



Approved
October 11, 2012

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

Gurecki Hearing Minutes
July 25, 2012

Members Present: Leo Tometich, Chairperson
John Martin, Clerk
Ted Gaudette, Member
Lisa O'Connell, Member and Acting Secretary
Josh West, Member
Al Horton, Associate Member
Gerald Mead, Associate Member

Members Absent: Judy Thompson, Associate Member

Petitioners Present: Barbara Gurecki, 423 Pleasant Street
Bob Gurecki, 423 Pleasant Street
Mark Lanza, Esq., Representation

Abutters Present: Wes and Jodi Goss, 446 Pleasant Street
Stephen Armato, Esq., Representation for the Goss'
Deborah Christopher and Stan Foster, 461 Pleasant Street
Paul Engeian, 473 Pleasant Street
Leslie and Ralph Brogna, 443 Pleasant Street

Others Present: Jan and Samantha Yarbrough, 144 Pond Street
Willard Goldthwaite, 147 Pond Street
Bourgeois, 14 Cross Street
Cook, 387 High Street
Tom Dumont, 20 Forest Street
Ronald Lamarre, 1048 Main Street
Jim Tully, 147 Depot Street

Chairperson Leo Tometich called the meeting to order, read the posted hearing notice for the record and introduced the board members.

John Martin motioned to open the hearing. Ted Gaudette seconded and the hearing was opened at 7:00 pm.

Leo Tometich stated the applicant Barbara Gurecki has concerns about the activity of the North East Six Shooters Club taking place on Goss Farm. Mrs. Gurecki submitted a written complaint to the zoning inspector,

but he declined to take action. The applicant is here to appeal the decision of the zoning inspector. The chairman asked the petitioner to present her case.

Mark Lanza of Concord, MA stated he is the attorney representing Barbara and Bob Gurecki of 423 Pleasant Street. Their property is located across the street from the Goss farm. A statement of appeal was submitted with the application, but he would like to summarize it.

Stephen Armato, Esq. of Boston, representing Goss Farm, interjected there are procedural issues regarding the case and he wanted to state these issues up front and address them before the hearing continued. The substance of these issues was that the activity complained of was occurring on property other than Goss Farm.

Richard Larkin, Dunstable Town Counsel said he had discussed the matter with Attorney Armato prior to the hearing and understood his clients' concerns. Attorney Larkin stated that if the contention were true, it raised certain considerations and questions, but that the petitioner should go ahead and present their case to the board.

Stephen Armato said the owners of the other land need proper notice. The appellant has the burden to prove where the activity objected to takes place. He cited a case by the name, Harrington but did not identify the court or provide a citation. The location needs to be corrected before the board can proceed. The appellant has the obligation to know where the activity is actually taking place.

Rich Larkin said that the appellant stated the appeal in the application. The board can hear the appeal because where the activity is taking place is not known yet. He advised the board that they can go forward. The appellant can make their case, the opposition can reply and comments can be heard.

Stephen Armato said the land owner has the right to be notified and to be present.

Rich Larkin said that is absolutely so. The board cannot take action relative to property of which the owner is not a party to the proceeding or has not been notified of it. The board would have to go back to the correct owner, but the board must proceed to find this out.

Mark Lanza continued, that this is the first they have heard of this issue. When the offensive activity began taking place, Mrs. Gurecki lodged a complaint with the zoning officer and then with the alternate zoning officer. The alternate zoning officer went to the Goss farm. If he went to the wrong farm, then we will find out soon enough. He will defer to the Gurecki's as to where the activity is taking place.

Stephen Armato said where the zoning officer thought it was taking place was not the Goss farm.

Chairperson Tometich said he thought the board should proceed.

Mark Lanza said their standing is this is a zoning concept. They will show it adversely affects the Gurecki's and not necessarily the public. The Gurecki's have the presumed standing that they are adversely affected in a way the public is not.

The activity consists of noise from gun shots. It is a horse mounted shooting competition where they shoot at balloons. This happens up to 45 times a year. During the competitions there may be up to 500 to 1500 shots. This is very audible for 4 to 6 hours. The petitioners can't enjoy their property. There is music from a loud speaker and announcements from a PA system that is audible at petitioners' property.

Attorney Lanza stated this is a violation of the town's zoning by-laws. The by-laws state what you can do on a property. They are alleging the activities are offensive and are not permitted. The property is zoned R1, residential and agricultural. This use is not allowed. The concept of accessory use is that not all uses have to be spelled out. What constitutes an accessory use changes over time. It applies to residential and mixed agricultural uses in the town and state. It has to take place on the property, be subordinate to the main use, go with the primary use and be minor or incidental to the principal use. He added that the Henry case, to which the town was a party, is a very important Massachusetts case regarding these issues.

These shooting activities are not traditional with a residential and agricultural use. They included a definition of these uses in the statement which was submitted with the application. The Gurecki's expect the board to conclude that the alternate building inspector's decision was wrong and this activity is not in the realm of agriculture. He will defer to the Gurecki's to describe the activities.

Stephen Armato said he would like to also make an opening statement.

Leo Tometich said he would like the Gurecki's to proceed.

Barbara Gurecki said she would like to read from a prepared written statement. She said she wanted to start by saying she supported the other farm activities on the property that were not related to the mounted horse shooting activity.

She was surprised by the alternate zoning officer's decision that this activity falls under the Right to Farm by-law. At the April 17th Selectmen's meeting, the Selectmen, Wes Goss and his attorney all agreed that this activity did not fall under the Right to Farm by-law. These are not private affairs or activities. If there is indeed another owner, why is this just being disclosed now? If Harry Cullinan's, the alternate zoning inspector, method of assessing the noise did not include the identification of the land on which this activity was occurring, then he did not go to the property referenced in the complaint.

She stated that even Selectman Walter Alterisio said he could hear the shooting a mile away.

This activity affects her in that her schedule revolves around the schedule of the North East Six Shooters' planned schedule which, including practices is held 51 days a year. A practice can also be scheduled last minute. She can't even plan on when the practices will be held. Every Wednesday she plans on not being home to avoid the scheduled practices. During the weekend events, she makes plans to leave for the day or the entire weekend.

She moved to Dunstable 30 years ago for the peaceful atmosphere and the horses. With the activities occurring across the street it is like living near a shooting range. If she ever sells her home, the realtors will have to disclose the noise that occurs from the property across the street. Her property value has decreased by 10 to 15%.

This has been an ongoing issue for the town. It had been going on for a year before she became involved. The activity is mentioned in the Selectmen's minutes of July 2010. In the April 2011 minutes there was reference to a possible cease and desist order. She read and heard a town official say this activity should not be allowed.

Ted Gaudette asked if the Gosses were involved or if legal representation was for the owners of the property on which the shooting is taking place.

Stephen Armato said he is representing Wes Goss presently and will represent the owners of the adjoining property if they become involved. He will make the exact same argument. It depends on how this ends up procedurally.

Attorney Armato stated he is also the Vice President of the North East Six Shooters, which is the same as the Massachusetts Six Shooters.

Barbara Gurecki asked if she could describe the activity as it relates to her property.

Leo Tometich said yes.

Barbara Gurecki said the corner of the property was an open field. In order to get to the area of the activity, you have to enter through Wes Goss' property. She is assuming that this part of the property which is adjacent to the corn field and behind the ice cream stand is owned by the other family members.

Mark Lanza asked if the ownership has changed since the activity began.

Wes Goss says he owns 65 acres, but the shooting activity has never been on his property.

Leo Tometich asked to hear from the attorney representing Goss Farm.

Stephen Armato said that at the Selectmen's hearing the Gurecki's had the only complaints. There were no other complaints. All the evidence will point out that there is no harm being done, the activity is not offensive and is within the by-laws. He does not agree with Mark Lanza. It is up to the board to objectively look at the evidence which will guide the board's decision.

The Building Inspector recused himself with regard to a conflict of interest and said he couldn't advise the alternate building inspector, but he did. The alternate building inspector walked from the activity to the ice cream stand and could barely hear any noise.

Mr. Armato said they have taken the Gurecki's complaint to heart and were very concerned when she first came to them. The PA system was a problem, so they moved it to the other side of the area and faced it away from the Gurecki's. The alternate building inspector conducted a complete investigation. The inspector, police and other abutters have said the activity is not invasive or out of control and is related to agriculture. The presence of horses on the farm is considered agriculture. Barbara Gurecki is not an abutter or directly across the street.

Unless this activity is a violation of the by-laws, the appeal is not valid. In regards to the cited Green and Harrington case, the appellant was an abutter to the land. It is the obligation of the abutter to find out where and who owns the land.

Mr. Amato said he spoke to Town Counsel to give him notice about the procedural issues. It is the obligation of the appellant to make their case and get the facts straight.

The appellant exaggerated the number of shots, events and practices. 21 people who are abutters or abutters to abutters have no complaints and have signed a petition. They know exactly what goes on and have no problem with the activity. No one agrees with the appellant that they need to leave their property while the activities are going on. The appellant can't say you can't do this when the alternate building inspector and 21 other people don't agree. Is this a rational complaint?

The statement made by the appellant that a decrease of 10 to 15% of the property value has no basis in fact and should be ignored by the board.

As Vice President of the North East Six Shooters, he took action to reduce the noise. Regular Traffic noise far exceeds the noise from this activity.

Stephen Armato continued to say that the Six Shooter members are a bunch of regular people. Balloons are placed on a stick and people shoot at them. They have enlisted 4H kids to be balloon runners and it works out well for everyone. The activity takes place once a month on a Saturday and Sunday. There is a safety meeting ½ hour before the events. The activities run from 10:30 am to 2 pm. Sometimes it will run over up to 3:30 pm. There has been a recent decline in attendance due to the economy. There were usually 20 riders, but now there are 12 to 13. They had to cancel their June events due to lack of riders. It is a family oriented activity. The town should not want to get rid of this good family fun.

Attorney Armato said the appellant's comments about the town officials' comments are hearsay. The building inspector said the activities are not improper. Their group is respectful of the town and any complaints. The rules of the competitions are overbearing and safety is paramount. There is no alcohol at these events. The complaint is being made by someone who has no legal standing to make them.

Al Horton asked the appellant about her comment "what is loud for me, may not be for someone else."

Barbara Gurecki said no, she said what is offensive to me, may not be to someone else.

Al Horton asked if the 45 caliber load makes the same sound.

Stephen Armato said it is not a full load. It's not a blank and is a 45 caliber gun, but the shooting is equivalent of a bullet.

Al Horton said it could be noisy even inside a house. The Mass EPA measures noise on a scale. Anything over 10 decibels is loud. He asked if there were any recordings of the noise levels.

Barbara Gurecki said no.

Stephen Armato said the practices are informal on Wednesdays. Once they rescheduled to a Thursday. 90% of the practices are on horsemanship skill and not shooting. The practices are over by 6 pm. They are held most Wednesdays, but not on every one. The matches are once a month on Saturday and Sunday. One month they go elsewhere and it takes place 6 months of the year.

The Board of Selectmen held informal meetings. Barbara Gurecki hadn't complained until after they had met 3 times.

Barbara Gurecki said she had the schedule, but she wasn't home.

Josh West asked if it was lawful to discharge a firearm on a property.

Ted Gaudette said the property owner could give permission for hunting.

Rich Larkin stated that the Henry case dealt with principal and accessory land uses. The by-laws can't list all uses. An accessory use has to go normally and usually with the principal use. It has to be proportionate in size relative to the principal use. A proper accessory use can grow excessive and disproportionate. Shooting in the backyard could be a lawful accessory use, but could become unlawful based on the extent of shooting or similar factors.

Stephen Armato cautioned to keep the complaint in mind. The complaint is not about the competition, not about the horses, but the complaint is about noise. The complaint is not exclusively about the competition; it's the noise.

Al Horton asked about the notice of appeal. If the board over turns the alternative zoning inspector's decision, does the board have the authority to stop the events.

Rich Larkin said the appellant asked the alternate zoning inspector to investigate. The zoning inspector did not see fit to stop the action. The board can make the zoning inspector enforce the by-law as they interpret them.

Josh West asked what the violation is.

Mark Lanza said they are not alleging the noise is a violation. They are saying the Dunstable Zoning By-laws don't allow this activity or competition. The Gurecki's are showing how this violation adversely affects them.

Ted Gaudette stated that the Right to Farm by-law gives the property owners some right to have horses, but does it apply to gun shooting? In past history, he could understand the use of shooting guns on a farm. How does the use of shooting a gun apply to the Right to Farm by-law?

Mark Lanza said they are not opposed to the farmer's use of a gun. This activity is not related to the farm activities. Nowhere in the definition of agriculture in the Mass General Laws does it include shooting competitions.

Stephen Armato said that firing a gun does not violate the by-laws. The complaint is about the level of noise. The zoning inspector did go to the Gurecki's driveway to listen to the noise. This may fall into an owner's property rights. The presence of horses is obviously farming.

Leo Tometich asked if this concerns multiple properties.

Stephen Armato said the arena is not on Goss Farm. The property is land locked by the farm.

John Martin asked who owns this land locked property.

Wes Goss stated it is the Goss Family Trust, which he is not a part of.

Leo Tometich asked for comments from abutters and others present.

Mr. Bourgeois of 14 Cross Street said he is not a direct abutter, but he is located close to the arena. He can faintly hear the shooting, but cannot hear the PA system.

Jim Tully of Depot Street said he is a ¼ of a mile from the Gosses. He has no problem with the noise. In the past, he has let the police chief know when he intends to shoot off 500-700 rounds. He is 50 feet from the Gurecki's and it's not an issue. Will he be next? Will there be no shooting on your own property?

Jan Yarbrough of 144 Pond Street said her daughter participates in the shoots. She said the Horseshoe Tuesday Party is louder than the Six Shooters. Horseshoe Tuesday is a game of horseshoes event with 8 to 10 people.

Debbie Christopher of 461 Pleasant Street said she is diagonal from the property. She has no strong opinion on the matter. She can hear the gun shots in her yard. She is not disturbed by the noise, but is disturbed that she had no knowledge the activities would be conducted. She is sensitive to gun shots and is not disturbed by it.

Paul Engeian of 473 Pleasant Street said he is diagonal from the Goss farm. He lives next to Debbie and Stan. He can faintly hear gun shots. He thinks gun shooting goes with horses and can see the correlation between the two. He is not concerned about the noise or safety.

Leslie and Ralph Brogna said they live directly across the street from the Gosses. They have no problem with the activity. They didn't immediately realize what was going on, but are not concerned. They moved to Dunstable for the agricultural atmosphere.

Stephen Armato said if the board reads the preamble of the petition, the abutters are now aware of the activities and have no concerns.

Al Horton asked if any finances pass hands.

Stephen Armato said there is no financial relationship whatsoever between the Gosses and the Six Shooters. There is no charge for the events. There is an entrance fee to pay for the ammo.

Al Horton asked if there are any financial arrangements with the Goss Family Trust.

Stephen Armato said no. They have had to pay in other arenas, but not with this farm.

Ted Gaudette asked Town Counsel about the procedure of the hearing. The board has 100 days to decide the case. How does that affect the hearing?

Rich Larkin said with regards to Attorney Armato's comment that the owners have not been notified. There was no time to notify the owners. The procedures included a hearing notice mailed to the parties in interest, which would include the owners as abutters. If this hearing is done over but in regard to different property, it is up to other people not the board.

For example, the zoning enforcement officer could send the Goss Family Trust a cease and desist order and that would start the procedure over. Mrs. Gurecki could ask the zoning enforcement officer to enforce the by-law. If he didn't, then another appeal could be filed similar to this one, and it would come to the ZBA.

On the Dunstable zoning map, it shows Goss Farm and the land locked piece owned by the family trust. The arena is on the latter property. Access to the land is part of the activity. The board can address this as a package. The noise prompted the petitioner to question the legality of the activity within the by-law.

The board doesn't have a complete situation in front of them. Part of it is the owner of the property is not in attendance.

Ted Gaudette said the posted hearing notice references the Goss farm. Doesn't the board have to act on that?

Rich Larkin said everything heard is regarding 446 Pleasant Street and that people can't tell if the property is 446 or not.

Ted Gaudette asked how the board can act on it if it's not 446 Pleasant Street.

Rich Larkin said Stephen Armato asserted the argument that the board can't act because the parties/owners of the property on which the activity complained of is taking place are not here. However, the board is also bound by the petition and notices. It is not appropriate to dismiss the case which is presently before the board because someone important is not here.

Stephen Armato said the board can decide to deny the appeal or uphold the decision or that proper notice has not been given.

Ted Gaudette said that there are 2 parties involved one at 446 Pleasant Street and the property owned by the Goss Family Trust. Also, the petitioner is a 30-year resident and the activity has begun recently.

Gerald Mead said that the board can instruct the building inspector to re-determine this ruling based on the revelation of the correct owners of the property.

Mark Lanza said this is a viable option. This appeal is not going away. There is the access issue and the proper owner issue. He suggests that the petitioner grant the board an extension to make their decision. The appellant will make the request to the zoning enforcement officer to go to the property, noting the correct owners and then combine the appeal.

In the meantime, Stephen Armato invited the board members to attend an event.

Gerald Mead said that he lives on Cross Street and the shooting can be heard clearly and persistently as well as the PA system.

Jim Tully asked what the issue is and whether how long you have owned land is relevant to how it's used.

Ted Gaudette said that the appellant bought their home 30 years ago in an R1 district and there was no "buyer beware." They should have some recourse if there is a change of use of the property. Is this more offensive than when she first bought the property? Is it more detrimental or not? She owned the property prior to the activity taking place.

Stephen Armato said the board must determine if the activity is a violation of the by-law. The zoning enforcement officer's investigation said the activity is not illegal.

Mr. Bourgeois asked if the petitioner is not an abutter, can she legally appeal the decision of the zoning inspector.

Rich Larkin said the disposition of the case must be made within 100 days. The time can be extended if the petitioner is willing. The zoning enforcement officer could then investigate the complaint with regards to the owners of the other property and then the appeal could possibly be combined.

Mark Lanza said they are willing to grant the board an extension to the decision deadline and suggested late October.

Gerald Mead said this is about the proportionality of the activity and he suggested that both parties come together in the meantime to try to come to some sort of agreement.

Stephen Armato said he was initially surprised by the complaint. There are not a lot of rounds fired. They have tried to work together.

Gerald Mead said they are not obligated to mediate, but it is just a practical solution and an opportunity.

Stephen Armato said they are always in favor of mediation, but would the petitioner stand for anything less than no competitions?

Robert Gurecki said not if there is still gun fire.

Stephen Armato said if the petitioner wants no shooting, then there is no basis for mediation.

Al Horton asked about the statement from the appellant.

Rich Larkin asked if there were any objections to the board going to attend the event on their own.

Mark Lanza said he would like to be present.

Ted Gaudette asked what the Six Shooters had scheduled for September.

Stephen Armato said he would have to check the date, but the competition is held from 10 am to 2 pm.

Leo Tometich said the board could make a site visit to the farm and Mrs. Gurecki's property if she had no objections.

Barbara Gurecki said the board could visit her property.

Rich Larkin said he would fill out an extension form now and will include a continuation of the hearing to a date in October and the appearance at the site and the Gurecki's as a session of the hearing.

Stephen Armato said the event is contingent on weather.

Mark Lanza said Rich Larkin's idea is good and it would give them time to file a new complaint with the zoning enforcement officer.

Rich Larkin asked what date should be noted on the extension form.

Stephen Armato said the competition is scheduled for Saturday, September 29th and Sunday, September 30th. The safety meeting is at 10:30 am and the competition is from 11 am to 2 pm.

Mark Lanza suggested extending the decision of the board to the end of October.

Rich Larkin said the board could meet on Thursday, October 25th at 7:00 pm and the extension could be dated as such.

Leo Tometich entertained a motion to continue the hearing to the site visit at 446 Pleasant Street.

John Martin motioned to continue the hearing on Saturday, September 29, 2012 at 11 am at 446 Pleasant Street for a site visit and to reconvene the hearing on Thursday, October 25, 2012 at 7:00 pm at the Dunstable Town Hall.

Gerald Mead seconded the motion and all the members were in favor.

Leo Tometich asked if anyone was opposed and the motion passed.

Mark Lanza asked if a copy of the extension agreement could be sent to him.

Lisa O'Connell said yes.

Leo Tometich said the board would now recess to its scheduled business meeting. The hearing was recessed at 9:15 pm.