

COMMONWEALTH OF MASSACHUSETTS
The Trial Court

HAMPDEN, ss.

Superior Court
Civil Action No: **09 295**

JAMES P LAMOUNTAIN DBA HUGUENOT
FARMS @ BONDET HILL CIRCA 1687

Plaintiffs

Vs. TOWN OF HOLLAND HIGHWAY
DEPARTMENT & TOWN OF HOLLAND
BOARD OF SELECTMEN

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAR 25 2009

Brian P. Ples
CLERK-MAGISTRATE

PETITION FOR AN ORDER OF MANDAMUS

NOW COME THE PLAINTIFFS , Who ask this Honorable Court to issue the above order pursuant to MGL 249 s. 5

SUMMARY OF THE COMPLAINT

In August of 2008 the Plaintiffs filed for a Permit to use a Pre Existing Driveway for the purpose of accessing and permitting a proposed farmhouse on 75 acres of Agricultural property controlled by the Plaintiff. The Defendant town requested information other than that required for the permitting process which was provided by the plaintiffs. The Defendant refused to issue the permits as required by law thus depriving the plaintiffs the right to legally access, occupy and farm their agricultural property.

FACTS

1. Plaintiff, James P LaMountain DBA Huguenot Farms @ Bondet Hill circa 1687 lives on 14 Lakeridge Drive Holland Ma 01521 and controls the 75 acres of agriculturally zoned property known as lot 3 on Mashapaug Road, Holland Ma, formerly known as the Blodgette Farm.
2. Holland has a zoning by-law requiring a driveway permit be issued prior to the construction of a new home and the Defendant Town Highway Surveyor and

No. of Pkts. 010
 Fee Paid - \$ 240.00 Cash - Check
 Surcharge Paid - \$ 15.00 Cash - Check
 Security Fee - Paid - \$ 25.00 Cash - Check
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Selectmen of 27 Sturbridge Road Holland Ma 01521 are responsible for the issuance of the local driveway permits in the Town of Holland.

3. Plaintiff applied for a driveway permit in august of 2008 which was denied by the Highway surveyor and the plaintiff re-applied on 31 December 2008 for a driveway permit as required by local zoning regulations, to utilize a pre-existing driveway on mashapaug road in Holland for the purpose of constructing and accessing a farmhouse and Farm for commercial agricultural purposes.
4. Plaintiff posted 3 million dollars insurance naming the town as an additional insured and also posted a Driveway Bond in the amount of \$ 2000.00 which is more than required.
5. The Town has refused to issue the permit.
6. MGL 40A s. 3 restricts towns from making by- laws that prohibit or interfere with the right to engage in commercial agriculture.
7. The Western Housing Court Justice DINA FEIN has made a viewing of the Farm in 2007 and ruled that all activities being conducted on the property are agricultural activities.
8. Agricultural activities are protected under the 97th amendment to the constitution of the Commonwealth of Massachusetts, and are also declared to be a public purpose and are exempt from local municipal jurisdiction or restrictions.
9. The requested access is pre-existing to the property at the time of purchase and a dwelling was on the town tax roles with taxes current at the time of purchase in May of 2006. The pre-existing driveway and structure are shown on a United States Geological Services map for the Wales quadrant.
10. The denial of the access by the Defendants interferes with the Plaintiffs protected pursuit of commercial agricultural activities.
11. The Plaintiff is being harmed as the actions of the Defendants make it impossible for the plaintiffs to construct a farmhouse/farmoffice and occupy the land.

DISCUSSION

By denying the plaintiffs a local "driveway permit" the Defendants are in violation of MGL 40A s, 3 which states in the pertinent part that no zoning ordinance or by-law shall regulate or restrict or require a special permit for the use of land for the primary purpose of commercial agriculture. The Defendant in requiring a driveway permit as a pre requisite for a permit to construct the farmhouse/farm office is in fact regulating and restricting the plaintiff from his

lawful and protected pursuit of commercial agriculture and this clearly violates MGL 40A s.3. The fact that the driveway existed at the time the plaintiff purchased the property should preclude the town from demanding the plaintiffs even need to apply for a permit to use the driveway and is arbitrary by the Defendant Town who does not require every new owner to get such a permit before using their **pre existing** driveways.

Furthermore: " Access to a public way is an **incident of ownership** of land bordering on that public way" "Government action amounting to a substantial interference with the basic right incident to the use of private property constitutes in fact a constructive taking." *Pauls Lobster Inc. V comm.* 53 Mass APP. CT 227, 758 N.E. 2d 145, (2001).

Also: "Access to a public way is a **right of ownership** appurtenant to land abutting that public way." *General Hospital Corp. v. Mass bay Transp. Authority* 672 N.E. 2d 521 Mass. (1996)

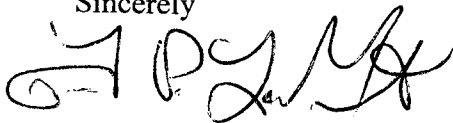
FURTHERMORE: "Power to regulate digging and opening to a highway does not include the power to bar access.." *Wenton v. Comm.*, 138 N.E. 2d 609

CONCLUSION

The Defendant's refusal to issue the permit as required by law amounts to the deprivation of the plaintiffs protected property rights and also a deprivation of the protected right of the Plaintiff to conduct protected commercial agriculture on his property.

Therefore the Plaintiff Farmer respectfully requests this Honorable Court GRANT the Plaintiffs' Petition for an Order of Mandamus to the Defendants to issue the permit as required by law.

Sincerely



25 MARCH 2009

James P LaMountain DBA Huguenot Farms @ Bondet Hill circa 1687
14 Lakeridge Drive
Holland Ma 01521

413 245 4502

pro se

