



OFFICE OF THE  
**BOARD OF APPEALS**  
TOWN OF DUNSTABLE  
TOWN HALL  
511 MAIN STREET  
DUNSTABLE, MA 01827-1313

**Approved**  
**May 1, 2008**

**Russell Continuation of Hearing Minutes**  
**October 4, 2007**

Members Present: Wesley Goss, Chairperson  
Joshua West, Clerk  
Judy Thompson, Member  
Alice Ekstrom, Member  
Al Horton, Associate Member  
Lisa O'Connell, Recording Secretary and Associate Member

Petitioners Present: Rose and James Russell

Abutters Present: Peter and Kathy Dumont, 108 Thorndike Street, Dunstable  
Leonard Dumont, 104 Thorndike Street, Dunstable  
Michael Udot, 120 Thorndike Street, Dunstable

Others Present: Alan Chaney, Conservation Commission  
Debra Dumont Hill,  
Dana Barnes, Dunstable Building Inspector  
Kevin Bray, Worcester, MA  
Kate Fokos, 10 Hatikva Way, North Chelmsford, MA

This meeting's intent was to file a formal decision with the Town Clerk regarding the application of Rose Russell for the properties located at 112 and 114 Thorndike Street, Dunstable, MA for a Special Permit to operate a home business for the purpose of conducting a horse boarding business. This is a continuation of the hearing opened on September 20, 2007.

Chairman, Wes Goss, called the meeting to order at 7:10 p.m., introduced the members and explained the hearing procedures. Lisa O'Connell read the public hearing notice as posted for the record. Mr. Goss stated that after checking with Town Counsel regarding the easement; the ZBA has no control over it. It is a private contract between the two parties. He also said that he was waiting to hear from Jay Slattery of the Massachusetts Farm Bureau Federation regarding his questions about a boarding stable as an agricultural enterprise.

Lisa O'Connell said that she had spoken with Town Counsel.

Rose Russell presented documentation to the board to be entered into the record (see attached list of documentation). She said that Dana Barnes is working on a punch list for them and has also recommended a civil engineer to over see the construction. She said that she interprets her property is agricultural and submitted a statement of value pertaining to the harvesting of their hay. She said that the primary business would be the haying and it is agricultural. The secondary business is the boarding and of horses and raising chickens to sell the eggs. She said they are not a stable for hire, but a private stable and private stables need not be licensed.

Alice Ekstrom asked if she gave lessons on her property.

Rose Russell said, no.

Wes Goss asked if there were any further questions.

Joshua West said that if the property is agricultural, it still cannot override the state laws and building codes, but the local by-laws or ordinances cannot restrict the use of materials or unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture. He read from Chapter 40A, Section 3:

*“No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce...”*

Wes Goss said that in this case the easement would not be an issue to consider for the ZBA.

Lisa O’Connell said that in talking with the Town Counsel, he said the board had to deal with several issues: the original variance issued, any additional variance needed for accessory buildings not in compliance with the by-laws, a special permit for the boarding stable, a stable license and the building permits for the accessory buildings not already permitted. He said the easement was an issue between the two parties privately.

Alan Chaney said the conservation commission is responsible for interpreting the conservation restriction agreement with the private parties.

Kathy Dumont asked who they would go to with concerns.

Alan Chaney said the Conservation Commission.

Peter Dumont asked about whom to talk to about liability concerns.

Wes Goss said that they would have to seek their own legal counsel and that it was a private legal matter between the two abutters and their attorneys.

Alan Chaney said that the Conservation Commission enforces the conservation restriction agreement as far as specific restrictions such as gravel removal, proposed subdivisions, etc.

Al Horton said that the easement and their liability are dealt with on an individual case and they should seek the services of an attorney regarding the contract.

Alan Chaney said that the conservation Commission is only concerned with the easement in the fields.

Rose Russell said that on both her Purchase and Sales agreement and the easement it states that she runs a horse farm and that her intentions of doing so were always known up front.

Wes Goss said that if the business is agricultural and is on 5 acres or more of land, then the circumstances are different.

Kathy Dumont asked if they were allowed to make a profit.

Wes Goss said that if the owners had 5 acres or more of land and were deemed agricultural, then they can make a profit from their agricultural product. Agriculture is a business. He also said that the easement that Alan mentioned was not the driveway, but the field.

Alice Ekstrom said that the confusion is regarding a special permit for a home business to conduct horse lessons versus an agricultural boarding and breeding business.

Rose Russell said that the horse lessons' business is regulated closely with licensing to see that the horses are not overworked.

Wes Goss read the Dunstable By-Laws section 6.2(d):

*“Uses Permitted by Special Permit of the Board of Appeals: the raising and keeping of poultry on parcels in excess of five (5) acres, for purposes other than the use by the occupants of the residence, or the maintenance of dog kennels or stables for hire;”*

Debra Dumont Hill said that if it was a home business she would think that the town would want to be protected by the individual's insurance for their business and the by-law.

Wes Goss said that the owner is responsible for all domestic animals.

Josh West said that in the event of an incident, the insurance companies handle it and negotiate back and forth.

Wes Goss said that it was not a stable for hire.

Rose Russell said she was originally raising quarter horses, but she took a different direction because of her health issues. Some friends of hers were in a bind when the stable closed where they were boarding their horses. She offered to take them in for a flat fee. The boarders take care of their own horses. She is currently running the boarding business at a loss. She said that the state law considers a stable for hire the rental of horses. The state regulates those types of businesses for the safety and health of the horses. Because she owns more than 5 acres and is a horse boarding farm, it's considered an agricultural business. The term private stable is typically used for properties under 5 acres.

Wes Goss asked for further questions.

Peter Dumont stated that this is not a personal issue and that if anyone was in his shoes, they would take the same steps. They have concerns about the traffic, safety and liability.

Wes Goss said that as previously discussed, they would have to seek the advice of an unbiased party.

Jim Russell said that he appreciated their concerns for their safety and peace, but that they live at the bottom of a driveway to a 26 acre piece of land. There would be the same traffic if from a septic tank truck, seven friends of their son's, the propane delivery or if they had a large family. The whole contract and the lots are problematic, but they are willing to work with the Dumont's to make it palatable for them.

Wes Goss said the easement issues should be worked out among the parties and that he appreciates their civil behavior at both hearing meetings.

Rose Russell asked the board if they could give her the chances of her being able to keep her boarding business.

Wes Goss said that they could not until they obtained further consultation from Town Counsel as to the Board's options and the recommendations from the Building Inspector.

Rose Russell asked if the hearing could be continued to give her a couple of weeks to get a report from the Civil Engineer.

Al Horton motioned to continue the hearing until Tuesday, November 6, 2007 at 7:00 pm. Joshua West seconded the motion and all were in favor. The meeting was adjourned at 7:50 pm.