

**Danville Zoning Board of Adjustment**  
**Oct. 20, 2015**  
**7:30 pm**

**Members present:** Chris Stafford-chairman, Tara Burkhart, Jason Holder, Joe Luna, Curt Springer, Janet Denison-clerk

**Others Present:** Sheila Johannesen-Selectmen's rep, Roger Whitehouse-Planning Board rep, David LaPlume, Dottie Billbrough, Kim Farah, John Cronin, Charles Cote, Wanda Cote, Natasha Cormier

Minutes

Joe made and Curt seconded a **motion to accept the September 22, 2015 minutes as amended**. The motion **passed** unanimously.

Continued Hearing for an appeal from an Administrative Decision for Charles and Wanda Cote of 6 Cote Drive, known as Tax Map and Lot 4-2. They are appealing a decision by the Danville Board of Selectmen referenced in a letter dated April 3, 2015 from the Selectmen to the Cotes

Chris began the hearing by stating the Board had received the documents from John Cronin and had time to review them. A letter was received from Peter Loughlin dated October 9, 2015 and given to the Board members. A follow-up email was sent to Chris on October 18. Copies of that correspondence were given to Board members.

Chris stated that Mr. Loughlin summarized the facts well and highlighted pertinent issues, stating there are many grey areas that are left for interpretation.

Chris stated that while Board members have been impartial in all dealings surrounding hearings and there has been no ex-parte communications by or to members, i.e., no communication has been exchanged to try to influence a vote. The Board is also reviewing an email policy to more fully address outside communication by Board members regarding applications.

Chris said that at the foundation of this case is the question of whether or not the agricultural exemption applies to this case and for this activity. If the operation can be accurately described as a farm or a customary farm operation, is this an allowed use in the Residential/Agricultural (RA) zone?

Curt said the number of dogs bred on the site and those brought in from elsewhere could be the distinction between this being a farm versus having a pet store at a mall. In other words, there may be a difference between breeding on the site, then selling the puppies, versus importing them, then selling them on this site. It was agreed it is hard to quantify the number of dogs on the site and the number that are elsewhere. Curt said breeding could be an allowed use.

Curt pointed out that there used to be sheep in the town forest but it is unknown if they were raised for wool or for sale. The applicant has offered no testimony that their dogs are sold for their fur. It was mentioned that breeding and raising on site did not bring this application to this Board; it was the import and sale of dogs from the site that caused this discussion.

The Board of Selectmen cited a violation of permitted uses in the RA zone and testimony has been heard that both breeding and exporting, and importing and selling have been occurring on site. The question remains whether or not breeding and raising dogs on site is an allowed use.

Jason said a simple question would be: is this a farm or does the raising, breeding, and selling on site make it farm? He said it is important to note that the Cotes have not indicated they are selling their dogs for the fur. He asked if the letter of the law defines dogs as farm animals.

The Board mentioned that the NH Fish and Game does not include dogs in their definition of fur-bearing animals. There is an instance of dogs included in a federal list of fur-bearing animals. Joe pointed out that in no instance has the applicant indicated they are raising dogs for their fur so this is not germane to this discussion. Raising fur-bearing animals of any kind for their fur is not an activity at this address. Curt pointed out that horse farms constitute farms, yet the duty of horses as work animals has changed over the years. Horses are raised now for recreation and enjoyment but that is still considered a farm use. Curt also pointed out dogs are used on farms for herding.

The Board discussed again the difference between breeding, raising, and selling versus importing and selling. It was mentioned that someone can go to a store and purchase produce. If produce is brought back to a home and resold, that home is a retail operation, not necessarily a farm. A farm is an agricultural use and a retail store is not.

Joe said that the terms “breeding, raising, and selling” are being lumped together and questioned if the terms “breeding and selling” more accurately describe this situation. It was clarified that if someone breeds a dog in order to sell it, there is inherently a small amount of raising of the animal.

Chris asked the Board if breeding and selling is an allowed use in the RA zone? Each member said yes. It was pointed out that there are requirements in the Zoning Ordinance specific to kennels being allowed in certain town zones. This may be due to the potential noise and traffic associated with this type of business. Chris said the difference between breeding and raising dogs versus a breeding kennel may be the scale. A special exception was mentioned as a way to allow a small retail operation in the RA zone. Curt said this Board can’t take a position on a special exception for this property because there is no application to discuss. Since the applicants have not sought for an exception, any retail business at this property is not legal at this time. Curt said he understands this operation can be run out of a mall and a pet store is not a farm.

Jason asked if this could be more quantitative than qualitative, as in more buy/sell versus breed/sell. The question was raised whether this is the primary or ancillary use. It has been difficult to determine the number of dogs bred on site and those imported and sold elsewhere. It was asked: if 100% of the dogs are imported, is this part of agriculture? The Board members each answered “no.” The Board agreed that farming means raising animals, that the agricultural component is associated with the land.

The Board considered if this is a retail or agricultural operation. The process for obtaining local approval for a home occupation was reviewed. If certain criteria are met, the Selectmen will sign a document stating the business is approved. If other circumstances will exist, e.g. customers

coming to the home, then an applicant needs to speak with the ZBA regarding a special exception. Each of these processes has criteria spelled out in the ZO. A special exception can be granted with certain conditions attached to it.

Chris introduced another line of discussion by stating this hearing is not to determine compliance with the special exception criteria but is the breeding/importing and sale of dogs an allowed use in the RA zone. He is not sure this activity at this scale would be an allowed use.

The Board discussed continuing the deliberation and rendering a decision tonight. It is likely this will then go to court, which will be expensive for the town and the applicant. While the Board needs to make an objective and correct decision, the Board is not compelled to render that decision tonight. Curt said the hearings could be continued to a certain date, and the application may be withdrawn prior to that date. If a variance or a special exception is pursued and not resolved, the proceedings for this appeal can be continued.

Chris said the public hearing was officially closed but would open the floor for comments and discussion. John Cronin said he has spoken with Peter Loughlin and they discussed several directions this appeal could go. He will be happy to meet with Peter again to discuss which option would be the best at this time and whether or not a follow-up visit with the Selectmen is in order or an application with the ZBA.

Kim Farah was asked if there is any opinion from the Board of Selectmen at this time. She said she couldn't speak for the Board. She would personally like to avoid an expense to the town in legal fees. She said it has seemed to the Selectmen that the CVIs indicate a commercial kennel.

It was agreed to meet in about a month's time to allow time for discussion between the town and applicant counselors. Joe made and Curt seconded a **motion to continue the appeal deliberation on December 1, 2015**. The motion **passed** unanimously.

The email policy will be reviewed at the next meeting. Comments can be sent to the clerk for compilation and to be discussed on December 1.

At 8:55pm Chris made and Curt seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk