



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

June 22, 2011

Present

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

Not Present

Alison Manugian, Member

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

Preliminary Agenda

- Cahen-Easom hearing
- Executive Session-GRG
- Sign Bills
- Approve Minutes
- New business

Meeting Minutes

Chairman Cadle reconvened the Cahen-Easom hearing and asked whether any new information will be presented.

Atty. Morrissey said falls under water resource protection district 2 and would need planning board approval under 218-30 as an accessory use.

Discussion ensued regarding how recently the bylaw was adopted and whether the property/use would be grandfathered.

Atty. Morrissey referenced subsections d, e and f, noting that if the owners are distributing manure to public it is a business.

Chairman Cadle asked Atty. Morrissey whether she would like to speak to the aggie exemption.

Atty. Morrissey said she does not dispute that horses can be kept on the property but there should be natural circumstances, and when manure is stored on an abutter's property line, there are not natural circumstances and should be regulated.

Mr. Dupell said the water resource protection district bylaw was adopted in 2008 and the boundaries are what recently changed. He said the northern side of Martin's Pond Road was brought into district 2 rather than district 3, noting that special permit regulations would not be in effect for this permit when granted because it was in zone 3. He said that sections e and f would be in effect for a zone 3 property.

Chairman Cadle said that since the board last met, an opinion from town counsel was requested and received. He said it is a public record so anyone can review it, but summarized it briefly.

Mr. Mulligan said the letter does state that the operation is required to maintain standards for health.

Mr. Prager said they might need to go to the Planning Board for a special permit because the property is in the water district, noting that they also need to comply with BOH issues.

Brad Mitchell, Bureau of Farm Management, noted that he is not an attorney but has worked with situations like this. He said the BOH needs to work with standard agricultural practices, noting that normal agricultural practices are allowed under Zone 2, per State law. He said he thinks Town Counsel is correct, that the Board needs to determine whether this is a commercial operation and if so, no zoning regulations can be applied.

Mr. Prager said there is a notion that it is a commercial farm, with the training and schooling of horses as part of the business, but he said spreading manure is not part of it.

Mr. Mitchell said a farmer could spread manure as a practice of manure management. He also said it is commonly accepted to sell or give away manure.

Mr. Prager asked whether the manure could be put on a boundary.

Mr. Mitchell said putting in garden is a normal practice, noting that he did not see any stockpiling on the site when he visited.

Chairman Cadle said there is a letter from the Agricultural Commission stating that when they visited the farm, there were no violations of good farm practice occurring.

Mr. Mitchell said that is a validation, noting that a 25-foot pile of manure would not be good practice.

Chairman Cadle said he feels the Board can't go further with this permit because of Town Counsel's letter.

Ms. Mahony said would she like to hear from the owners as to the primary purpose/use of the land.

Mr. Easom submitted copies of licenses from the state to have a school and teach riding. He said he does sustainable forestry and has a permit for such. He said he harvested in 2006, 07 and used 7.5 acres for such, noting that he will submit copies of tax returns if necessary. He said a farm has to have a minimum of five acres and he has more than that.

Chairman Cadle said there appears to be two agricultural operations: a riding school and forestry.

Mr. Easom said 40% of the land is used for forestry and 40% for horses, for a total of 80%. He said he has a cutting plan for the forestry portion of the operation.

Discussion ensued regarding what requiring a cutting plan means and how that relates to the business portion of it.

Mr. Easom said they harvest every 10 years but the cutting plan remains in effect. He also submitted an inspection letter, noting that he has shown a good faith effort to prove that he is running an agricultural operation with good management practices and thus no special permits are required.

Chairman Cadle said he would like copies of all documents for the record, but principally the forestry cutting plan map.

Mr. Prager said he is largely satisfied that there is a commercial operation happening on the site. He said what he heard so far makes it likely that the operation is exempt from special permit requirements, but suggested they may still need to satisfy the PB that a permit is not required from them because of the water protection district. He said they also might need to satisfy the BOH.

Atty. Morrissey said she downloaded part of an article put out by the State, which gives examples of various agricultural uses and the article states that a riding school is not an agricultural use.

Mr. Mitchell said he helped write that article and it only applies to the wetlands protection act and not 40A, §3, which is the ZBA purview. He said that statement is only appropriate for the ConsComm.

Chairman Cadle said that court cases consider riding schools agricultural uses.

Mrs. Maxwell said it sounds like an agricultural use.

Discussion ensued regarding whether the board should mandate a visit to the PB and BOH.

Chairman Cadle said he feels very uncomfortable telling the owners what they need to do.

Mr. Mitchell suggested referring the case to the PB and BOH.

Further discussion ensued regarding how to proceed.

Mr. Mitchell said the board could either nullify the permit or ask the attorney general for advice.

Mr. Prager suggested a finding that could give clarification that due to town counsel's opinion, the board is not in a position to modify this permit, and further, that a special permit would not be required.

Discussion ensued regarding what action the board can and should take.

Ms. Mahony said they are only exempt if they follow common practices.

Mr. Mulligan asked whether all were in agreement that per Town Counsel's letter, the board could not modify the permit.

Chairman Cadle said there should be a finding that it is a commercial agricultural operation and exempt under section 3, and thus conditions of the special permit are not enforceable, per opinion of town counsel. He said a finding could then refer them to the PB and/or BOH for further proceedings as may be warranted. He said he apologized for the complicated nature of the wording but noted the board is limited as to what it can do.

Mr. Kieleczawa asked why the town has bylaws if they can't be enforced.

Mr. Prager said other boards have different permitting requirements and as submitted, this operation is exempt from these types of permits, but not necessarily from special permit requirements from the PB and BOH. He said they are not in front of the right board.

Mr. Kieleczawa asked how a homeowner is protected if the town allows a house to be built so close to a horse farm.

Mr. Mitchell said that the State would come in if the operation is exceeding good practices, as with the BOH.

Mr. Kieleczawa wants the board to condition a PB application.

Discussion ensued regarding whether the board can do that.

Mr. Prager suggested a finding that the board finds it is a commercial agricultural operation if they go to the PB.

Discussion ensued regarding how to get the owners to go before the PB.

Mr. Easom said they would be willing to approach the PB to determine whether a special permit is required.

Mr. Mitchell noted that the BOH does not have special permitting requirements but does have a broad realm.

An abutter asked whether all farmers in town would have an issue because of the location of wetlands.

Chairman Cadle said it is not just wetlands but a wetlands protection district.

Mr. Mitchell said it refers to groundwater and not wetlands.

An abutter said this is not the board's authority.

Mr. Degen asked whether the permit is for boarding and noted that the owner represented there are no boarders at present.

Mr. Easom said yes, the permit is for boarding and that if he had a customer, he would take a boarder in tomorrow.

Finding: the board will refer this to the PB and the owner will voluntarily seek an opinion as to whether a special permit from the PB is required.

Mr. Mulligan made a motion, that as a board and in agreement with town counsel, a determination is made that the property/operation is agricultural and thus the terms of the special permit would not be enforceable in a court of law. Further, the board has determined that it is not within its purview to modify this permit and refers the owner to the PB and BOH for further review.

Further findings include the scope of both the horse operation and forestry management and the owners' agreement to consult the PB.

Mr. Prager seconded and the motion passed unanimously.

Mr. Prager made a motion to go into executive session due to litigation, Mr. Mulligan seconded and Cadle, Prager, Mahony, Mulligan and Maxwell all voted yes.

The meeting reconvened.

Member appointments were discussed.

Bills

The following bills were authorized for payment: Groton Herald.

New business

A meeting about the Groton Gardens settlement will be scheduled in July or August, along with a reorganization session.

Mr. Mulligan moved to adjourn at 9:20 pm, Mr. Prager seconded and the motion passed unanimously.

Minutes approved 8/3/11.