

**TOWN OF DUMMERSTON
DEVELOPMENT REVIEW BOARD
LAND USE DECISION**

Name of Applicant: Scott Farm, David Tansey, Agent
Name of Owner: The Landmark Trust USA
Location of Property: 707 Kipling Road
Dummerston, Vermont 05301
Mailing Address: 707 Kipling Road
Dummerston, Vermont 05301
Application Number: #3160 – Conditional Use Permit

The matter came before a warned public hearing of the Dummerston Development Review Board (DRB) held on September 16, 2008 at the Dummerston Community Room of the church, Dummerston Center, Vermont. The hearing was preceded by a site inspection attended by the applicant's agents, members of the public and Board members, Pat Jaquith, Herb Rest, Rick Sullivan, John Warren and Lew Sorenson.

Present and participating at the hearing were the following members of the Development Review Board: Patricia Jaquith, Herb Rest, Lew Sorenson, and alternates Rick Sullivan and John Warren who were seated as two regular members were absent. Also present were: the applicant agents, David Tansey and Kelly Karlin, the Zoning Administrator, Gina Faro and members of the public as listed on the attendance sign-in Sheet and incorporated as Exhibit F.

The hearing was adjourned with provision for final written testimony to be submitted by September 18th and was followed by deliberations and motions.

FINDINGS OF FACT

The Board finds as follows:

1. The applicant filed Application for Zoning Permit #3160 on August 19, 2008 for approval of Agritourism: apple/fruit related activities; renewable energy workshops; cooking demonstrations; etc. An attached letter further describes the operations at the Scott Farm, including weddings, and the economic considerations of operating the farm. On August 14, 2008 the Zoning Administrator found that the proposed development did not meet the provisions of the zoning regulations and disapproved the application with the following statement: "The use for which the applicant is applying is neither a permitted nor a conditional use for the Rural Residential District. Please read the attached letter from applicant Re: Agritourism – clearly, this is a current and valid issue that needs to be addressed. The Planning Commission is aware of the situation." The discrepancy in the date of the application and date of disapproval is unexplained. The Zoning Administrator further discussed her actions in an accompanying letter to the applicant dated August 19, 2008.

2. The property is located primarily in a Rural Residential District (RR) with some areas away from the Town roads in the Conservation District (CN). The farm totals 571 acres and has frontage on several town roads. Cropland is primarily orchard use but some acreage is in other uses including land rented by a Community Supported Agriculture group for production of vegetables and fruit.
3. The Scott Farm property is owned by The Landmark Trust USA, a nonprofit corporation, which also owns the abutting Naulakha property. The Trust has historic preservation as its purpose; however, the Scott Farm property is not protected by deed restriction or conservation easement.
4. There has been a history of requests to the Dummerston Selectboard for event liquor licenses in conjunction with weddings at the Scott Farm. The Zoning Administrator, in response to questions raised as to conformity with the Zoning Bylaw, on July 31, 2008 requested that the applicant apply for a Conditional Use Permit to “. . . allow you to make a case before the Development Review Board to come into compliance with the Dummerston Zoning Bylaws.”
5. A portion of one of the farm structures has been upgraded for a commercial kitchen and meeting hall (Exhibit J photos). This area is the primary area that is proposed for events. It accommodates approximately 100 persons for dining, dancing or other events. Some weddings are also been outdoors in a more remote orchard area accessed from Dutton Farm Road, and in the past in a courtyard area among the farm structures. For the primary event area, primary parking for large events is in a field across Kipling Road, with smaller event and support parking adjacent to the event building and between the building and Kipling Road.
6. The Zoning Bylaw in Sections 220 & 215 lists agriculture as a permitted use and Article VIII defines agriculture as “a farm, orchard, nursery and other uses of land for agricultural production, processing and marketing”. “Agritourism” is neither among the listed permitted or conditional uses nor within the definition of agriculture. Nor are the specific uses requested, including weddings and renewable energy workshops, within definition of agriculture, or accessory uses to agriculture.
7. The Dummerston Selectboard on August 4, 2008 sent a letter (Exhibit H) to the Dummerston Planning Commission urging the review of the definition of agriculture to insure that farmers can use their resources in flexible ways that will allow diverse uses. The Planning Commission has begun that review.
8. State statute (24VSA Chapter 117) does not give the DRB authority to grant Conditional Use Permits for uses that are not provided for in the Zoning Bylaw, and the Bylaw precludes uses that are not listed as permitted or conditional.
9. The Board’s site inspection and testimony at the hearing noted that other uses also currently exist on the farm. In addition to the uses requested in this application, the property includes short and long-term rental housing, dormitory housing for seasonal

farm workers, and professional office space for the Landmark Trust director and staff. A copy of the Scott Farm's web page on weddings and events (Exhibit K), submitted at the hearing advertises the property for weddings, civil unions, birthdays, family reunions, meetings or small seminars, and offers coordination with caterers, musicians and florists.

10. Testimony of the applicant's agent stressed the economic importance of hosting activities and events at the farm to support the continuation of the primary agricultural use. These include, but are not limited to, educational events, weddings and other celebrations, workshops and cooking demonstrations. The testimony also stressed the complementary nature of these activities, the relatively minor time periods they consume, and the trend of other jurisdictions to encourage agritourism activities.
11. Testimony of other members of the public acknowledged the importance of supporting agriculture in the Town of Dummerston and the value of some complementary activities with appropriate performance standards that would minimize adverse impacts. Concerns included noise, event frequency, late evening music, traffic and future expansion to other unspecified Agritourism activities. However, testimony also noted that the applicant has taken some measures to recognize neighborhood concerns, and conditions of any approval could help ensure that impacts would be minimized.
12. The Board finds that much of the testimony of both the applicant and others might more appropriately be made at the hearing to consider possible bylaw amendments referenced above. The Board also finds that agritourism includes such a wide variety of activities that it is impossible to predict all the considerations that should be part of a Conditional Use review.
13. For purposes of application, the applicant and those neighborhood property owners testifying at the hearing (as noted on Exhibit L) are determined to be "interested persons" as defined in 24 VSA Section 4465(b).

CONCLUSIONS OF LAW AND DECISION

1. The requested uses specifically identified in the application are not conditional uses. While use activities such as apple tasting, pick-your-own and farm stand sales are clearly within the bylaw's definition of agriculture and therefore permitted uses, public events such as weddings, seminars, reunions and workshops are not listed by the bylaw and are therefore not approvable. The Town is considering possible change to the bylaw that may, or may not, change permitted and conditional uses in these zoning districts.
2. It would be inappropriate for this Board to attempt to interpret the bylaw to rationalize additional permitted or conditional uses especially given that the Planning Commission is working on this matter.
3. The application for Conditional Use Permit is denied as it does not request a development that can be authorized as a Conditional Use.

4. The Board recommends that the application fee for this request be refunded as the applicant was advised to apply for a Conditional Use for a development not approvable.

The following members of the Dummerston Development Review Board participated and concur in this decision. The Decision is subject to appeal as provided by Vermont statute.

Pat Jaquith, Herb Rest, Rick Sullivan, John Warren and Lew Sorenson
Dummerston Development Review Board

Dated: September 30, 2008

For the Board, Lew Sorenson, Chair

EXHIBITS

Conditional Use Permit, Zoning Permit Application #3160 Scott Farm

- A. Application for Zoning Permit #3160 with site plan dated August 19, 2008
- B. Denial form from Zoning Administrator (on back of Zoning permit) with accompanying August 19, 2008 letter
- C. DRB Application for Conditional Use Permit dated August 19, 2008 with attached supporting letter
- D. Newspaper Legal Notice
- E. Applicant's Certification of Notice
- F. Attendance Sign in Sheet for Hearing
- G. Zoning Administrator's July 31, 2008 letter to applicant
- H. Selectboard August 4, 2008 letter to Planning Commission
- I. Applicant's framed aerial photo of area with property boundaries shown. A smaller, replacement 11X17 version was submitted by the applicant after the hearing.
- J. Applicant's series of 7 color photos
- K. Scott Farm web page advertising weddings and events
- L. Interested Person Record and Service List
- M. September 17, 2008 memo from Gina Faro, Zoning Administrator
- N. September 17, 2008 memo from John Evans, abutter
- O. September 17, 2008 letter from Scott Farm, David Tansey, agent