

## CIVIL ACTION COVER SHEET

U.S. SHERRIFFS Fax: 413/336933  
 Trial Court of Massachusetts  
 SUPERIOR COURT DEPARTMENT  
 County: HAMPDEN

Sep 30 2009 09:50am P013/019

Docket Number  
09 935

## PLAINTIFF(S)

Town of Holland Fire Department

## DEFENDANT(S)

James P. Lamountain and Northeast Concepts, I

## ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

Tani E. Sapirstein, (413) 827-7500  
 apirstein & Sapirstein, PC 1350 Main St. Springfield, MA 01103  
 Board of Bar Overseers number: 236850

## ATTORNEY (if known)

Place an x in one box only:

- ☒ 1. P01 Original Complaint  
☐ 2. P02 Removal to Sup. Ct. C-231-104 (Before trial)  
☐ 3. P03 Re-transfer to Sup. Ct. C-231-103C (X)  
☐ 4. P04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)  
☐ 5. P05 Reactivated after rescript; relief from judgment Order (Mass. R. Civ. P. 60)  
☐ 6. E10 Summary Process Appeal (X)

CODE NO.

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

D99

Injunctive Relief

TRACK

IS THIS A JURY CASE?

( )

( ) Yes

(X) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(Attach additional sheets as necessary)

## A. Documented medical expenses to date:

1. Total hospital expenses
2. Total doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe)

Subtotal \$

## B. Documented lost wages and compensation to date

## C. Documented property damages to date

## D. Reasonably anticipated future medical and hospital expenses

## E. Reasonably anticipated lost wages

## F. Other documented items of damages (describe)

## G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

TOTAL: \$

## CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods.

Signature of Attorney of Record

Tani E. Sapirstein

DATE: 9/25/09

COMMONWEALTH OF MASSACHUSETTS

**X**  
LAMPDEN, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION  
NO. 09-935

Town of Holland  
Fire Department

PLAINTIFF(S)

V.  
James P. Lamountain and  
Northeast Concepts, Inc.

SUMMONS

DEFENDANT(S)

James P. Lamountain  
To the above named defendant: 16 Lakeridge Drive  
Holland, MA

You are hereby summoned and required to serve upon  
Tani E. Sapirstein, Esq.  
1350 Main St. Springfield, MA 01103, plaintiff's attorney, whose address is  
you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do  
so, judgment by default will be taken against you for the relief demanded in the complaint. You are also  
required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before  
service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which  
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter  
of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse, Esq., at Springfield the 25th day of  
September in the year of our Lord two thousand nine

*Brian Keely*  
Clerk / Magistrate

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

FORM No 1

9/30/09

A TRUE COPY ATTEST  
*Donald P. Cartwright*  
DEPUTY SHERIFF HND. CTY.

NOTICE TO DEFENDANT -- You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

Superior Court Department  
Civil Action No. **09 935**

TOWN OF HOLLAND, FIRE )  
DEPARTMENT )

Plaintiff )

v. )

JAMES P. LAMOUNTAIN and )  
NORTHEAST CONCEPTS, INC. )

Defendants )

VERIFIED COMPLAINT AND  
REQUEST FOR INJUNCTIVE RELIEF

The Plaintiff, Town of Holland, Fire Department, ("Town") files this verified complaint and seeks injunctive relief against the Defendants, James P Lamountain, ("Lamountain") and Northeast Concepts, Inc , ("Northeast"), (collectively "Defendants") prohibiting the Defendants from open burning in violation of the Sanitary Code, 310 CMR 7.07 and Mass. General Laws, c. 48, §13 and G.L. c. 111, §142L.

1 Town of Holland, Fire Department, is a department within a municipality with a place of business at 7 Sturbridge Road., Holland, Hampden County, Massachusetts ("Town").

2 James P. Lamountain is an individual with a residence at 16 Lakeridge Drive, Holland, Hampden County, Massachusetts ("Lamountain").

3 Northeast Concepts, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business at 16 Lakeridge Drive, Holland, Hampden County, Massachusetts ("Northeast").

4. On several dates since June, 2009, Lamountain and Northeast have engaged in open burning at Mashapaug Road, Holland, Massachusetts. Specifically, the Defendants engaged in open burning on June 8, 2009, June 22, 2009, August 31, 2009 and September 9, 2009.

5. Paul Foster, the Fire Chief, ("Foster") had previously denied an open burning permit to Lamountain due to the lack of supervision when burning, the disregard to the public safety of adjacent homes and property, and not having proper fire equipment to handle the fires

6. Defendants' blatant disregard of the laws restricting open burning places other property owners at risk and unnecessarily utilizes the resources of the Town.

7. On August 31, 2009, Lamountain was arrested by the Massachusetts Environmental Police and Massachusetts State Police for, *inter alia*, violation of G.L. c. 131. At the time of the arrest, there were two open fires burning and the Town was called to extinguish the fires.

8. The total cost for extinguishing the brush fire at Mashapaug Road on August 31, 2009 was \$1,057.50.

9. Neither Lamountain nor Northeast have a permit which would allow  
~~open burning.~~

10. Neither Lamountain nor Northeast qualifies for an open burning permit under any relevant law or regulation.

COUNT I  
VIOLATION OF SANITARY CODE  
310 CMR 7.07  
(Lamountain and Northeast)

11. The allegations contained in Paragraphs 1 through 10 are repeated, reiterated and realleged as if fully set forth herein.

12. The conduct of Defendants violates 310 CMR 7.07.

13. The Town and the public will suffer substantial, immediate and irreparable harm and damages unless Defendants are enjoined from open burning

COUNT II  
VIOLATION OF  
G L. c. 48, §13  
(Lamountain and Northeast)

14. The allegations contained in Paragraphs 1 through 13 are repeated, reiterated and realleged as if fully set forth herein.


15. The conduct of Defendants violates G L. c. 48, §13.

~~16. The Town and the public will suffer substantial, immediate and~~  
irreparable harm and damages unless Defendants are enjoined from open burning.

WHEREFORE, Plaintiff, Town of Holland, Fire Department requests that this honorable Court:

1. issue its Summons and Order of Notice that Defendants answer this verified complaint and appear for a hearing on the Motion for Preliminary Injunction at 2:00 p.m. on October 6, 2009;
2. after hearing, issue a preliminary injunction enjoining and restraining Defendants from open burning in the Town of Holland unless expressly and specifically authorized by the Fire Chief;
3. after trial, enter a permanent injunction in the form set forth in paragraph 2;
4. award the Plaintiff its damages, attorney fees, costs and interest; and
5. award such other relief as the Court may deem appropriate.

The Plaintiff,  
Town of Holland, Fire Department  
By its attorney,

  
Tani E. Sapirstein, Esq.

~~BBO No. 236850~~

Sapirstein & Sapirstein, P.C.  
1350 Main Street, 12<sup>th</sup> Floor  
Springfield, MA 01103  
Tel. (413) 827-7500  
Fax (413) 827-7797

Dated: September 25, 2009

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

Housing Court Department  
No. 06H79CV000392

TOWN OF HOLLAND FIRE  
DEPARTMENT FOR THE

Plaintiff

v.

JAMES LAMOUNTAIN

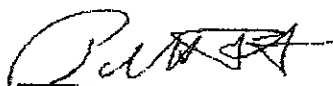
Defendant

VERIFICATION

I, Paul Foster, hereby depose and state as follows:

1. I am the Fire Chief for the Town of Holland, the Plaintiff in this matter.
2. I have read the Verified Complaint and have found that the allegations of fact set forth therein are based on my own personal knowledge and are true, except as to those allegations based on information and belief which I believe to be true.

Signed under the penalties of perjury on this 24<sup>TH</sup> day of September,  
2009.

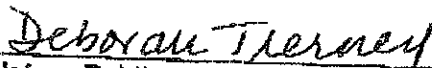


Paul Foster

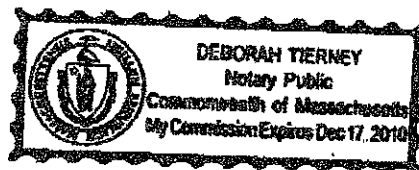
## COMMONWEALTH OF MASSACHUSETTS

, SS.

On this the 24<sup>th</sup> day of September, 2009, before me, the undersigned notary public, personally appeared Paul Foster, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily and for its stated purpose.



Notary Public

My commission expires: 12/17/10



C. Denied.

D. Denied.

E. Denied.

#### FIRST AFFIRMATIVE DEFENSE

The counterclaim fails to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

The Defendants' claims are barred by the applicable statute of limitations.

#### THIRD AFFIRMATIVE DEFENSE

The claims in the counterclaim are barred by the doctrines of equitable estoppel and *res judicata*.

#### FOURTH AFFIRMATIVE DEFENSE

The claims contained in the counterclaim are frivolous and without merit in violation of relevant statutes, pursuant to which the Plaintiff/Defendant in Counterclaim seeks an award of attorneys' fees.

WHEREFORE, the Town of Holland Fire Department respectfully requests that this honorable Court:

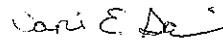
1. Dismiss the counterclaim in its entirety;
2. Enter judgment for the Plaintiff/Defendant in Counterclaim;

3. Deny the relief requested by the Defendants/Plaintiffs in Counterclaim;

4. Award the Plaintiff/Defendant in Counterclaim attorneys' fees and costs; and

5. Award the Plaintiff/Defendant in Counterclaim such other relief as the Court deems appropriate.

The Plaintiff/Defendant in Counterclaim,  
Town of Holland Fire Department  
By its attorney,



Tani E. Sapirstein, Esq.  
BBO No. 236850  
Sapirstein & Sapirstein, P.C.  
1350 Main Street, 12<sup>th</sup> Floor  
Springfield, MA 01103  
Tel. (413) 827-7500  
Fax (413) 827-7797

Dated: November 2, 2009


### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above document was served upon the following via first class mail, postage prepaid, to:

James P. LaMountain  
41 Lakeridge Drive  
Holland MA 01521

Chad E. Brigham  
Northeast Concepts, Inc.  
16 Lakeridge Drive  
Holland MA 01521

Dated: November 2, 2009

  
Tani E. Sapirstein

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

Superior Court Department  
Civil Action No. 09-935

TOWN OF HOLLAND, FIRE )  
DEPARTMENT )

Plaintiff )

v. )

JAMES P. LAMOUNTAIN and )  
NORTHEAST CONCEPTS, INC. )

Defendants )

AFFIDAVIT OF PAUL FOSTER

Affiant, Paul Foster, being of sound mind and over twenty-one (21) years of age, deposes and states, under the pains and penalties of perjury, as follows:

1. I am the Fire Chief for the Town of Holland and have been in such position at all times relevant to the above-captioned cause of action.

2. On several dates, James P. LaMountain and Northeast Concepts, Inc., have engaged in open burning at Mashapaug Road, Holland, Massachusetts.

3. Specifically, the Defendants engaged in open burning on June 8, 2009, June 27, 2009 and August 31, 2009.

4. I had previously denied an open burning permit to James P. LaMountain due to the lack of supervision when burning, the disregard to the public safety of adjacent homes and property, and not having proper fire equipment to handle the fires.

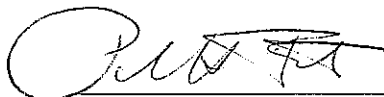
5. Fires which burn stumps are not cooking fires. The fire on August 31, 2009, consisted of stumps and large tree trunks.

6. There were no fire pumps visible to me on August 31, 2009 on the LaMountain property.

7. A well pump does not supply sufficient volume or pressure to combat a fire.

Further Affiant sayeth not.

Dated: October 21, 2009



Paul Foster

COMMONWEALTH OF MASSACHUSETTS

*Hampden*, ss.

On this the 21<sup>st</sup> day of October, 2009, before me, the undersigned notary public, personally appeared Paul Foster, and proved to me through satisfactory evidence of identification which was personal knowledge, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily and for its stated purpose.



KRISTIN M. LAPLANTE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
June 2, 2011

*Kristin M. LaPlante*  
Notary Public KRISTIN M LAPLANTE  
My commission expires: *June 2, 2011*

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss

Superior Court Department  
Civil Action No. 09-935

TOWN OF HOLLAND, FIRE )  
DEPARTMENT )  
Plaintiff )  
 )  
v. )  
 )  
JAMES LAMOUNTAIN and )  
NORTHEAST CONCEPTS, INC., )  
Defendants )

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Plaintiff, Town of Holland, Fire Department ("Town") seeks injunctive relief enjoining and restraining the Defendants, James LaMountain ("LaMountain") and Northeast Concepts, Inc. ("Northeast") (collectively "Defendants") from open burning in the Town of Holland unless specifically and expressly authorized by the Fire Chief.

FACTUAL BACKGROUND

In June, 2007, the Housing Court Department, Western Division issued findings, rulings, and order for entry of permanent injunction in *Fire Department, Town of Holland v. James LaMountain*, Docket No. 06-cv-00392. Included in this order, a copy of which is attached hereto for the convenience of the Court as Exhibit "A", the Housing Court (Fein, J.) found that the relevant regulation (310 CMR 7.07(3)(e)) mandates the hours during which seasonal brush burning must take place and allows the Town authority to condition issuance of a permit for agricultural burning as the Fire Department determines to be necessary to

protect against fire hazards. (See ¶ 15) The Housing Court noted that the Fire Chief could "withhold permission or place conditions upon his permission if deemed necessary in light of meteorological conditions to protect the public safety." (See ¶ 16). The ruling expressly did not abrogate the authority of the Fire Chief and the determination of the Fire Chief was binding on the defendant LaMountain and those acting on his behalf.

The Housing Court issued a permanent injunction prohibiting LaMountain "from conducting open burns at the property except pursuant to, and upon such conditions as required by, agricultural burning permits issued for not more than two day intervals by the Chief of the Fire Department for the Town of Holland."

In August, 2006, Northeast and Huguenot Farms, Inc. obtained a Forest Cutting Plan Certificate ("Certificate") from the Department of Conservation and Recreation ("DCR"). On December 31, 2008, the DCR issued a Stop Order to cease and desist from forest cutting and related operations due to the failure to follow the Forest Cutting Plan. A copy of the Stop Order is attached hereto as Exhibit "B".

On or about June 8, 2009, the Town of Holland Fire Department investigated a complaint of open burning on land owned by Northeast and/or LaMountain. Upon investigation, it was discovered that the open burning of brush was occurring or had just occurred. A copy of the June 8, 2009 Incident Report is attached hereto as Exhibit "C".

On June 9, 2009, Paul Foster, the Fire Chief ("Foster") performed a follow up investigation of the complaint from the previous day. Michael LaMountain<sup>1</sup> admitted to Foster that he had been generally burning one load of brush per day. Foster had previously denied the issuance of a burning permit due to the lack of

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<sup>1</sup> According to records maintained by the Secretary of State, Michael LaMountain is a Director of Northeast

supervision when burning, disregard to public safety of adjacent homes and property and not having proper equipment on hand to handle fires. A copy of the June 12, 2009 inspection report is attached hereto as Exhibit "D".

On or about June 27, 2009<sup>2</sup>, a complaint was received by the Fire Department of open burning on the LaMountain property. Upon inspection, some warm coals were discovered. A copy of the June 27, 2009 incident report is attached hereto as Exhibit "E".

On or about August 31, 2009, Massachusetts Environmental Police Lieutenant Charles Ziembra observed a large pile of stumps burning on one portion of the LaMountain property and two separate piles of smoldering hot ashes and burning stumps on another part of the LaMountain property. Upon questioning Jarred Hagerty, who was operating an excavator, he stated that LaMountain lit the fires. LaMountain was arrested. A copy of Lt. Ziembra's Narrative is attached hereto as Exhibit "F". The Fire Department was called upon to extinguish the fires. A copy of the August 31, 2009 Incident Report is attached hereto as Exhibit "G".

### LEGAL ARGUMENT

The legal standard for the issuance of a preliminary injunction is: i) a likelihood of success on the merits and balancing the risk of irreparable harm to the moving party if the injunction does not issue against the risk of irreparable harm to the enjoined party if the injunction issues. A preliminary injunction should issue if the risk of irreparable harm to the moving party if the injunction does not issue outweighs the risk of irreparable harm to the enjoined party if the injunction does issue. *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

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<sup>2</sup> The Verified Complaint inadvertently identifies June 22, 2009 as date on which Defendants engaged in open burning. The actual date was June 27, 2009



The Town of Holland is likely to prevail on the merits underlying this cause of action and in fact has prevailed on substantially similar facts in the Housing Court. In 2007, Judge Fein issued an injunction prohibiting LaMountain from conducting open burns without a permit issued by the Chief. There is indisputable evidence of the conduct of four (4) open fires without a permit. The Certificate, which has since been revoked, was in effect at the time of the ruling of the Housing Court. The conduct of open burning not only violates Massachusetts law and relevant regulations, but also violates the injunction issued by the Housing Court. There is sufficient evidence to conclude that the Town is likely to prevail on the merits in this matter.

The failure or refusal to issue the requested injunctive relief will potentially irreparably harm the Town while the granting of the requested relief will not result in any injury to the Defendants. The continuation of open burning without a permit has the potential risk of damaging adjacent properties particularly in light of the lack of supervision and not having the proper equipment available to handle fires.

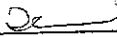
If the requested injunctive relief is granted, the Defendants will merely be required to obtain a permit prior to conducting open burning in compliance with relevant law and regulations. There is no risk of irreparable harm to Defendants if this request is granted. Therefore, the balancing of the risk of irreparable harm is properly struck in favor of the Town and therefore, the injunctive relief should issue. *See Hull Municipal Lighting Plan v. Massachusetts Municipal Wholesale Electric Co.*, 399 Mass. 640 (1987).

WEREFORE, for the foregoing reasons, the Town of Holland, Fire Department respectfully requests that:

1. A hearing on this Motion be conducted; and

2. This Court issue a preliminary injunction restraining and enjoining the Defendants from open burning in the Town of Holland unless a permit is first obtained from the Fire Chief for the Town of Holland.

The Plaintiff,  
Town of Holland, Fire Department  
By its attorney,

  
Tani E. Sapirstein, Esq.  
BBO No. 236850  
Sapirstein & Sapirstein, P.C.  
1350 Main Street, 12<sup>th</sup> Floor  
Springfield, MA 01103  
Tel. (413) 827-7500  
Fax (413) 827-7797

Dated: November 2, 2009


**CERTIFICATE OF SERVICE**

Pursuant to Superior Court Rule 9A, I hereby certify that a copy of the above document was served upon the following via first class mail, postage prepaid, to:

James P. LaMountain  
41 Lakeridge Drive  
Holland MA 01521

Chad E. Brigham  
Northeast Concepts, Inc.  
16 Lakeridge Drive  
Holland MA 01521

Dated: November 2, 2009

  
Tani E. Sapirstein

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

Superior Court Department  
Civil Action No. 09-935

TOWN OF HOLLAND, FIRE )  
DEPARTMENT )

Plaintiff )

v. )

JAMES LAMOUNTAIN and )  
NORTHEAST CONCEPTS, INC., )  
Defendants )

MOTION FOR PRELIMINARY  
INJUNCTION

Plaintiff, Town of Holland, Fire Department, ("Town") moves for a preliminary injunction as reflected in Paragraphs 4 through 11 of the Verified Complaint. In support thereof, the Town relies upon the Memorandum of Law and Affidavits filed herewith.

WHEREFORE, the Plaintiff, Town of Holland, Fire Department, moves that this Court issue a preliminary injunction pursuant to Mass.R.Civ.Pro. 65(b).

The Plaintiff,  
Town of Holland, Fire Department  
By its attorney,

Tani E. Sapirstein  
Tani E. Sapirstein, Esq.  
BBO No. 236850  
Sapirstein & Sapirstein, P.C.  
1350 Main Street, 12<sup>th</sup> Floor  
Springfield, MA 01103  
Tel. (413) 827-7500  
Fax (413) 827-7797

Dated: November 2, 2009

**CERTIFICATE OF SERVICE**

Pursuant to Superior Court Rule 9A, I hereby certify that a copy of the above document was served upon the following via first class mail, postage prepaid, to:

James P. LaMountain  
41 Lakeridge Drive  
Holland MA 01521

Chad E. Brigham  
Northeast Concepts, Inc.  
16 Lakeridge Drive  
Holland MA 01521

Dated: November 2, 2009


  
\_\_\_\_\_  
Tani E. Sapirstein

EXHIBIT # A

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. 06-CV-00392

FIRE DEPARTMENT, TOWN OF  
HOLLAND,

Plaintiff

v.

JAMES LaMOUNTAIN,

Defendant

FINDINGS, RULINGS, AND ORDER  
FOR ENTRY OF PERMANENT  
INJUNCTION

Following evidentiary hearing and a view by the court, the following findings of fact and rulings of law shall enter in the above-captioned matter:

1. **Introduction:** This matter is before the court on an application by the Fire Department for the Town of Holland ("Holland;" "the Town"), for an order prohibiting the defendant James LaMountain ("LaMountain") from burning wood and other debris at the property known as the Mashapaug Road lot ("the subject property;" "the property"). The parties have agreed that the outcome of this case turns on a determination as to whether LaMountain is engaged in agricultural activity at the subject property. LaMountain maintains that he is engaged in agricultural activity at the subject property, and is therefore exempt from regulation with respect to burning. Holland submits that LaMountain's burning is subject to reasonable regulation, even assuming he is engaged in agricultural activity.

2. ***Findings of Fact:*** The subject property is a 79 acre parcel of land located across Mashapaug Road from the Hamilton Reservoir, in Holland. The property is owned by Northeast Concepts, Inc. ("Northeast Concepts"), which acquired title by deed dated February 16, 2006. There are two collapsed structures on the property, and existing residential structures on adjoining parcels.

3. Huguenot Farms, Inc. ("Huguenot"), a Massachusetts corporation organized for the purpose of engaging in farming, owns the majority of shares in Northeast Concepts. LaMountain is the sole director and officer of Huguenot. Michael LaMountain, the son and business partner of James LaMountain, owns 10,000 shares of Northeast Concepts, and shares are also owned by an individual named Chad Brigham.

4. Huguenot conducts farming activity on a parcel of land located in Oxford, Massachusetts, owned by Michael Leduc ("Leduc"). For a number of years, LaMountain and Leduc have operated the Huguenot farm in Oxford in partnership with one another, although the partnership is not documented, nor does it file a partnership tax return. The Oxford property is used for raising cattle, growing grass, and selling sod and loam. Huguenot currently purchases most of the grass used to feed the cows which graze on the Oxford farm.

5. LaMountain, as the sole director and officer of Huguenot, and Northeast Concepts are attempting to develop the subject property for residential and agricultural use. They have identified six potential residential lots, representing between 5 and 10% of the total property, to be located on a ridge which rises above Mashapaug Road and overlooks the Hamilton Reservoir. The potential lots are located in a residence zone. Chad Brigham is responsible for the residential development. LaMountain wishes to develop the remaining portion of the property

into pasture land, for raising cows and growing grass to feed them and the cows on the Oxford farm. This portion of the property is located in an agricultural-residence zone.

6. In order to develop the subject property into pasture land, Northeast Concepts and Huguenot Farms wish to clear trees and brush. In August, 2006, they obtained a forest cutting plan certificate from the Department of Conservation and Recreation. Prior to obtaining the certificate, individuals acting on behalf of the two corporations began clearing trees and burning brush, without a permit from the Fire Department. Holland then initiated this case, alleging that the defendant was conducting burns late at night, that adjoining property owners were complaining of smoke, and that LaMountain had instructed his associates to block access to the property by public safety personnel.

7. On July 14, 2006, the defendant agreed not to conduct burns at the subject property until a permit was issued by the Holland Fire Department. LaMountain and Huguenot Farms applied for a permit which was allowed, and authorized "agricultural burning" through October 31, 2006. LaMountain or individuals acting on his behalf conducted open burns at the property after October 31, 2006. By order entered on November 28, 2006, the court prohibited the defendant from conducting any open burns at the property in the absence of authorization by permit or the court. Holland thereafter issued another permit allowing open burning for a limited period between the hours of 10:00 a.m. and 4:00 p.m.

8. LaMountain has attempted to obtain a agricultural preservation grant for the property, but has failed to date to complete the application process. LaMountain has targeted 30 acres of the property for agricultural development, and has partially cleared 14 acres, having cut down trees, cleared brush, and removed rocks. He or others acting on his behalf have rebuilt small areas of



stone walls, cleared out drainage ditches, maintained an access road to the upper portion of the property, constructed a very minimal structure which they characterize as a pig pen, and planted ½ acre of grass. No animals or crops are presently being raised on the property, although LaMountain intends to raise cows there when the pastures are restored.

9. On February 19, 2007, LaMountain's business partner at the Oxford farm, Michael Leduc, paid Huguenot Farms \$400 for "forest products" acquired at the property. On May 18, 2006, Huguenot Farms sold forest sod and four laurels from the property to Redtail Associates, Inc., which paid by a check in the amount of \$2,700, signed by Mr. Leduc. On two occasions in October, 2006, Northeast Concepts sold logs harvested from the property to Cersosimo Lumber Co. Inc., which paid, respectively, \$3,100 and \$1,142.77.<sup>1</sup>

10. *Statutory and Regulatory Framework:* G.L. c. 111, §142L provides in pertinent part as follows:

**Notwithstanding the provisions of sections one hundred and forty-two A to one hundred and forty-two E, inclusive, the burning of tree prunings, diseased plant materials, and brush from land clearing operations, which are the direct result of the normal commercial pursuit of agriculture, as defined in section one A of chapter one hundred and twenty-eight, shall be allowed subject to the permission of the local fire chief which need not be in writing. Said permission shall be based solely upon whether or not appropriate meteorological conditions exist to ensure safe burning.<sup>2</sup>**

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<sup>1</sup> It appears from the record, Exhibit 5, that Northeast may also have sold timber to Scotland Hardwoods

<sup>2</sup> G.L. c.128, §1A defines "agriculture" to include the following:

[F]arming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry

11. 310 C.M.R. 7.07(3) provides in pertinent part as follows with respect to open burning:

**Except during periods of adverse meteorological conditions...310**

**CMR 7.07(1) shall not apply to open burning conducted for...**

**c) open burning of brush and trees resulting from agricultural land clearing operations...**

**(e ) the disposal of brush, cane, driftwood, and forestry debris excluding grass, hay, leaves, and stumps from January 15 to May 1 of each year. All such open burning shall be conducted:**

- 1. on land proximate to the place of generation,**
- 2. at a location greater than 75 feet from any dwelling, and**
- 3. between ten o'clock A.M. and four o'clock P.M.**

**No such open burning shall apply to commercial or institutional land clearing for non-agricultural purposes...**

**(g) open burning as described in 310 CMR 7.07(3)(a) through 310 CMR 7.07(3)(f) must be conducted:**

- 1. during periods of good atmospheric ventilation,**
- 2. without causing a nuisance,**
- 3. with smoke minimizing starters if starters or starting aids are used, and**
- 4. under the provisions of a properly executed permit issued under the provisions of M.G.L. c. 48, s. 13**

12. G.L. c. 48, §13 provides that “[n]o person shall set, maintain or increase a fire in the open air at any time except by permission, covering a period not exceeding two days from the date thereof, granted by the ...chief of the fire department...”

13. ***Rulings of Law:*** For purposes of this case, the above-referenced statutes and regulations signify that the defendant is allowed to conduct open burning only if engaged in agricultural land clearing, and then only during periods of good atmospheric conditions, without causing a

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or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

nuisance, with smoke minimizing starters if starters or starting aids are used, and only for two days immediately following issuance of a permit by the Chief of the Fire Department.

14. The defendant intends to use portions of the property for agriculture, and portions for residential development. The defendant has not taken any steps to date with respect to the potential residential development, other than having the land surveyed. (Exhibit 2). Were there evidence of actual activity at the property directed towards residential development, the court would be required to evaluate it in relation to the proposed burning, to determine whether the proposed burning was “incidental” to agricultural activity and exempt thereby. See *Henry v. Board of Appeals of Dunstable*, 418 Mass. 841 (1994). At this stage, however, the only activity which is being conducted at the property is agricultural in nature: selling sod; cutting and selling timber; and beginning the process of restoring pastures. I therefore conclude that open burning on the property is permitted, within the constraints set forth in 310 CMR 7.07(3). The Town is free, however, to petition the court for an appropriate order at such time, if at all, as the defendant or those acting on his behalf engage in commercial real estate development and/or other non-agricultural activity at the property.

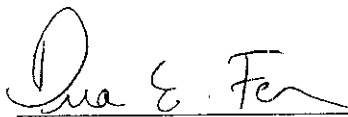
15. LaMountain has argued that the Town is not permitted to restrict the hours during which he may engage in agricultural burning. I disagree. 310 CMR 7.07(3)(e) mandates the hours during which seasonal brush burning must take place. The regulation does not, however, limit the Town’s authority to condition issuance of a permit for agricultural burning on such terms as the Fire Department determines to be necessary to protect against fire hazards.

16. In addition, G.L. c. 48, §13 requires permission of the Chief of the Fire Department in order to conduct agricultural burning, and G.L. c. 111, §142L provides that the Chief’s

permission shall be based solely upon whether or not appropriate meteorological conditions exist to ensure safe burning. Implicit in these requirements is the right of the Chief to withhold permission, or place conditions upon his permission, if deemed necessary in light of meteorological conditions to protect the public safety. Agricultural burning is permitted as a limited exception to the general prohibition against open burning. It is for the Fire Chief, in the exercise of his unique expertise, to determine whether and under what conditions that exception might safely be exercised. This ruling does not in any way abrogate that authority, and the determination of the Fire Chief whether, and on what conditions, to issue a two-day permit for agricultural burning under G L c. 48, §13, shall be binding upon the defendant and those acting on his behalf.

17. ***RULING AND ORDER:*** Based upon the foregoing, a permanent injunction shall issue, prohibiting the defendant from conducting open burns at the property except pursuant to, and upon such conditions as required by, agricultural burning permits issued for not more than two day intervals by the Chief of the Fire Department for the Town of Holland.

So entered this 5<sup>th</sup> day of June, 2007.



Dina E. Fein  
Associate Justice

cc: Kevin R. Byrne, Sr.  
Chief Housing Specialist