

TOWN OF DUMMERSTON

Development Review Board

Appeal of Zoning Administrator Decision Findings and Decision

HEARING SPECIFICS

Appeal Number: 3768

Date Received: May 15, 2024

Appellant: Maria Glabach

Mailing Address: 32 Nourse Hollow Rd., Dummerston, VT 05301.

Location of Property: Parcel 810, Houghton Rd., Dummerston, VT

Owner of Record: Maria Glabach

Appeal: Appeal of Zoning Administrator Decision

Date of Hearing: June 18, 2024

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an appeal of a Zoning Administrator Decision under the Town of Dummerston Zoning Bylaw Section 716.
2. On May 31, 2024, notice of a public hearing was published in The Brattleboro Reformer.
3. On May 30, 2024, notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
 - The Dummerston School.
4. On June 3, 2024, notice of a public hearing was posted at the following place: Parcel 810, Houghton Rd., Dummerston, VT, which is within view of the public right-of-way most nearly adjacent to the property for which the application was made.
5. On May 30, 2024, a copy of the notice of a public hearing was emailed to the applicant.
6. On May 30, 2024, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Echo Farm Llc, 853 US Rt 5, Dummerston, VT 05301
 - b. Gangloff Shane & Short Anna Gangloff, 7 Oak St, Gill, MA 01354
 - c. Goodband Ezekiel, 158 Houghton Rd, Dummerston, VT 05301
 - d. Greenberg John & Kathryn O, 564 Butterfield Rd, Brattleboro, VT 05301
 - e. Harris Ray & Loretta M W/Life Estate, 42 Tucker Reed Rd, Dummerston, VT 05301
 - f. Houghton Eric, 16 Carpenter Rd, Dummerston, VT 05301
 - g. Kelly Susan M, 557 Old Stage Rd, W Halifax, VT 05358

- h. Normandeau Paul & Jo Jean, 250 Tucker Reed Rd, Dummerston, VT 05301
 - i. Olmstead James A & Jane V W/Life Estate, PO Box 85, Newfane, VT 05345
 - j. Rooney Brian & Carolyn, 25 Central Park West Apt 7M, New York, NY 10023
 - k. Stone Melody B & Shawn C, 51 Houghton Rd, Dummerston, VT 05301
 - l. Volaitis Magdaline, 229 Middle Rd, Dummerston, VT 05301
7. The application was considered by the Development Review Board (DRB) at a public hearing on June 18, 2024.
 8. The Development Review Board reviewed the appeal under the Town of Dummerston Zoning Bylaw, as amended April 6, 2022.
 9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday.
 - b. Others: Harold Newell, Jean Newell, Theresa Chapman, James Olmstead, Theodore Glabach, Tom Simeon, Barb Simeon, Paul Chapman, Ray Harris, Brenda Davis, Lori Thibault, Katelyn Barrows, Dan Normandeau, Suzanna Heller, Len Howard, Becky Howard, Carlene Hellos, Chip Hellos, Zeke Goodband, Magdaline Volaitis, Shawn Stone, Nancy Ellis, Susan Kelley, Deb Forrett, Claudia Teachman, Kristen Glabach, Beverly Tier, Darin Sitar, Martin Forrett, Lewis White, Skip Fletcher, Kim Fletcher, Steve Moody, Mark Lane, Cole Rooney, Theresa Glabach, Kyle Paquette, Daryl Graves, Jeremy Graves, Michael Thibault, Brian Barrows, Evan Martin, Roger Jasaitis (Zoning Administrator).
 10. A site visit was conducted on June 18, 2024.
 11. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Alan McBean, Cami Elliott, Peter Doubleday, Chad Farnum.
 - b. Others:
Maria Glabach (appellant), Lawrence Slason.
 12. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Appeal, number: 3768.
 - b. Exhibit 1; Email: Anne Posternak
 - c. Exhibit 2; Email: Walker Farm
 - d. Exhibit 3; Correspondence history, Zoning Administrator, Maria Glabach, Lawrence Slason
 - e. Exhibit 4; Letter: Ali Wilder (abutter)
 - f. Exhibit 5; Letter: Doreen Aldrich, Melinda Cyr
 - g. Exhibit 6; Memorandum of law, Lawrence Slason
 - h. Exhibit 7; Position Statement, Maria Glabach
 - i. Exhibit 8; Zoning Administrator Report, June 18, 2024

FINDINGS OF FACT

Based on the application, testimony, exhibits, and other evidence the DRB makes the following findings:

1. Review of Appeal; Zoning Administrator Decision, dated May 6, 2024, under the Town of Dummerston Zoning Bylaw Section 716, at parcel 810, Houghton Rd., Dummerston, VT. The subject property is a 102.3-acre parcel located at Houghton Rd., in the Town of

Dummerston (tax map parcel no. 000810). The property is more fully described in a Deed recorded at Book 72, Page 231, in the Town of Dummerston Land Records.

2. The property is located in the Rural Residential and Rural Commercial Districts as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Sections 220 and 235 of the Zoning Bylaw.
3. The appeal states; *The subject property is located off Houghton Road, Parcel 810. The tractor shed and the three-sided sand storage shed were constructed more than fifteen years ago and are not subject to any enforcement action. All activities on the site have been lawfully approved and are grandfathered uses.*
4. The appeal requires review under the following section of the Town of Dummerston Zoning Bylaw: Article 7; Section 716 Appeals.
5. Attorney Lawrence Slason from Salmon and Nostand, introduced himself and stated that he was representing Maria Glachbach. He proceeded to explain that “there is been a notice of violation by your own administrative officer and that it’s our position that the notions are not meritorious and that there is no basis to proceed against this lady for the two commercial structures or that they are ‘public nuisance” (referring to burn pit). Lawrence stated that they believe the two structures were constructed before May 6, 2009, therefore are grandfathered and the violation is unenforceable. He stated that the “Vermont Supreme Court has made it real clear that structures that were erected more than 15 years ago and uses that were in existence or substantially similar uses today are not enforceable so it is our position that the two structures and uses are grandfathered. In reference to Section 660 Performance Standards, Title 24 allows you to adopt performance standards but it makes it very clear the performance standards must have specific standards and must specifically describe the levels of operation that are either authorized or prohibited. The Supreme Court has numerous cases struck down for the kind of language that Dummerston has, which is general but does not have specific examples with respect to noise . There is no specific standard, so what the court states is, when you have an ordinance and there are no standards it can’t be applied in an arbitrary manner, he said there are no enforceable standards.
6. Lawrence also stated that the site visit is not evidence , it’s only to place in perspective the testimony you are hearing tonight. (He presents photos and documents to the Board) This photograph will show you the nature of the structures we are talking about. These are the commercial structures that the town has now spent a year going back and forth , trying to get fines for and the block structure that stores sand and there’s the burn area and the approved permit by the State of Vermont Air Quality and Climate Control Division.”
7. I think I have done most of my job and provided you with legal guidance. Maria prepared a position statement that at one point she wanted to read and I just suggested she hand it to you and it will be another one of your exhibits. (He presented a legal memorandum and 3 page position statement by Maria Glabach to the board)
8. Lawrence then introduced Fire Chief Lenny Howard and stated that Lenny had worked for Steve Glabach and asked “that you tell these good folks what you remember about the back shed and when you were involved in the construction.” Lenny stated that worked construction in 2004 and on days off he helped Steve. He helped Steve put up the blocks,

and he actually went down and picked up the blocks. The exact date he could not say. The shed housed salt then, now sand. Lawrence showed Lenny a photo. Lenny shared it was the same shed but it had a tarp over it.

9. Alan McBean (DRB) asked when the roof was added. Lawrence stated it doesn't matter about the roof as it is a three sided structure. Whether it has a roof or not it is not enforceable.
10. Brian Burrows was then asked about the tractor shed..Brian stated that he was working in the spring of 2009 and the tractor shed was already built. Lawrence showed Brian a photo and asked if it had changed and Brian said,"nope, same as now" He stated the shed housed a tractor or haying equipment. Lawrence asked Brian "what were you doing for these folks?" "Sugaring"
11. Lawrence went on to discuss the burn pit. Repeating that it has been approved by the state and that Maria tries to honor the performance standards that she burns on days that smoke is more likely to dissipate. He asked Maria if she was honoring the permit and she responded yes to burning pallets and untreated wood only and fires are always attended all the time. The burn pit is used about every four to six weeks. About once a month.
12. Lawrence asked if it was true that Mr. Jasaitis (ZA) contacted the air quality division to come down to inspect a burn? Maria said yes. Lawrence asked if he did that with the permission of the Selectboard or on his own? She replied on his own. On October 30th David Shepard came down to inspect a fire to show compliance. She stated that the ZA later said the fire was "staged" for compliance. She said it was not staged. She confirmed that she will comply with the burn permit going forward.
13. Alan stated that the DRB has copies of the report
14. Lawrence asked if anyone else wanted to come forward
15. Mark Lane stated that he worked for Steve and was involved in putting up the concrete structure and removed pallets from the Book Press when they closed. He said they burned quite often and the State would come down to check. He stated that if she has had a State permit this long then she must be doing it right. The structures have been there a long time, late 90s, early 2000s.
16. Deb Forrett stated if the permit was expanded, she is doing it right.
17. Alan stated that this is an unusual situation because we have two sides, usually it is just the applicant. He wanted Roger to have a chance to speak and then would open it up to the public. He acknowledged that there are many people here supporting Maria but we are not here to assassinate her character. We all think she is a wonderful person so it would be helpful to keep discussions in terms of the violations so we are not here until midnight extolling her virtues.
18. Roger stated that he would start at the beginning. He has been the ZA for six years. As defined by his job he went through all of the conditional Use permits which took 5 years. He said; I have a good sense of all the businesses in town and the related conditional use permits. When I happened to drive by Maria's site I noticed that there was commercial activity going on and so it provoked me to look at the permit history and there were no commercial permits on the site and so it raised some questions. My job is to follow up with an investigation to be sure there are no violations so that is when I began corresponding

with Maria. He stated that he works with the town's Zoning Bylaws. He reads them literally and applies them fairly. In his initial correspondence with Maria, she stated that everything on site was agricultural. He said the state has definitions for what is agriculture and that the only activity on that site that is exempted is the sugaring operation, everything else on that site is considered a commercial use by our Bylaw. He could find no permitting for that commercial use. He contacted the state to see if there was any State permitting because typically this type of commercial use might require an Act 250 permit. They said there was no ACT 250 permit but there was a burn permit so that is when he learned there was a burn pit. He stopped by there about a year ago sometime in June and he was on the road, it was 9:00 in the morning. The smell of smoke was overwhelming and he could see the pit smoldering and that is a violation of her permit. There was nobody there monitoring it and it was smoldering from the day before. He stated he provided aerial photos as evidence of the site from 2011 to 2015 and it appears that the structures were not there in 2011 and they were in 2015. That provided him the evidence to issue the Notice of Violation. He said that he was not provided with testimonials of the people that built the buildings in any of the correspondence, so "I need to go on the evidence I have". Roger also stated that in August he received letters of complaint about the site. He shared the letters with Maria. He stated that the letters reinforced his feeling that the smoke was drifting off of the site and the noise present was interfering with the neighbors. He included this in the Notice of Violation going by what the Bylaw says. He also stated for the business to be grandfathered in, it would have had to be started before zoning.... Lawrence interrupted, "We're not here to talk about the commercial operation tonight though, we are talking about when the two structures were constructed and whether or not you have Performance Standards that you can point to that this lady violated. The photographs are not admissible...."

19. Chad Farnum (DRB) asked for clarification about why we are not considering the grandfathered commercial use? Lawrence explained that because Maria's business was established 30 years ago she is not required to have Commercial Use Permit unless there is a substantial change in the use. He reiterated that we are only considering the two structures and Performance Standards. The ZA clarified that any activity more than 15 years old is beyond the Statute of Limitations and allowed. Chad went on; the ZA stated that he reviews CU permits every 5 years (the ZA responded yes), so a business in Town (for example; the Putney Paper Mill) was established long ago, do you have to review their CU permit every 5 years? (The ZA responded yes) So why aren't we reviewing Maria's CU permit? The ZA responded; because she has no permit. Lawrence stated that because this use is substantially unchanged she does not need a permit because the business has been in existence for more than 15 years. The Town has been aware of this business for a long time and has no jurisdiction to enforce or limit what is going on there.
20. Shawn Stone asked if it is a change of use if there are two separate businesses instead of one on the site? Lawrence replied; it makes no difference if it is one business or two businesses if the commercial activity is substantially similar to what has been going on. That is the key principle not about ownership issues. Alan McBean (DRB) asked "you don't think it is an increase in use if a second business is operating on the site?" Lawrence

replied that the number of businesses has no bearing if the commercial use does not change.

21. Shawn: stated; I know there are now two businesses operating within the last 2 to 3 years and the noise has increased in the last year, 7am-8pm and on weekends. Chad Farnum (DRB) asked; What are the activities going on with the noise? Shawn Stone replied; large machines, backup beepers, banging tailgate and the smoke issues. I brought it to Maria's attention 4 or 5 times. Her response was; what am I going to do, close down? Lay everyone off?
22. Alan McBean (DRB) asked Slason how the State deals with the language of nuisance surrounding smoke. He replied that it is a problem because the law is not written in a way that is enforceable. Usually the State concept of nuisance is one of intense frequent duration that makes it unreasonable to use your property. He thinks that Shawn's comments are interesting to the extent that they may be bothersome at times and may be legitimate. He does not mean to minimize that. He said even without Performance Standards Towns may have rules about loud noise, when it is permitted or not. He said he was not aware when the noise was occurring. Maria said between 7pm or 8pm, later on rare occasions (once a month). Rarely before 7am. She stated that "I don't own trucks that would bang a tailgate". Lawrence continued; whether or not this activity rises to a level of nuisance is if this noise happens once or twice a month, and is a part of the ongoing operations for years, the neighbors have to absorb it. If it was ongoing 4 or 5 days a week and 9 or 10 at night it would be a tougher situation to sort out whether or not that rises to a public nuisance with or without Performance Standards.
23. Melody Stone asked to play a recording of noise from the commercial site at 8:30 am Sunday, Dec 3, 2023; there were sounds of trucks, back up beeper on the loader.
24. Several comments from the public about trucks, where the recording was made, laws about back up beepers...
25. Lawrence "please, I want to help out the chair, please address comments through the chair. Your comments are valid but you gotta do it the right way."
26. Deb Forrett: How do we know where this was recorded? Shawn Stone replied "our backyard".
27. Alan McBean said : I think this demonstrates you can hear the back up alarms and trucks at Melody and Shawn's house without any problem. How many times a month? Melody responded; every day. Every morning at 7am. Now, every day. I have more recordings.
28. Melody then read a prepared statement about issues of noise, smoke, toxicity of the burn pit and being intimidated by Maria. Removal of the berms around the pit, the lack of restrictions on time of operation. She talked about retaliation by Maria for her reporting the nuisance.
29. Nancy Ellis: spoke of the changes in the sand pit from 1998 to now. It was not commercial when her father owned it. Her brother started the burn pit. The smoke was a nuisance but she didn't dare confront him for fear of retaliation.
30. Teddy Glabach: "I remember stacking and breaking apart pallets with my grandfather to sell at KOA. He didn't participate in the burning but was there when it was burning so it was all there prior to him".

31. Jeremy Graves: explained delivery of pallets and said he never hauled pallets after 2pm and fire was burning by 9am. He never leaves the fire unattended. He sits on the tractor and watches the burn.
32. Kristen Glabach: pointed out that Ruth and Merrill Barton have an outdoor wood boiler that is always billowing smoke and that smoke goes in different directions. Comments from the crowd approving or disapproving....
33. There was general discussion about the burn pit, what is permissible to burn in the pit and accusations made against Shawn Stone. Comments from the crowd.....
34. Zeke Goodband: stated that he is a neighbor on the west side of the site. The site used to be busy but has quieted down quite a lot. On the west side we've never had an issue with the smoke. The noise has never been an issue and he was sorry that it was an issue on the east side.
35. Theresa Chapman: Stated that she served on the selectboard with Maria. She wanted to know if Roger had submitted the complaint to the Selectboard as it concerned a Selectboard member. Roger (ZA) stated that he does not report complaints to the selectboard. He also shared he was not aware of the burn permit until September which he found out through his investigation to see if there were permits on the property. He reiterated, answering a question from the crowd, that he did not initiate the visit from the State.
36. Deb Forret shared a prepared statement about the dishonesty and incompetence of the ZA and her opinion about the job Roger is doing. Included in the personal attack was a call for the dismissal of the ZA, to a round of applause and cheers from the crowd.
37. Alan stated his positive, fair and professional interactions with Roger in his position as Chair of DRB.
38. Several people spoke to the positive nature of Maria's character. Another person shared that it is sad that a family and neighborhood are in this situation and hopes it can be resolved.
39. Lawrence finished the meeting by restating his position that the structures have been on the site more than 15 years and that there are no specific Performance Standards to use against the burn pit and it has a State permit. He stated the ZA did the investigative work for his job and that is where it must end.

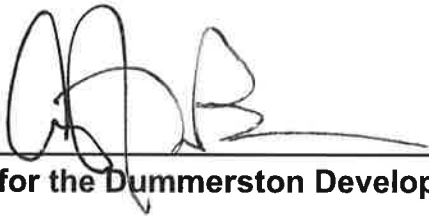
DECISION AND CONDITIONS

1. Based on the information presented, the Board finds that the two structures on the subject property have been in their current location in excess of 15 years and are therefore considered an existing non-conforming structure per Article 8-6 of the Bylaw. This means that the structures are beyond the State statute of limitations for requiring a Zoning permit (24 VSA§4454). Therefore, their presence and use are not an enforceable violation of the Dummerston Zoning Bylaw. Any change in the location, size or use would require a conditional use permit under Section 720 of the Bylaw.

2. Based on the information presented, the Board finds that noise from commercial activity at the subject property is in violation of the Performance Standards as set forth in Section 660 (1) of the Dummerston Zoning Bylaw in that reasonable use of the abutting properties is being impacted during early morning hours (before 7:00 AM), late evening hours (after 7:00 PM) and on Sundays (Anytime). The Board considers noise from commercial activities during these times to be outside reasonable working hours when in proximity to residential properties.
3. Based on the information presented, the Board finds that smoke from the commercial burn pit is in violation of the Performance Standards as set forth in Section 660 (3) of the Dummerston Zoning Bylaw when it is not being done in compliance with the State issued commercial burn permit #23012 Revised. Provision #2 states; "No public or private nuisance is to be created; burning may occur only during weather conditions which allow the smoke to rise and blow away from residences, businesses, or other inhabited areas." Violation of this condition occurs when the prevailing wind is from the west and the smoke carries to a nearby residence. The Board finds that if the burn pit can not be used in compliance with conditions set forth in the State permit then the activity shall be ceased until such time as a remedy for the violation is implemented.

The following members of the Dummerston Development Review Board participated and concurred in this decision: Chad Farnum, Peter Doubleday, Cami Elliott, Alan McBean.

Dated at Dummerston, Vermont, this 26th day of July, 2024.



Signed for the Dummerston Development Review Board

ALAN J. MCBEAN

Printed Name

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.