Memo

03a

From the Town Manager's Office

To: Colchester Selectboard

From: Renae Marshall, Deputy Town Manager

CC: Aaron Frank, Town Manager

Date: May 5, 2022

Re: Update on Fry Daze of Vermont / 100 East Lakeshore Drive

As you requested at your April 26, 2022 meeting, town staff have met with Stephen Harrington, owner of Fry Daze of Vermont and Joseph Handy, owner of the property at 100 East Lakeshore Drive, to discuss potential options that could allow Fry Daze of Vermont to operate this season and avenues that could be pursued to become in full compliance in future years.

As these discussions haven't yet completed, we will provide the board with a full update at your meeting on May 10.

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Colchester Selectboard
May 10, 2022

ACTION SHEET

Peddlers Application

RECOMMENDED ACTION: The Colchester Selectboard moves to deny the Fry Daze Peddlers permit application, but welcomes Fry Daze to resubmit a permit application after they demonstrate compliance with the July 27, 2005 site plan, April 26, 2006 site plan amendment, wastewater permit and all other town and state requirements.

Memo

03a

From the Town Manager's Office

To: Colchester Selectboard

From: Renae Marshall, Deputy Town Manager

CC: Aaron Frank, Town Manager

Date: May 10, 2022

Re: Follow Up Regarding Options for Fry Daze of Vermont

Issue: The issue is whether or not the Selectboard will consider the 2022 peddlers permit application by Fry Daze of Vermont at their May 10, 2022 Selectboard meeting, if the owner of Fry Daze of Vermont food truck and the owner of the property at 100 East Lakeshore Drive, agree to the terms of the May 2022 draft agreement that has been proposed by the Town of Colchester, as a path forward to allow the food truck to operate during the 2022 season and provide them time to become in compliance with the conditions set forth by the July 27, 2005 Site Plan Approval, April 26, 2006 Site Plan Amendment and the February 17, 2012 State of Vermont Environmental Court ordered settlement agreement related to the property at 100 East Lakeshore Drive in Colchester.

Background: At their April 26, 2022 meeting, the Colchester Selectboard reviewed a peddlers permit application from Fry Daze of Vermont to operate a food truck at 100 East Lakeshore Drive. As part of the departmental application review process, staff reviewed the site plan approval and other permit related documents contained within the Enterprise Land Management System (ELMS) and recommended a denial of the annual peddlers permit application until the applicant can demonstrate compliance with the conditions of the April 26, 2006 Site Plan Approval and the February 17, 2012 State of Vermont Environmental Court ordered settlement agreement, including limited seasonal use from May-November, daily removal of the vehicle by 8:00 p.m., and a prohibition on outdoor lighting.

In addition, after a recent site visit to the property to observe if those conditions were being met, staff became aware of a connection to an unpermitted and therefore illegal underground onsite septic tank, according to the State of Vermont's wastewater rules and regulations. As the Town of Colchester has Wastewater Delegation from the State of Vermont for the administration of the State's onsite wastewater program, the town is required to follow the State's wastewater rules and regulations contained within the State's Environmental Protection Rules. The town could risk losing its wastewater delegation if we allow this violation to continue after becoming aware of this situation, and we could further threaten the quality of the water in Lake Champlain, as this un-permitted septic tank is located in close proximity to the waters of Malletts Bay. If the town were to lose its wastewater delegation, it would then be forced to recognize Clean Slate. Clean Slate is an exemption to permitting requirements that allows any buildings to be exempt from all wastewater permitting requirements if substantially complete prior to January 1, 2007, and the system is not failed. The majority of wastewater systems in Colchester were constructed prior to 2007. Under our current delegation authority, as building permits are applied for and situations with wastewater violations are recognized, Colchester works with property owners to ameliorate issues in order to address potential environmental and pollution issues that threaten water quality.

During the course of the April 26, 2022 Selectboard meeting, the Selectboard discussed these compliance related issues with Stephen Harrington, owner of Fry Daze of Vermont and Joseph Handy, owner of the property at 100 East Lakeshore

Drive and explained that they would be unable to approve the 2022 peddlers permit application as they have now been made aware of these violations. As a result of the conversation that took place at that meeting between the Selectboard, Mr. Harrington and Mr. Handy, the Selectboard voted to table action on this peddler permit application, rather than deny it, and allow time for the applicant and landowner to work with town staff on a potential path forward that would allow them to become operational for this season, within the confines of the State's wastewater rules, and explore options they might have to operate in future years.

Attached is a draft agreement that Town Manager Aaron Frank, Deputy Town Manager Renae Marshall and Planning & Zoning Director Cathyann LaRose presented to Stephen Harrington and Joseph Handy at a meeting on Monday, May 2 at the Colchester Town Hall. This agreement, as written, would allow Fry Daze of Vermont to operate for the 2022 season if they are able to meet the conditions outlined within the agreement, which include a requirement to disconnect and not re-connect the food truck or other equipment to any wastewater infrastructure, including holding tanks, without appropriate permits. In addition, the agreement removes the requirement for nightly removal of the food truck from the site for the May-November 2022 season only, but with agreement that the vehicle, all structures, equipment and improvements be removed by November 10, 2022 and the removal of the unpermitted underground holding tank, backfill where the existing tank is located and remove all related plumbing and electrical equipment by December 1, 2022. In addition to other terms outlined in the attached agreement, Mr. Harrington and Mr. Handy would need to provide a cash surety in the amount of $10,000 to the Town of Colchester prior to the Town's signature to this May 2022 draft agreement. This surety would be forfeited to the town should the stipulations outlined in 3 and 4 of the attached draft agreement not be complied with, but returned if those same stipulations have been met. During the course of the May 2, 2022 meeting, Mr. Handy offered to cover the full cost of that $10,000 in an effort to help Mr. Harrington operate for the 2022 season.

Since the date of this meeting, Mr. Handy has continued to communicate with the town regarding how he can assist in getting a legally permitted wastewater system to allow Fry Daze of Vermont to be operational this season. We understand that Mr. Handy contacted a licensed wastewater engineer to determine if there are options for wastewater permitting that comply with the State wastewater rules, understanding this is a complicated issue with a tank installed decades ago without a permit.

Note: As of Friday, May 7, 2022, although Mr. Handy was prepared to pursue a permitted system, his tenant, Mr. Harrington, has expressed no interest in pursuing his peddlers permit since staff met with him on May 2, 2022.

Staff Recommendation/Action:

The Colchester Selectboard moves to deny the Fry Daze Peddlers permit application, but welcomes Fry Daze to resubmit a permit application after they demonstrate compliance with the July 27, 2005 site plan, April 26, 2006 site plan amendment, wastewater permit and all other town and state requirements.

AGREEMENT

This Agreement, dated as of May __2022 is made and entered into by and between the Town of Colchester ("the Town") a Vermont municipal corporation located in the County of Chittenden and State of Vermont, peddler/operator Fry Daze of Vermont LLC, a Vermont limited liability company with a principal place of business in the Town of Richmond, County of Chittenden, and State of Vermont and Stephen Harrington, of the Town of Richmond, County of Chittenden, and State of Vermont (together, with Fry Daze, "Fry Daze/Harrington"), and property owners Joseph J. Handy, Anthony S. Handy, Charles Handy, Joan D. Handy, and Laura R. Handy, of the Town of Colchester, County of Chittenden, and State of Vermont ("Handy") (together, "the Parties").

The Parties have reached the following agreement in reference to several issues arising out of, or related to, a request for a Peddlers License under Chapter 11 of the Colchester Code of Ordinances, and violations of an approved 2005 site plan, 2006 site plan amendment, and 2012 Settlement Agreement for the property located at 100 East Lakeshore Drive, Colchester, Vermont, Tax Map 66, Parcel 22-1 ("Property").

WITNESSETH:

WHEREAS, A (non-operable) food truck (a bus) is currently located on the Property;

WHEREAS, on March 3, 2022, Fry Daze/Harrington, the self-identified operator of the food truck, requested a Peddler's License to sell prepared foods on the site;

WHEREAS, Handy was aware the operation of a non-operable food truck is prohibited under the 2012 Settlement Agreement in the State of Vermont, Superior Court, Environmental Division Docket # 104-7-11;

WHEREAS, Fry Daze/Harrington could have accessed information about the zoning/building permit on the Property prohibiting the operation of a non-operable truck prior to purchasing the business by searching a free online database on the town website, or inquiring at the town planning and zoning office, both of which are customary---and importantly, a responsibility of the purchaser--in business purchases;

WHEREAS, the Property is subject to a 2005 Site Plan, 2006 Site Plan amendment, and the 2012 Settlement Agreement, all which provide for improvements on the lot and restricted use of a food truck operation;

WHEREAS, the restrictions on operation on the site (as more fully described in the 2012 Settlement Agreement and 2006 Colchester Site Plan Approval) include that:

a) No outside storage is permitted.

b) The facility and all equipment shall be removed from the site at the end of each business day and not returned to the site until 10:00 am the next day or thereafter.

c) The hours of operation shall be 10:00 am to 9:00 pm.

d) The seasonal mobile food unit shall be operated only after May 1st and cease to operate on or before November 1st of the same year.

e) The seasonal business is allowed the placement of three picnic tables to provide up to twelve (12) customers with outside seating.

f) Two (2) large garbage cans may remain on site; they must be enclosed, contained, or surrounded by fencing or enclosure to be approved by the Town.

WHEREAS, the 2012 Settlement Agreement states that should plaintiffs fail to comply with the terms of the 2012 Settlement Agreement in any manner, that agreement shall become voidable at the discretion of the Town and the Town may then move to enforce its regulations against the Plaintiffs;

WHEREAS, the property is not currently in compliance with the approved plans or the 2012 Settlement Agreement;

WHEAREAS, in March of 2022, the Town of Colchester became aware of an unpermitted wastewater tank on the property that Handy and Fry Daze/Harrington claim is a gray water holding tank;

WHEREAS, the Parties have reached agreement to issue a Peddler's Permit as stipulated below, and delay enforcement against these zoning violations for the period of time specified below, provided all stipulations outlined hereafter are met.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, the receipt and sufficiency of which is hereby acknowledged by each of the Parties hereto, and subject to the conditions set forth herein, the Parties agree as follows:

1. The Town reserves continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the Property subject to site plan decisions and permits in effect, the 2012 Settlement Agreement, and this Agreement.

2. Fry Daze/Harrington and Handy agree to disconnect, and not re-connect, the food truck or other equipment to any wastewater infrastructure, including holding tanks, without appropriate permits. Disconnection shall be completed and verified by Town staff before a Peddlers Permit is issued.

3. Fry Daze/Harrington and Handy agree that they will permanently remove the vehicle, all structures, equipment and improvements from the site by November 10, 2022.

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4. Fry Daze/Harrington and Handy agree that they will remove the unpermitted greywater tank, backfill the tank and remove all related plumbing and electrical equipment by December 1, 2022.

5. Fry Daze/Harrington and Handy agree that they will provide a cash surety in the amount of $10,000 to the Town of Colchester prior to the Town's signature to this agreement. This surety shall be forfeited to the town should the stipulations outlined in 3 and 4 not be complied with. The $10,000 surety is a penalty which shall not be used for the cleanup charges described in Section 6.

6. Fry Daze/Harrington and Handy agree that should the stipulations outlined in Sections 3 and 4 above not be complied with, the Town may, at its sole discretion, take possession of the bus and all property on the parcel, pay for the removal and disposal of all items, including the bus and gray water tank, and place a lien against the property for the cost of said removal, disposal and remediation of said items and improvements, and any attorney's fees related thereto.

7. Fry Daze/Harrington and Handy agree that they will not seek a future Peddlers License, and no future Peddlers License will be issued for any person or business at the Property, until and unless they can demonstrate that all conditions of the approved site plans and 2012 Settlement Agreement can be met.

8. The Town agrees that Fry Daze/Harrington may obtain a Peddlers License and operate the food unit between the time of issuance of a Peddlers License in 2022 by the Colchester Selectboard and October 31, 2022.

9. The Parties agree that no extension of this Agreement will be issued.

10. Nothing in this Agreement shall be construed as having relieved, modified, or in any manner affected Fry Daze/Harrington or Handy's ongoing obligation to comply with all other applicable local or state statutes, regulations or directives.

11. This Agreement, along with the 2006 Site Plan approval and 2012 Settlement Agreement, set forth the complete agreement of the Parties, and may only be altered, amended, or otherwise modified by subsequent written agreements signed by the Parties hereto.

12. The Parties agree that this Agreement shall apply to all Parties, shall run with the land, and shall be binding on their successors, assigns, and heirs.

13. Should any provision of this Agreement be deemed invalid or unenforceable, the validity or enforceability of the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

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Dated at Colchester, Vermont this ___ day of May 2022.

_____
Aaron Frank
Town of Colchester

Dated at Colchester, Vermont this ___ day of May, 2022

_____
Stephen Harrington for Fry Daze

Dated at Colchester, Vermont this ___ day of May, 2022

_____
Joseph Handy

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PROPERT
HOUSES • FOR
PROPANE
Office
















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POWER
ON LIGHT/
SILENCE
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