business is not relevant to our decision.

*Shane to David:* What is the road width of High Country Road? David: I don't know the width, but it is a single lane road. It is difficult for two cars to pass each other on the road. Shane: can you quantify how many vehicle trips per day go past your property? David: When we noticed more cars, we didn't know what was going on, but we logged the type of car/plates. Some days we saw eight different cars.

*Pete to David:* Is the road a town road or association road? David: It is a private road.

*Dan:* Since it's a private road, if there is a physical impact to the road, that should be addressed as a private matter among the members of the association. Also, I wonder if a home occupancy permit is even necessary for this.

*Craig Dalgren:* We are operating a small business. I also work for a not-for-profit in Waitsfield. The Earls don't reside at the house on High Country Road. I can count six days when they were there. Last year, the cars that went by were those of our college aged kids and their friends. Shane: Did you not run camps last year? Craig: Yes, we did, but the incident of turning around in his driveway was our son. Since then, we've talked to our son about his speed, and it's resolved. Safety is not a concern. We can

document traffic on the road; it's less than when we had four drivers in the house. The width is three times the width of my grader (total 14') – I maintain the road. It's torn up only after mud season.

*Katie Westhelle:* I did not know I needed a permit for summer camps, I've been doing camps for over 20 years. I have four horses and am covered by the right to farm to do riding lessons. Last year I did three weeks of summer camps. The Earls came up when my kids were home from college. Camp drop off is 9am. Every day I walk the kids to the pond, so pickup is there and parents do not need to drive up the road for pickup. The limit on children in the camp is six. Hours are 9-3. Other traffic is personal or protected by the right to farm. Daycare is under home occupation and there are other businesses where people have home occupations outside the home. We applied for the permit, and it was granted. I have planned summer camps based on this permit. People are counting on these. I have a masters in early ed, and certification in animal assisted therapy. The Earls moved into a preexisting situation.

*Brian Tillman (Westhelle attorney):* The question is, is a home occupation permit even needed? There was a camp before, they didn't realize they needed a permit, they approached Jason to discuss this. We are not talking about a suburban/urban area, we are talking about the end of a private road in Fayston, running a farm is customary in Fayston. Regarding the Earls' complaint about traffic and safety, this is a stretch. If the Earls are only there during the four-week period in the summer when camp is in session, it may appear that the traffic is greater than it really is. They are a certified farm with documentation.

*Jason:* I was approached by the appellant that he wanted to investigate what was going on. I was in contact with permittees. I knew that there were farm exemptions. I didn't tell them they needed home occupation, though at the time the closest thing seemed to be home occupation. I suggested other options, including daycare; home occupation was the path they chose. Then I discovered that there was an accessory on a farm business (AOFB) option. We are not permitted to prohibit AOFB's. Their farm camps fit the description of AOFB. Since this is an AOFB we may not need to be here. Confusion happens when you compare AOFB with our LURs, because AOFB is not mentioned in the LURs. Childcare doesn't fall into the definition of AOFB, but this is a farm education program which does fall into AOFB.

*Ky:* Are you getting complaints from the other houses on the road? *Michael River:* We live at the bottom of the private road. I was surprised at how many friends their son had (lol). But in the seven years we have been there, haven't seen much difference year over year. Yes, summer is busier than the other times of the year.

*Ky:* Can you discuss the farm designation letter received from the state. *Katie:* We have been paying taxes on the farm since 2011 but didn't know we needed the determination letter. As soon as I sent in the information, the state granted the farm determination. *Shane:* did the letter of 6/13/23 state it was an AOFB? *Jason:* The state determines only that it is a farm, the town is supposed to designate it as an AOFB.

*Shane:* How many weeks of camp do you do? *Katie:* Last year, three. This year we are doing 6 weeks (30 days), less than the 40 days allowed in our application. Five days a week there is a drop off at the farm and pickup on Rabbit Run Road. *Craig:* we overestimated the number of days in our application so we wouldn't be limited in the future. *Shane:* in each session there are six children? *Kate:* there is a possibility we might fill the other two slots during the last two weeks of August when Neck of the Woods is closed, as childcare coverage is desperately needed at that time in this area.

*Shane:* Can you describe a typical day? *Kate:* 9am drop off with craft, 9:30 chores and feeding and teaching about the animals, 10:30 snack, then full hour of horse care. Then intro riding lessons. Then lunch and rest time. Then garden, teach about compost, feed the animals. We make something out of the eggs, learn how to clean eggs. Talk about alpaca fiber, learn how to felt, clean the fleece. Then at 2 pm we walk to my parents' pond below us on Rabbit Run. The kids swim for the last hour and then are picked up there at 3pm.

*Dan:* What was the first year that the camp was run on the property? *Katie:* The first year was last summer. However, since 2001 I have been running "camp Katie" which I later turned into an educational program with the farm.

*Jason:* A home occupancy permit was issued in 2014 to a dog training program which went outside.

*Karen Sauther:* There is a LUR that talks about camp refuge retreat. I encourage the DRB to look at this to see if it fits. I also encourage the DRB to look at whether this business can be exempted from a permit altogether. This issue should be evaluated on its own merits not based on precedent from before.

*Kelly Elwell:* Shane and I are going through something similar. It is hard for locals to live and work here, and childcare is next to impossible to find. I don't think part time/out of staters should be able to tell us how to live and work. As to speeding on the road, the homeowners should get together to agree on a speed limit and post it.

*Katie Babcock:* I have lived in Waitsfield since 2006. There is a huge amount of work required in the home before you even get outside. 25% is allowed under the regulations.

*JB Weir:* Consider that there is a statute of limitations based on the length of time she's had the camp; since there are no bylaws about AOFB, the town can't regulate or prohibit them.

*Jan Tierson, Moretown:* This is not a camp, there is no overnight "board". It sounds like this is a definition of AOFB, every activity is related to farming. Without bylaws you'd have to permit it. If not covered by AOFB, anything indoors would be covered by home occupation.

*Corinthia Richards:* I can attest that the road is safe. You can't get to a high speed. His claims of safety are overblown.

*Susan Koepplinger:* I want to speak to Katie and Craig's character. She is one of the hardest working people I know.

*Karen Sauther:* Depending on where the DRB lands on this appeal you might want to consider what the other permits say regarding road maintenance. If the permit is upheld, you should make sure those conditions are added to the upholding of the permit.

*Mr. Seff:* Mr. Earl has nothing against the permittees. This sounds like camp/retreat where lodging and/or board is offered. Since there is no overnight, is food provided (aka board)? (*Katie:* No, they are packed lunches.) This town has determined that camps can take place in parts of Fayston, but not this part of the town. As for as AOFB, Mr. Earl takes the position that even if this is a certified farm, this camp would not qualify as an AOFB.

*David Earl:* We've been here since 2019, and we come up often. Before last summer, we had no issues with the neighbors. But last summer there was an increase in traffic. I understand businesses for

children and what it means to run a small business. Before last summer we had no issues. But last summer that's when High Country Animals was launched.

*Shane:* When are you starting this year? *Katie:* This coming Monday. Camp will run for three weeks in July and three weeks in August. Other than a few trips by the members of the campers the traffic is our life: kids, their friends, deliveries, farm business, etc.

*Katie Babbock:* We are just coming out of COVID. There is an increase in traffic vs during COVID. And we tend to carpool here in VT.

*Kelly Shiavone:* Mr. Earl said that the only concern is the speed of traffic. Seems if you posted a speed on the road, this would address his issue.

*Brian Tillman:* It seems that the definition of AOFB is closest and home occupation is alongside the farm accessory business. With all due respect, Mr. Earl, this is your second home, you technically can't live here if this is your second home.

*Shane:* if there is written documentation of car counts, we might be able to consider that to understand what the previous traffic count is. David, do you have written documentation to provide that would support your claims of traffic frequency? *David:* I will look for documents.

*Jan Tierson:* What is the acceptable level of traffic to him? She can still have visitors even without a business. This is normal traffic, not a valid criterion for an appeal.

*Corinthia Richards:* If a dead-end road in Fayston is not a suitable place for a farm camp, then where is? I sent my kids there, it's safe.

*Mr. Seff:* the Fayston town regulations apply to everyone, and addresses traffic as follows. "No traffic should be generated that would be greater than would be expected in a residential neighborhood". The camp causes an increase of 480 vehicle trips during the summer season. We believe this is a substantially greater amount than would be reasonably expected.

*Jason:* I considered all that. Kew Vasseur can handle the traffic, and this private road is essentially a driveway.

*Shane:* closing statements?

*Craig:* In the past 12 months there is less traffic than pre COVID. *Katie:* If I'm not doing camps, I am protected by right to farm to do riding lessons. Without camp, I could do more riding lessons which would generate far more traffic, all day long. There would be no limit as an equine center. I am not permitted without approval for events, but all other equine activities are protected by the right to farm. My children have significant others with out of state plates. You can't decipher between the "camp" traffic and the personal traffic. This is farm based education program. I also have a folder with letters of support.

*Mr. Seff:* Again, this is not a problem with the applicant or the nature of the business. They applied for a type of permit that doesn't fit this business. Does this business fit this type of business? This would set a poor precedent in Fayston.

*David Earl:* I appreciate your time. Let me be super clear: there is nothing directed toward Katie. We had no issue until last summer.

*Shane to the Board:* do you think we have everything we need to make a decision? Board: yes

#### **6. Move to Deliberation**

*Motion to close the hearing. Pete moves, Mike seconds. All in favor, none opposed. Motion carried.*

*Motion to move to deliberative session: Pete moves, Mike seconds. All in favor, none opposed. Motion carried.*

#### **7. Adjourn**

*Motion to adjourn made by Dan, Mike seconded. All in favor, none opposed. Motion carried. Meeting adjourned at 9:10 pm.*