



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

June 1, 2011

Present

Robert Cadle, Chairman
Mark Mulligan, Member
Megan Mahoney, Alternate Member
Cynthia Maxwell, Member
Jay Prager, Member

Not Present

Bruce Easom, Alternate Member
Alison Manugian, Member

A quorum was attained. The meeting was called to order at 7:35 pm.

Preliminary Agenda

- The Cahen/Easom special permit modification hearing
- Sign Bills
- Approve Minutes
- New business

Meeting Minutes

Cahen/Easom

Chairman Cadle convened the Cahen/Easom hearing by reading the legal notice.

Chairman Cadle asked the Building Inspector, Mark Dupell, to state his reasons for bringing the permit (#32-94) to the board.

Mr. Dupell said that Carla Kieleczawa, abutter, made a complaint and submitted photos regarding the spreading/smell of manure. He said that someone complained to the Board of Health but the health agent found no issues. He said he went back to the file and found this issue was brought up in 2007/2008 with the same complaints. He said he went to the permit originally issued by the Board, noting that conditions 1

and 2 were the issue, and that he can't do enforcements on those conditions because they are too vague. He said this is why he wanted to see if the board wanted to amend/modify those conditions.

Mr. Prager asked whether he observed manure close to the property line.

Mr. Dupell said he didn't see any manure but noted there was some discussion that it was spread and covered by straw.

Bruce Easom, husband to Helene Cahen, disclosed that he is an alternate member of the ZBA, noting that he hasn't spoken to any ZBA member about this matter since he received an email that there is an issue. He said he filled out and filed a conflict of interest form with the Town Clerk. He said he has a handout that addresses the topics at hand, noting that it contains letters of support, etc. and then read the table of contents. He said he will read only one letter from the packet and noted that he has all the contents available electronically if needed.

Chairman Cadle said he wanted to cite letters received from abutters and the attorney representing the Kieleczawas. Mr. Easom agreed that he should read the letter from Atty. Morrissey.

Mr. Easom gave background information, noting the barn was built in 1972 by the O'Neills and was used as a horse farm and haying operation. He said the property was then subdivided and built upon, noting that he and his wife purchased 15 acres and have continued to have a working farm. He said this is one of only three farms existing to the north of Martins Pond Road that together make up about 250 acres of contiguous land. He said his wife has a license to give lessons, etc. and the property is under Chapter 61 for sustainable forestry. He said since December 1994 two big changes have occurred, one being in April of 2007, when the Right to Farm Bylaw was adopted by the Town of Groton, which under Section 137-2 allows for the keeping of horses. He then read the Right to Farm Bylaw, noting that if the Board changes any part of the permit, he wants the wording to conform to the wording of generally acceptable agricultural practices. He then referenced letters from various grange and aggie commissions and read a letter from the Ma Farm Bureau, and stressed this is a good operation because of the twenty or so letters from neighbors, abutters and customers in support.

Chairman Cade read a letter from George Moore into the record, dated 5/4/11.

Atty. Morrissey, attorney for the Kieleczawas, said it was not the intent of her clients to have the special permit revoked and noted that in the permit there was no provision for the spreading of manure. She said they have been impacted by manure being spread on and near their property and for the past few years, manure was spread deeply and close to their house. She said her clients love the atmosphere of farm, etc., but in summer the manure is spread deeply, noting that it is now a garden that in reality is a dumping site for manure. She said this attracts flies and impacts their enjoyment of their home, and suggested there should be some distance from the garden/manure to the house. She said that if the town wants to allow manure to be used as fill, that is okay, but it is probably against DEP regulations and they want some separation. She said the Kieleczawas are the only ones that are close and that impacted, and they want to be able to enjoy their own property.

Michelle Collette, Town Planner, said she wants to add another fact for the ZBA to consider. She said this is complicated because of what Mr. Easom said regarding agricultural uses and exemptions, noting that the Minutes Meeting of June 1, 2011- page

town has a situation where the bylaw has competing interests because of the newly amended water resources district voted in at the last town meeting. She said the property is in Zone 2 of the water use resource district, noting that a special permit is required for the storage of animal waste and it must be in a contained structure. She said there was a problem in the West Groton water supply and DEP required a survey, and it was found that manure storage from a turkey farm on Townsend Road caused the problem. She stressed that this bylaw requires a sound manure management plan, noting that many manure best management practices are on the Mass.Gov website. She said this operation is grandfathered and has certain exemptions but she felt the ZBA maybe able to negotiate some manure management conditions. She said at least part of the property is in Zone 2, as newly delineated.

Mr. Prager said there are two situations on the table: one is the suggestion of Mr. Dupell that no manure be stored or placed within 50 feet of the lot line and second, Atty Morrissey is requesting that no manure either fresh or composted, be less than 150 feet from any dwelling unit. He then asked how far the driveway is from the Kielezcawa house.

Mr. Kielezcawa said about 15 feet.

Mr. Prager said the 150-foot restriction would put any manure uses in the indoor ring. He then asked Ms. Cahen whether she would accept a 50-foot condition.

Mr. Easom said they would not, because he wants the farmer to be able to determine how best to utilize his property to maximize revenue, depending on what the market will bear, and he thinks using best practice is appropriate. He said he thinks this is a test case as to whether the town is serious about the right to farm bylaw, noting that if someone wants a 150-foot separation, it should be on their property and not up to the farmer to always give. He said the farming business is difficult at best and when a farmer is taken to court, he often just sells to a developer. He said the State of Mass is concerned about farms being eaten up by wealthy abutters that move in next to a working farm and then complain about it.

Emmanual Gueller said he takes 50 to 100 lbs. at any given time, noting that he has to pick it up from the field because there is no manure pile.

Ms. Cahen said she owns the five horses on the property, noting that the horses are turned out 24/7 so the stalls don't have to be cleaned. She said she sometimes needs to truck in manure from other farms for her garden. She said the stalls are empty and used for storage and manure is picked up from the ring and spread. She said she is following guides from the Dep. of Aggie for manure management, noting that she can't apply raw manure to the garden in the spring or summer because it would kill the plants. She said she hasn't had a boarder since 2009 and thus doesn't understand the correlation of the boarding permit and her practices here.

Mr. Prager noted that Atty. Morrissey said they should file an application with the Department of Agricultural and he wanted Mr. Easom to comment on that.

Mr. Easom submitted two permits but Mr. Prager felt they were related to the riding school.

Atty. Morrissey said there is an application process and the manure should be contained in a cement structure.

Discussion ensued regarding how to manage manure while composting.

Mr. Prager asked whether Ms. Cahen composts.

Ms. Cahen said she does, noting that she has three compost bins behind her shed. She said she spreads the manure and later picks it up for composting.

Mr. Dupell, Zoning Enforcement Officer, said zoning is in place for the protection of the whole town, and is not for individual home owners to decide what is a best use of their property. He said that town can't unreasonably regulate, but there can be regulations.

Mr. Kieleczawa said he has lived there for 11 years, and has never once seen manure removed.

Chairman Cadle said one gentleman claimed he comes once a week on a regular basis.

Mrs. Kieleczawa, direct abutter, said what has brought them here is that raw manure is dumped by their property and then covered up with straw and compost. She said last year they had a terrible problem with flies and is asking for some relief. She said she understands Ms. Cahen has a business and that she works very hard, but felt there must be some compromise. She said Ms. Cahen takes manure from all over the premises and dumps it by them.

Ms. Cahen asked for the people in the audience who take manure to raise their hands so Mrs. Kieleczawa could look at them (several people raised their hands). She said she has three gardens and has to spread manure thinly in very early spring, noting that as it soaks in, she spreads newspaper to prevent weeds and then puts compost on top.

Discussion ensued regarding the size of the gardens and how they are worked and whether they are part of the business. Ms. Cahen said they were experimental last year and wants the produce to be part of her business this year, which is giving horseback riding lessons.

Mr. Prager suggested that because she is not using the garden as part of the business at this time, there maybe could be some sort of compromise.

Ms. Cahen said the garden location by the barn has the best sun, has water and has the least lugging of produce.

Mr. Prager asked whether the Kieleczawas are against manure spreading or composting, or the whole situation.

Mrs. Kieleczawa asked how any restriction would be regulated.

Ms. Mahony said they might not qualify under the right to farm bylaw because it is not a working farm.

Mr. Kieleczawa said five horses make 3500 pounds of manure per month, and one horse 30 pounds/day.

Ms. Cahen said she doesn't spread raw manure except in winter and then it thaws and composts.

Discussion ensued regarding whether the applicant uses the garden for herself or as a business. Ms. Cahen said she wants to sell produce but last year it was for her use only.

Mr. Moore submitted paperwork about the UMass office of dispute resolution. He said he is the animal control officer and also composts manure so is not totally impartial.

Chairman Cadle said it would be a shame to have this issue, which has been ongoing for years, coming back repeatedly to the ZBA.

Mr. Prager said he is sympathetic to Mr. Easom's offerings but noted there is still an aggrieved party here. He suggested there could be a compromise that raw manure is composted on the other side of the property.

Ms. Cahen said she only puts raw manure out in winter and it is tilled in and composted by spring.

Ms. Mahony said the special permit could not handle the issues here.

Discussion ensued regarding how to file a grievance, either with the zoning enforcement officer, the BOH or the BOS.

Mr. Moore said that if the ZBA could clarify some of the regulations, then Groton could be a shining star in the state. He said there are no hard and fast rules and that this is a fuzzy area.

Mr. Mulligan said he feels that assigning a distance to allow manure distribution is arbitrary.

Ms. Mahony said the permit addresses only the boarding of horses and not the use of manure on the property. She said the nuisance is created by another use.

Chairman Cadle brought up section 135a, a state provision on animal management on a farm. He said manure spreading, usage, etc., is not considered a nuisance.

Discussion ensued regarding how to change the permit, if at all.

Mr. Easom said there have been two important changes since this permit was granted, 1) the right to farm bylaw, and 2) the state precludes towns from requiring permits for farming. He then read from the state bylaw regarding the three tiers of farming and said they fall under the lowest tier and thus no permit is

required nor can be requested. He suggested posing this issue to town counsel and is requesting a continuation for this determination.

Mrs. Kieleczawa said they don't mind horses but the manure has been maliciously dumped.

Chairman Cadle said the board only can act on what is before it and that is related to conditions in the special permit to board horses. He said that if Mr. Easom is correct, a challenge to the special permit is not the way.

Mr. Prager asked whether either party would be willing to go before the UMass office of dispute resolution.

Mr. Easom asked whether the board would ask town counsel for advice.

Chairman Cadle said town counsel would be questioned but wanted some way to resolve the dispute between the neighbors.

Mr. Prager said the board can only deal with the conditions on the special permit and there may be no special permit required.

Mr. Easom asked for a continuation to June 22, at 7:30 pm.

Ms. Mahony made a motion to continue to 6/22 at 7:30 pm. Mrs. Maxwell seconded and the motion passed unanimously.

Bills/Minutes

The following bill was authorized for payment: Groton Herald

No minutes were approved.

Mr. Mulligan made a motion to adjourn at 9:00 pm, Mrs. Maxwell seconded and the motion passed unanimously.

Minutes approved July 13, 2011.