

THE STATE OF NEW HAMPSHIRE

STRAFFORD, S.S.

SUPERIOR COURT

Town of Lee
249 Calef Highway
Lee, NH 03861
v.

Jay Scott Grumbling
55 High Road
Lee, NH 03861

and

Boulder Brook Stables, LLC
596 Calef Highway
Lee, NH 03861

and

Amanda Hanson, Manager
Boulder Brook Stables, LLC
596 Calef Highway
Lee, NH 03861

Docket No. 219-2022-CV-00290

**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIONS AND
ATTORNEYS' FEES**

NOW COMES the Town of Lee, by and through its attorneys, Mitchell Municipal Group, P.A., and, in complaining against Jay Scott Grumbling, Boulder Brook Stables, LLC, and its Managing Member Amanda Hanson, and states as follows:

1. Jay Scott Grumbling is the owner of property located at 596 Calef Highway ("the property"). That property houses a business known as Boulder Brook Stables, LLC, which operate a horse farm on the property. Boulder Brook Stables, LLC's registered agent is Patricia A. Morris, 840 South Barnstead Road, Center Barnstead, NH 03225.

2. Mr. Grumbling, Ms. Hanson and Boulder Brook Stables, LLC are currently operating the property in violation of the State Fire Code. Although the town has attempted to work with Mr. Grumbling for over two years to bring the property into compliance in a reasonable time frame, Mr. Grumbling has refused to undertake the required improvements. The town therefore seeks preliminary and permanent injunction to prohibit the occupancy of the barn on the property unless and until the required health, safety and welfare upgrades are completed; as well as reimbursement of its attorneys' fees.

3. According to its website:

Boulder Brook Stables is a 40-stall full service equine facility . . . [which offers] a wide variety of services, including quality care horse boarding, a competitive training program, and a fully customizable lesson program in multiple disciplines. Boulder Brook Stables includes a 100' x 200' Cover-All indoor arena, heated viewing room, 12 x 12 matted stalls, and a wide variety of daily turnout options.

4. In 2020, Mr. Grumbling applied for site plan approval for various non-agricultural activities occurring on the property. Although that was an after the fact application (because the activities were already illegally occurring on the property), the town treated the application as if it were submitted prior to the commencement of the activities.

5. As part of that review, the fire department was asked to opine on the application. The Deputy Fire Chief attended a site visit to the property on February 22, 2020, after which he instructed Mr. Grumbling to consult with a fire protection engineer to determine what needed to be done to bring the property into compliance with the New Hampshire State Fire Code. See Exhibit 1.

6. Mr. Grumbling retained Nortech Systems to complete a code review with respect to fire and life safety for the horse arena on the property, and to make recommendations regarding the improvements necessary to bring the property into compliance. See Exhibit 2.

7. In September, 2020, the Deputy Fire Chief reached out to Mr. Grumbling to get an update on the installation of the improvements recommended by Mr. Grumbling's fire engineer. In response, Mr. Grumbling indicated that because the stables and riding facility were previously constructed and has had the same continuous use over the years, he would not be implementing any of the recommendations unless and until the use of the building changes or additional uses are added. See Exhibit 3.

8. While Mr. Grumbling's position is understandable, it ignores the New Hampshire Supreme Court's holding in the case of Fischer v. New Hampshire State Building Code Review Board, 154 N.H. 585, 589 (2006), that "in some instances, the code imposes different requirements on new and existing buildings and that 'requirements for 'existing buildings' will apply if more restrictive than those imposed at the time of construction plan approval.'"

9. After further communications between the Deputy Fire Chief and Mr. Grumbling, the Lee Fire Department met with Mr. Grumbling on April 1, 2021 to discuss developing a plan of action to address the issues outlined in the Nortech report. As of October 12, 2021, Mr. Grumbling had had the fire alarm system and extinguisher inspection completed. The Deputy Fire Chief followed upon that date with a further e-mail requesting another meeting to come up with a plan to complete the next phase of compliance. See Exhibit 4.

10. In response, Mr. Grumbling's registered agent and attorney wrote a letter questioning the Nortech Report which had been prepared by Mr. Grumbling's chose fire engineer and at Mr. Grumbling's direction. See Exhibit 5.

11. In 2022, Mr. Grumbling retained new counsel, who represented that there are fire extinguishers at all required locations, that a knox box had been installed at the gate to ensure fire department access, and that an extensive fire alarm system with pull stations and a horn/strobes had been installed. See Exhibit 6. He refused to undertake any additional upgrades until all other barns in town are required to do so. See Exhibit 7. This left the town with no other choice than to bring this action.

12. RSA 155-A, I requires that all buildings comply with the state fire code. Building is defined in RSA 153:1 as "any structure, framework or housing, public or private, excluding single family dwellings . . . and multi-unit dwellings." It therefore includes the horse facility on the property. The state fire code is defined as "the Life Safety Code 2015 edition and the Uniform Fire Code NFPA 1, 2015 edition, as published by the National Fire Protection Association."

13. NFPA §1.3.2.4 and §13.1 both provide that existing buildings and uses may be required to come into compliance with current code requirements to the extent that the Authority Having Jurisdiction determines that the existing conditions constitute an imminent danger, or that the modifications are required to provide and maintain for reasonable life safety against the hazards of fire, explosion and panic.

14. Based on the Nortech Report, the Lee Fire Chief has determined that these conditions exist at the property, and that full compliance with the recommendations set forth in the Nortech Report is required. The defendants are therefore required to come

into full compliance with that report, and have refused to do so.

15. The town therefore seeks preliminary and permanent injunctive relief pursuant to RSA 676:15 to require defendants to cease all occupancy of the horse facility on the property unless and until the recommendations made by Nortech are implemented.

16. Based on the facts herein, an order of preliminary relief is warranted, because the town has established that defendants have violated town and state law and there is a cognizable danger of recurrent violations, the town has no adequate remedy at law, and will likely succeed on the merits of its claims. See, e.g., State of NH v. Mottolo, 155 N.H. 57, 63-4 (2007).

17. Pursuant to RSA 676:17, the town also seeks reimbursement of its attorneys' fees and costs incurred in this matter.

17. An Affidavit of Scott Nemet, Lee Fire Chief, is attached hereto as Exhibit 8.

WHEREFORE, the Town of Lee respectfully requests that this Honorable Court:

A. Issue preliminary and permanent injunctive relief to require defendants to cease all occupancy of the horse facility on the property unless and until the recommendations made by Nortech are implemented;

B. Award the town its costs and attorneys' fees incurred in this matter; and

C. Grant such other and further relief as the Court deems just and necessary.

-6-

Respectfully submitted,

TOWN OF LEE

By Its Attorneys
MITCHELL MUNICIPAL GROUP, P.A.

Date: September 22, 2022

By: */s/ Laura Spector-Morgan*
Laura Spector-Morgan, Bar No. 13790
25 Beacon Street East
Laconia, New Hampshire 03246
(603) 524-3885

EXHIBIT 1



LEE FIRE & RESCUE DEPARTMENT

20 George Bennett Road
Lee, New Hampshire 03861
(P): 603.659.5411 (F): 603.659.9611



Scott M. Nemet
Fire Chief

Jeffrey S. Liporto
Deputy Chief

February 24, 2020

Mr. Grumbling,

Thank you for meeting with myself, Caren Rossi and the members of the Lee Planning Board on Saturday 22, 2020 at your Boulder Brook Stable property on 596 Calef High Way. After the site inspection and our discussions on site about the current status regarding the Boulder Brook Stables' fire code compliance, I consulted with Chief Scott Nemet and we have decided that we will need you to consult a Certified Fire Protection Engineer to determine what needs to be done to bring the property into compliance with the NH State Fire Code. After consulting with the fire protection engineer and obtaining a certified report outlining what needs to be done to bring the property into compliance we can meet and discuss a plan of action. This is the process that should have been implemented in 2006 before you were issued an Occupancy Permit to operate the building. Please feel free to contact myself or Chief Nemet with any questions.

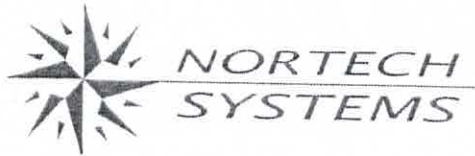
Best Regards,

Jeffrey Liporto
Deputy Chief
Lee Fire & Rescue
20 George Bennett Rd.,
Lee, NH 03861
(603) 659-5411

CC Planning and Zoning Office

Professionalism • Integrity • Teamwork • Courtesy • Dedication • Compassion

EXHIBIT 2



Code Review: Boulder Brook Stables

June 18, 2020

Submitted to:

Scott Grumbling
Cornerstone Farm
596 Calef Highway
Lee, NH 03861

Project:

Boulder Brook Stables
596 Calef Highway
Lee, NH 03861

Dear Mr. Grumbling,

Nortech Systems (Nortech) has completed a code review for Scott Grumbling, with respect to fire and life safety, for the above-mentioned building. The code review is based on applicable portions of the New Hampshire State Building Code (RSA 155-A). Specifically, the International Existing Building Code (IEBC-2015). It is also based on the New Hampshire State Fire Code (Saf-C 6000). Including, but not limited to, the Fire Code (NFPA 1-2015) and the Life Safety Code (NFPA 101-2015).

Although subsequent and more recent editions of the Fire Code adopt the Standard on Fire and Life Safety in Animal Housing Facilities (NFPA 150), the 2015 edition does not. Chapter 35 of the Fire Code typically directs users to NFPA 150. However, Chapter 35 in NFPA 1-2015 is "reserved". Nortech understands NFPA 150 has gone through major changes since it was last adopted by the State of New Hampshire. This may be the reason for the absence of its adoption. Regardless, the report does not reference NFPA 150.

The report is limited to visual observations made on May 22, 2020. Nortech has tried to note all existing conditions and address all deficiencies. However, hidden areas or unknown deficiencies may exist as no surface materials or furnishings were removed. Results of the report do not nullify additional requirements of the authority having jurisdiction (AHJ).

1 Construction Type

- 1.1 Portions of the exterior walls use combustible or limited combustible materials. The interior walls, as well as the ceiling-roof assemblies, are not rated. The building incorporates a membrane structure. The membrane structure uses a noncombustible frame and a membrane that is flame resistant. According to manufacturer drawings, dated September 10, 2004, the membrane passes the small and large scale tests outlined in the Standard Methods of Fire Tests for Flame Propagation of Textiles and Films (NFPA 701).
 - 1.1.1 According to the National Fire Protection Association (NFPA), the building is of Type V (000) construction.
 - 1.1.2 According to the International Code Council (ICC), the buildings is of Type 5B construction.

2 Level of Exit Discharge (LED)

- 2.1 The level of exit discharge is defined in Section 3.3.85.1 of NFPA 101-2015. It is the lowest story from which not less than 50 percent of the required number of exits and not less than 50 percent of the required egress capacity from such a story discharges directly outside to the finished ground level. Thus, the ground level is deemed to be the level of exit discharge. NFPA counts stories starting from the level of exit discharge and ending with the highest occupiable level. Thus, per NFPA, the building is two stories tall.

3 Story Above Grade Plane

- 3.1 A story above grade plane is any story having its finished floor surface entirely above grade plane, or in which the finished surface of the next floor is: more than 6 feet above grade plane, or more than 12 feet above the finished ground level at any point. The ICC counts stories starting with the story above grade plane and ending with the highest occupiable story containing the occupancy considered. Thus, per ICC, the building is two stories tall.

4 Use and Occupancy

- 4.1 The building contains an office, waiting area/kitchenette, storage, stables, and a paddock.
- 4.1.1 The paddock is used for horse exercise and riding lessons (training and skill development). According to the Owner, classes do not approach 50 people (the stables contain 40 horse stalls). The paddock does not contain bleachers for audience viewing and the building is not situated to host a significant amount of spectators (seating is typical to what is found outside of gymnastics and martial arts classes).
- 4.1.1.1 In the future, the owner may create an outdoor arena. The design of the outdoor arena shall be evaluated at such time. It should not affect the requirements for Boulder Brook Stables.
- 4.1.2 The paddock is used for horse exercise, training, and skill development. It is not used for recreation or amusement. Thus, the building does not contain an assembly occupancy.
- 4.1.2.1 Use of the paddock shall not change without further evaluation. If the paddock is used for recreation or amusement, the building would contain an assembly (A-3) use group. The building would contain an assembly (A-4) use group if the paddock is used for recreation or amusement and spectator seating is added. Such changes in use would require the installation of an automatic sprinkler system.
- 4.2 NFPA considers the office, waiting area/kitchenette, and paddock to be a business occupancy. According to the ICC, the business occupancy is classified as a business (B) use group.
- 4.3 NFPA considers the second floor storage space to be a storage occupancy. According to the ICC, the storage occupancy is classified as a storage (S-1) use group.
- 4.4 NFPA considers the stables to be a storage occupancy. According to the ICC, the storage occupancy is classified as a utility (U) use group.
- 4.5 Boulder Brook Stables shall comply with Section 6.1.14.3 in NFPA 101-2015 for mixed occupancies.
- 4.5.1 Occupancies are not separated by fire-resistance rated construction.

- 4.6 The building is not constructed to contain a hazardous use group. Thus, quantities of hazardous materials shall not exceed the maximum allowable quantities of hazardous materials per control area.
- 4.6.1 Quantities of hazardous material do not appear to exceed the maximum allowable quantities of hazardous materials per control area.

5 Work Area

- 5.1 The building is existing. Thus, it shall comply with existing requirements in NFPA 101-2015. Currently, the building is not undergoing construction, so IEBC-2015 is not applicable.
- 5.2 Construction is required to fix discrepancies in the report. Such construction should consume less than 50 percent of the buildings' aggregate floor area. This is considered a Level 2 alteration in IEBC-2015 and a modification in NFPA 101-2015.
 - 5.2.1 Level 2 alterations shall comply with Chapters 7 and 8 (for Level 1 and 2 alterations, respectively) in IEBC-2015. Unless otherwise noted in IEBC-2015, new work shall comply with the requirements of the International Building Code (IBC-2015), the International Energy Conservation Code (IECC-2015), the International Mechanical Code (IMC-2015) and the International Plumbing Code (IPC-2015) for new construction.
 - 5.2.1.1 Per Section 805.2, Exception 1, in IEBC-2015, the means of egress shall comply with IEBC-2015, unless it complies with NFPA 101-2015.
 - 5.2.2 Modifications shall comply with NFPA 101-2015. Newly constructed elements, components and systems shall comply with the requirements of the Code applicable to new construction. The remainder of the building must meet the requirements of the Code applicable to the buildings' existing occupancy chapters.
- 5.3 If a project scope of work ever converts the second floor storage to a dwelling unit, this would be a change in occupancy from a storage (S-1) use group to a residential (R-3) use group. Per IEBC-2015 and NFPA 101-2015, this would be classified as a change to an equal or lesser hazard category.
 - 5.3.1 Such a change in use would require further evaluation. It would likely require the dwelling unit to be separated from the remainder of the building by 1-hour fire-resistance rated construction and equipped with an automatic sprinkler system.
 - 5.3.1.1 The current storage space is also required to be separated from the remainder of the building by 1-hour fire-resistance rated construction. Reference Section 11 of the report for further information.

6 Building Height and Area

- 6.1 Per IEBC-2015, the building height and area are deemed acceptable.
- 6.2 If a project scope of work ever increases building area (excluding the addition of exit stairs) or creates a change in occupancy to a higher-level hazard category, the building height and area shall be evaluated in accordance with Sections 1102.2 or 1012.5.1 in IEBC-2015, respectively.
 - 6.2.1 The existing occupancies are housed in a facility with an area that exceeds allowable areas for new construction. Thus, an evaluation of building area would have significant implications.
 - 6.2.1.1 Such an evaluation would likely require the following:
 - 6.2.1.1.1 The installation of an automatic sprinkler system.
 - 6.2.1.1.2 The separation of occupancies by fire-resistance rated construction.

7 **Means of Egress**

- 7.1 Per Section 7.1.5.1(1) in NFPA 101-2015, the means of egress has a ceiling height of at least 7 feet, with projections from the ceiling at least 6 feet 8 inches above finished floor.
- 7.2 Per Section 7.5.2.1 in NFPA 101-2015, means of egress do not pass through kitchens, storage rooms, closets, or spaces used for similar purposes.
- 7.3 Per Section 7.4.1 in NFPA 101-2015, outside of common paths of travel, spaces shall be equipped with at least two exit access doorways.
 - 7.3.1 The second floor storage space is not provided adequate means of egress. It is currently equipped with a non-exit stair that is classified as a two-story opening with partial enclosure, in accordance with Section 8.6.8 in NFPA 101-2015.
 - 7.3.1.1 Equip the second floor storage space with an exit. Per Section 42.2.4(2) in NFPA 101-2015, a single means of egress is allowed from the second floor storage space, provided the exit can be reached within the distance permitted as a common path of travel (travel distances are measured in right angles). Per Table 42.2.5 in NFPA 101-2015, the common path distance for the non-sprinklered ordinary hazard storage space shall not exceed 50 feet. The size of the second floor storage space likely needs to be decreased to be served by a single means of egress and comply with the common path of travel restriction.
 - 7.3.1.2 The following options can serve as a second floor exit. These options would be considered nonoccupiable appendages. Per Section 1102.2 in IEBC-2015, nonoccupiable appendages shall be permitted beyond the area that is permitted in IBC-2015.
 - 7.3.1.2.1 An exit stair shaft that discharges to the exterior of the building at ground level in accordance with Section 7.1.3.2 in NFPA 101-2015. The shaft shall be enclosed in 1-hour fire-resistance rated construction. The interior door-frame assembly shall be 1-hour fire rated. The interior door shall be self-latching and equipped with a closer.
 - 7.3.1.2.2 An outside exit stair in accordance with Section 7.2.2.6 in NFPA 101-2015. The outside stair shall be separated from the interior of the building by 1-hour fire-resistance rated construction. The door-frame assembly shall be 1-hour fire rated. The door shall be self-latching and equipped with a closer. Openings around the exterior stair shall have a minimum 45-minute fire protection rating. Reference Exhibit 7.1119 in NFPA 101-2015 to visualize the extent of required protection. Wall and window protection shall extend vertically from the ground to a point 10 feet above the top landing of the stairs or to the roofline, whichever is lower. Wall and window protection shall extend horizontally from the edge of the stair for not less than 10 feet.
- 7.4 The first floor occupant load does not exceed 278 people [6,048/500 (stable) + 6,048/500 (stable) + 507/15 (waiting area/kitchenette) + 20,900/100 (paddock) + 1,053/100 (remaining gross square footage from offices, walls, stairs, etc.), rounded up]. Once upgrades are complete, the first floor will be equipped with at least 8 exterior exit doors [one office, two front paddock (one on each side of the office space), one back paddock, and two on each far end of the two stables]. Each exterior door will have a minimum egress capacity of 160 people. This exceeds the demand set forth by the occupant load.

- 7.5 The occupant load for the second floor does not exceed 4 people [1,560/500 (storage), rounded up] Once upgrades are complete, the second floor will be equipped with an exit stair. It will have a minimum egress capacity of 140 people. This exceeds the demand set forth by the occupant load.
- 7.6 Doors shall comply with Section 7.2.1 in NFPA 101-2015.
 - 7.6.1 Per Section 7.2.1.4.1 in NFPA 101-2015, means of egress doors shall be of the side-hinged swinging type.
 - 7.6.1.1 The paddock and stables use overhead and sliding-type doors. The paddock and stables are not equipped with side-hinged swinging type doors. Equip the following locations with side-hinged swinging type doors (Nortech assumes the side-hinged swinging type doors will be incorporated into the above-mentioned overhead and sliding-type doors).
 - 7.6.1.1.1 Two front paddock (north) exterior doors. One on each side of the office.
 - 7.6.1.1.2 One back paddock (south) exterior door.
 - 7.6.1.1.3 Two exterior doors at eastern exterior wall of east stables. The second exterior exit is required to prevent a dead-end corridor.
 - 7.6.1.1.4 Two exterior doors at western exterior wall of west stables. The second exterior exit is required to prevent a dead-end corridor.
 - 7.6.2 Per Section 7.2.1.2.3.2 in NFPA 101-2015, means of egress shall have a clear width of at least 32 inches.
 - 7.6.3 Per Section 7.2.1.5.1 in NFPA 101-2015, means of egress doors shall not be locked against egress. Locking devices shall allow doors to be opened from within the building, without the use of a key.
 - 7.6.4 Per Section 7.2.1.5.10 in NFPA 101-2015, a latch or other fastening device on a door leaf shall be provided with a releasing device that has an obvious method of operation and is readily operated under all lighting conditions. The releasing mechanism shall open the door leaf with not more than one releasing operation.
 - 7.6.4.1 Upgrade door hardware to not include bolts. Upgrade door hardware so doors can be opened with not more than one releasing operation.
 - 7.6.5 Per Section 7.2.1.3.5 in NFPA 101-2015, where doors open to the outside, the floor level outside of door openings is not more than 8 inches lower than that of the inside.
 - 7.7 Per Section 38.2.3 in NFPA 101-2015, corridor widths provide enough capacity for means of egress.
 - 7.8 Stairs shall comply with Section 7.2.2 in NFPA 101-2015.
 - 7.8.1 Add risers to the interior stair.
 - 7.9 Handrails shall comply with Section 7.2.2.4 in NFPA 101-2015.
 - 7.9.1 Add a handrail to the interior stair.
 - 7.9.2 Add a handrail to the front steps.
 - 7.10 Guards shall comply with Section 7.2.2.4 in NFPA 101-2015.
 - 7.10.1 Guards shall be provided at the open sides of means of egress that exceed 30 inches above the floor or finished ground below.
 - 7.10.1.1 Add a guard to the interior stair. The guard shall also protect the stair's top landing.

- 7.11 NFPA regulate paths of travel, dead-end corridors, and travel distances until one reaches an exit. Once upgraded, the building layout shall not exceed the maximum paths of travel, as catalogued in Table 7.11. The following table catalogues values from NFPA 101-2015.

Table 7.11: Maximum Paths of Travel in Non-Sprinklered Buildings (Existing)

Use of Space	Common Path	Dead-End	Travel Distance
Business	75'	50'	200'
Storage	50'	50'	200'

8 Fire Alarm and Detection

- 8.1 Upgrade the existing fire alarm system to comply with applicable codes, including the National Fire Alarm and Signaling Code (NFPA 72-2013). Fire alarm drawings and calculations shall be submitted to and approved by the authority having jurisdiction (AHJ) before the start of construction.
- 8.1.1 Alarm, trouble, and supervisory signals shall be automatically transmitted to an approved off-site supervising station. The means of transmission shall be listed for fire service.
- 8.1.2 The fire alarm system shall include initiation by manual pull stations and automatic detection.
- 8.1.3 Occupant notification shall include audio and visual signals from horns and strobes.
- 8.1.3.1 Audible notification shall be heard throughout the building.
- 8.1.3.2 Visual notification shall be in all public spaces.
- 8.1.3.3 Exterior beacons shall be installed in accordance with local ordinances.
- 8.1.4 Secondary power shall have enough capacity to operate the fire alarm system under quiescent load for a minimum of 24 hours and, at the end of that period, be capable of operating all alarm notification appliances for 5 minutes.

9 Fire Sprinkler System

- 9.1 The building is not required to be equipped with a sprinkler system.
- 9.1.1 The building is not equipped with a sprinkler system.

10 Portable Fire Extinguishers

- 10.1 Provide portable fire extinguishers throughout the building. The building contains fire extinguishers, but the installation of fire extinguishers is not wholly code compliant. They shall be maintained in accordance with the Standard for Portable Fire Extinguishers (NFPA 10-2013).
- 10.2 ABC-Type fire extinguishers shall be installed per Chapter 6 of NFPA 10-2013. They shall be readily accessible within 75 feet of all locations, hung, marked by signage, and possess a valid inspection sticker.
- 10.2.1 An ABC-Type fire extinguisher shall be located within 50 feet of all combustible and flammable liquids.

- 10.3 The distribution of fire extinguishers should also comply with Table E.3.5 in NFPA 10-2013, as catalogued in Table 10.3.

Table 10.3: Maximum Area (Square Feet) of Protection per Fire Extinguisher¹

Class A Rating on Extinguisher	Occupancy Type		
	Light Hazard	Ordinary Hazard	Extra Hazard
2A:10B:C (5 lbs.)	6,000	3,000	Not Allowed
3A:40B:C (5 lbs.)	9,000	4,500	Not Allowed
4A:80B:C (10 lbs.)	11,250	6,000	4,000
10A:120B:C (20 lbs.)	11,250	11,250	10,000

¹ Weights provided by ULINE for AMEREX ABC-Type fire extinguishers.

11 Fire Rated Construction

- 11.1 The following options can serve as a second floor exit.
- 11.1.1 An exit stair shaft that discharges to the exterior of the building at ground level in accordance with Section 7.1.3.2 in NFPA 101-2015.
 - 11.1.1.1 The shaft shall be enclosed in 1-hour fire-resistance rated construction.
 - 11.1.1.2 The interior door-frame assembly shall be 1-hour fire rated. The interior door shall be self-latching and equipped with a closer.
 - 11.1.1.3 Firestop penetrations in accordance with UL listed assemblies.
 - 11.1.2 An outside exit stair in accordance with Section 7.2.2.6 in NFPA 101-2015.
 - 11.1.2.1 The outside stair shall be separated from the interior of the building by 1-hour fire-resistance rated construction.
 - 11.1.2.2 The door-frame assembly shall be 1-hour fire rated. The door shall be self-latching and equipped with a closer.
 - 11.1.2.3 Openings around the exterior stair shall have a minimum 45-minute fire protection rating. Reference Exhibit 7.1119 in NFPA 101-2015 to visualize the extent of required protection. Wall and window protection shall extend vertically from the ground to a point 10 feet above the top landing of the stairs or to the roofline, whichever is lower. Wall and window protection shall extend horizontally from the edge of the stair for not less than 10 feet.
 - 11.2 Per Section 8.7 in NFPA 101-2015, separate the first-floor boiler room from the remainder of the building with fire barriers having a 1-hour fire-resistance rating.
 - 11.2.1 Upgrade boiler room walls to have a 1-hour fire-resistance rating. This can be achieved by attaching one layer of 5/8-inch Type X gypsum board to wood studs. Wood studs shall be nominal two by fours (or larger), installed 16 inches on center. Fastening of the gypsum board shall comply with applicable codes.
 - 11.2.2 Upgrade the floor-ceiling assembly to have a 1-hour fire-resistance rating. This can be accomplished by installing two layers of 5/8-inch gypsum board to the underside of floor joists. Fastening of the gypsum board shall comply with applicable codes
 - 11.2.3 Firestop penetrations in accordance with UL listed assemblies.
 - 11.2.4 Seal joints in accordance with UL listed assemblies (where applicable).
 - 11.2.5 Replace the boiler room door with a 45-minute door-frame assembly. The door shall be self-latching and equipped with a closer.
 - 11.3 Per Section 8.7 in NFPA 101-2015, separate the second floor storage space from the remainder of the building with fire barriers having a 1-hour fire-resistance rating.

- 11.3.1 Upgrade enclosing walls to have a 1-hour fire-resistance rating.
 - 11.3.1.1 Remove interior windows from the second floor storage space. Infill openings with 1-hour fire rated construction.
- 11.3.2 Upgrade the floor-ceiling assembly to have a 1-hour fire resistance rating.
- 11.3.3 Firestop penetrations in accordance with UL listed assemblies.
- 11.3.4 Replace the interior (non-exit) stair door with a 45-minute door-frame assembly. The door shall be self-latching and equipped with a closer
- 11.4 Per Section 8.7 in NFPA 101-2015, separate the stables from the remainder of the building with fire barriers having a 1-hour fire-resistance rating.
 - 11.4.1 Upgrade dividing walls, between the stables and adjacent spaces, to be of 1-hour fire rated construction.
 - 11.4.2 Upgrade dividing wall openings (stable openings to paddock) to have a 45-minute fire-resistance rating.
 - 11.4.2.1 This can be achieved by installing a deployable fire curtain to protect each of the two above-mentioned openings. Such curtains shall be equipped with means of egress flaps.

12 Lighting and Signage

- 12.1 Under normal power, the means of egress are illuminated whenever the room or space is occupied.
- 12.2 Install emergency lights in accordance with applicable codes. Per Section 7.9 in NFPA 101-2015, in the event of power failure, emergency lights shall automatically illuminate the following areas:
 - 12.2.1 Corridors, paddock, stairs and waiting area/kitchenette.
 - 12.2.2 Exterior egress components until exit discharge is accomplished.
- 12.3 Per Section 7.10.1.2.1 in NFPA 101-2015, exits shall be marked by signs that are readily visible from any direction of exit access.
- 12.4 Per Section 7.10.5.1 in NFPA 101-2015, exits shall be internally illuminated by a reliable light source.
 - 12.4.1 Install internally illuminated exit signs to mark exits in accordance with applicable codes.

13 Interior Finish

- 13.1 Wall and ceiling finishes shall comply with Section 10.2 in NFPA 101-2015.
 - 13.1.1 Finishes shall be Class B or better in exits.
 - 13.1.1.1 Gypsum board has a Class A finish.
 - 13.1.2 Finishes appear to be Class C or better in exit access corridors (storage).
 - 13.1.2.1 The business occupancy is not equipped with exit access corridors.
 - 13.1.3 Finishes shall be Class C or better in all other areas.
 - 13.1.3.1 Complete unfinished walls and ceilings.
- 13.2 Combustible decorative materials do not cover more than 10% of the specific wall or ceiling area to which they are attached to.
- 13.3 Floors are assumed have at least a Class II rating.

14 Protection from Hazards: Chimney

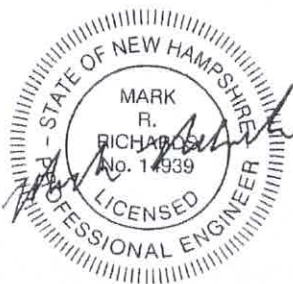
- 14.1 Per Section 6.1.1 in the Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-burning Appliances (NFPA 211-2013), via Section 11.2.2 in NFPA 1-2015, factory built chimneys and chimney units shall be listed and installed in accordance with manufacturer instructions. The minimum clearance from combustible materials is generally a few inches.

- 14.1.1 Ensure the chimney is constructed and maintained in accordance with applicable codes and manufacturer instructions. Move second floor combustibles, as necessary.

15 Summary of Recommendations

- 15.1 Equip the second floor storage space with an exit. Reference Section 7.3.1.1 of the report for further details.
- 15.2 Equip the following locations with side-hinged swinging type doors.
 - 15.2.1 Two front paddock (north) exterior doors. One on each side of the office.
 - 15.2.2 One back paddock (south) exterior door.
 - 15.2.3 Two exterior doors at eastern exterior wall of east stables. The second exterior exit is required to prevent a dead-end corridor.
 - 15.2.4 Two exterior doors at western exterior wall of west stables. The second exterior exit is required to prevent a dead-end corridor
- 15.3 Upgrade door hardware to not include bolts. Upgrade door hardware so doors can be opened with not more than one releasing operation.
- 15.4 Add risers to the interior stair.
- 15.5 Add a handrail to the interior stair.
- 15.6 Add a handrail to the front step.
- 15.7 Add a guard to the interior stair. The guard shall also protect the stair's top landing.
- 15.8 Upgrade the existing fire alarm system to comply with applicable codes, including NFPA 72-2013. Fire alarm drawings and calculations shall be submitted to and approved by the authority having jurisdiction before the start of construction.
- 15.9 Install and maintain portable fire extinguishers in accordance with NFPA 10-2013.
- 15.10 Separate the first-floor boiler room from the remainder of the building.
- 15.11 Separate the second floor storage space from the remainder of the building.
- 15.12 Separate the stables from the remainder of the building.
- 15.13 Install emergency lights in accordance with applicable codes.
- 15.14 Install internally illuminated exit signs to mark exits in accordance with applicable codes.
- 15.15 Complete unfinished walls and ceilings.
- 15.16 Ensure the chimney is constructed and maintained in accordance with applicable codes.

Respectfully Submitted,
Nortech Systems



Mark R. Richards, PE
Fire Protection Engineer

EXHIBIT 3

Laura Spector-Morgan

From: Scott Nemet <snemet@leefire.org>
Sent: Tuesday, December 29, 2020 10:18 AM
To: Laura Spector-Morgan
Cc: Caren Rossi
Subject: FW: Boulder Brook Stables Fire Inspection

Scott Nemet

Chief of Department/EMD
Lee Fire & Rescue
20 George Bennett Road
Lee, New Hampshire 03861
603.659.5411

From: Jeff Liporto <jliporto@leefire.org>
Sent: Wednesday, December 23, 2020 8:01 AM
To: Scott Nemet <snemet@leefire.org>
Subject: FW: Boulder Brook Stables Fire Inspection

From: Scott Grumbling <sgrumbling@yahoo.com>
Sent: Monday, September 28, 2020 10:31 AM
To: Jeff Liporto <jliporto@leefire.org>
Subject: Re: Boulder Brook Stables Fire Inspection

Hi Jeff,

Based on the facts and a in depth meeting with my lawyer, the stables and riding facility was constructed over 15 years ago under the supervision and approval of both the building department and fire department at the time, and has operated as such under the same continuous use. As such, the building and use is legally vested. Until such time that the use of the building changes or additional uses are added, specially to the building, there is no legal basis to disassemble, alter, or reconstruct the building for the sole purpose of meeting current code.

Sincerely,

Scott Grumbling
Cornerstone Farm
Lee, NH.
Sent from my iPhone

On Sep 22, 2020, at 9:09 AM, Jeff Liporto <jliporto@leefire.org> wrote:

Hi Scott,

I reached out to you regarding the discussion with the fire protection engineer back in August and I would like to see where we are at with the fire protection engineer's recommendations. Please get back to me and let me know how you are progressing. I would like to schedule a reinspection when the work outlined has been completed. If there is any issues with the work that needs to be done let me know and we can come up with a suitable plan to move forward.

Thank you,

Jeffrey S Liporto
Assistant Chief
Lee Fire & Rescue
20 George Bennett Road
Lee, NH 03861
Jliporto@leefire.org

EXHIBIT 4

Laura Spector-Morgan

From: Jeff Liporto <jliporto@leefire.org>
Sent: Wednesday, October 20, 2021 10:22 AM
To: Laura Spector-Morgan
Cc: Scott Nemet; Caren Rossi
Subject: Boulder Brook Stables

Hello Laura,

Chief Nemet has asked me to update you on our progress with Mr. Grumbling and Boulder Brook Stables. I have had a series of email correspondences with Mr. Grumbling over the past six months regarding bringing his business up to the State Fire Code requirements that were outlined in his Certified Fire Protection Engineer report for his building. We did have a meeting with Mr. Grumbling on 4/1/21 to discuss developing a plan of action to complete the issues outlined in his CFPE report. At that meeting priorities were set for the work to be done and a timeline for that work was also discussed. It was made clear that the fire alarm system and extinguisher inspections were part of phase one and that after those were completed that we would meet and discuss phase two of the plan to complete the required work. To date Mr. Grumbling has had the fire alarm system and extinguisher inspection completed and inspected (9/14/21). My last email to Mr. Grumbling was on 10/12/21 requesting another meeting to come up with the plan to complete the next phase of compliance work to be done. To date I have not received a reply from Mr. Grumbling. In the past it has taken Mr. Grumbling a couple of weeks to reply. I will let you know if and when I hear from Mr. Grumbling. If I don't hear from him within a reasonable amount of time we may need you to send him another letter asking him to comply. Your council on how and when to proceed would be appreciated.

Thank you,

Jeffrey S Liporto
Assistant Chief
Lee Fire & Rescue
20 George Bennett Road
Lee, NH 03861
jliporto@leefire.org

EXHIBIT 5



The Law Offices of
Patricia Morris, PLLC

P.O. Box 32
Center Barnstead, N.H. 03225

(603)-344-8878
pmorris@pmorrislaw.com

November 1, 2021

VIA PRIORITY MAIL

Jeffrey S Liporto, Assistant Chief
Lee Fire & Rescue
20 George Bennett Road
Lee, NH 03861

Re: *Cornerstone Farm/Boulder Brook Stables*

Dear Assistant Chief Liporto :

My office represents Boulder Brook Stables, LLC, a duly formed limited liability company located in Lee, New Hampshire ("Boulder Brook"). This letter is in response to your October 12, 2021 email to Mr. Grumbling concerning the Boulder Brook Stables "project" (as set forth in the June 18, 2020 CPE report).

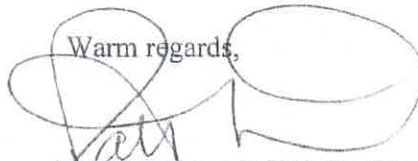
In June 2020, Nortech Systems completed a code review for Scott Grumbling regarding the Boulder Brook Stables' facility. The review is based upon NH RSA 155-A, Administrative Rule Saf-C 6000, the NFPA 1-2015 and Life Safety Code NFPA 101-2015¹. However, in its report, Nortech applied commercial standards, rules and laws to my client's agricultural use and premises. My client's use/premises is not a commercial use; it is agricultural. Thus, the report is incorrect in its recommendations.

There is no dispute that my client's premises is "viewed as agricultural". (See attached letter dated October 24, 2005 from the Town of Lee). Our state law defines agriculture in detail in NH RSA 21:34-a (attached hereto). Most on point is the definition of "farm" in the statute (NH RSA 21:34-a(I) "means any land, buildings or structures on in in which agriculture and farming operations or activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees location on such land." The definition continues to expand to include an exhaustive list of what constitutes "agriculture" and "farming", which includes all operations and activities of a farm. This clearly includes my client's paddocks, office, waiting area, storage areas and other areas used to conduct her agricultural activities. Again, Boulder Brook Stables, LLC is an agricultural use and premise, subject to those laws and regulations. Thus, the use of NFPA's definitions, such as in 4.2 considering the office, waiting area and paddock to be a business occupancy is in clear contradiction to N.H.'s statutory definition of farming/agricultural. (State law is controlling). These "conflicts" between NFPA and our state law continue throughout the report.

Notwithstanding the above, my client has implemented several of the Recommendations from the report (Report, Section 15). These implemented Recommendations include: the installation of a \$20,000.00 fire alarm system and fire extinguishers. My client values her premises, her farm and its operations and clients, and its reputation exceptionally highly. Boulder Brook has every intention to ensure the premise is safe for all residents (including animals) and visitors to the best of its ability. However, holding a farm to the commercial standards for our building code is not feasible, nor reasonable. With the recent investment and installation of additional fire safety measures, we consider this matter closed with no further "next steps" needed. The Report does not find any issues with other areas of our State Building Code, as applicable to an agricultural use. It simply identifies NFPA as the controlling standard, which it is not: NH RSA 155-A and NH RSA 31:24-a are.

We are more than amenable to recommendations and suggestions to continue to improve the safety and welfare of Boulder Brook Stables' premises, residents and guests. We hope to continue a strong solid working relationship with the Town. In doing so, we remind the Town that we are a working farm, not a commercial entity and request that we be treated as such and subject to the appropriate relevant laws. If you have any further comments, questions or concerns, please do not hesitate to contact me directly at 603-344-8878 or pmorris@pmorrislaw.com.

Warm regards,



Patricia A. Morris, Esquire

¹ Note: our NH Building Code is defined in NH RSA 155-A:1(IV), providing a complete list of the codes that are adopted by reference (which does not include the NFPA). The NFPA is adopted by reference only in Saf-C6003.01.

EXHIBIT 6

Laconia, NH 03246
(603) 524-3885
fax (603) 524-0745
www.mitchellmunicipalgroup.com

-----Original Message-----

From: John Kuzinevich
Sent: Monday, May 23, 2022 12:49 PM
To: Laura Spector-Morgan <laura@mitchellmunigroup.com>
Subject: Grumbling / Town of Lee

Hi Laura. There are fire extinguishers at all required locations. They are maintained yearly by A.S. P. Fire & Safety of Tyngsboro, MA. A Knox box has been installed at the gate providing fire department

2

access. . An extensive fire alarm system with pull stations and a horn/strobes has been installed recently. It is undergoing troubleshooting for more accurate sensors. The system cost over \$20,000 and several thousand dollars of additional work is anticipated. This was far higher than anticipated and in light of these costs, Jon was not planning further work.

Also, if you could follow up an issue. I understand there are 5 very similar horse barn facilities in Lee, including this one. I believe at least one has living quarters in the barn. Could you advise if all of these have been requested to fully comply with current code? Thanks.

John Kuzinevich
jjkuz@comcast.net

EXHIBIT 7

Laura Spector-Morgan

From: John Kuzinevich <jjkuz@comcast.net>
Sent: Tuesday, July 05, 2022 8:44 AM
To: Laura Spector-Morgan
Subject: Re: Boulder Brook

Hi Laura: I wanted to get back to you on these issues. As far as the fire upgrades, it is clear that there is unfair discrimination by the town. It is inconceivable that the process has not at least been started at the other barns, even if simply a demand by the town that each of them hires a consultant as my client did. With that in mind, he will complete the upgrades on the same timetable as the other barns. Anything else is putting him at a competitive disadvantage and depriving him of his property. As far as the site plan, he has elected to cease any incidental commercial activity at the site and limit activity to agricultural. Since agricultural activity is not subject to site plan, this should obviate the need for review. In addition, we are still unclear what triggered review in the first place. Please describe the specific activity and a citation to the specific ordinance and regulation governing it. Thank you.

John

John Kuzinevich
jjkuz@comcast.net

On Jun 17, 2022, at 2:14 PM, Laura Spector-Morgan <laura@mitchellmunigroup.com> wrote:

John:

I am writing to follow up on our conversation and e-mails about Boulder Brook Farms.

As to the required site plan approval, Allan Dennis has no recollection of ever telling Mr. Grumbling that site plan approval was not required for the non-agricultural uses of the property. Therefore, unless your client can produce some evidence that Mr. Dennis made this representation, the town continues to assert that site plan review is required for those non-agricultural uses.

As to the fire code issues, the fire chief is not willing to accept anything less than full compliance with the recommendations made by Nortech, Mr. Grumbling's fire protection expert. He does not, however, expect all of those upgrades to be done immediately. The fire extinguishers and alarm system were a major concern, and we are glad to hear that they have been installed, though the fire alarm system does need to be operational. The next most important improvement for the chief is sheet rocking the ceiling in the viewing room and the stairs leading to the second floor. The chief would like to see this done by the end of the year.

Of the remaining recommendations, the chief's priority is recommendations 15.10-15.15, then 15.1, then 15.2, then 15.3-15.7 and 15.16. Again, the town understands that it might take up to two years to complete these upgrades. However, for over a year

EXHIBIT 8

THE STATE OF NEW HAMPSHIRE

STRAFFORD, S.S.

SUPERIOR COURT

Town of Lee

v.

Jay Scott Grumbling, Boulder Brook Stables, LLC
and
Amanda Hanson, Manager

Docket No. _____

**AFFIDAVIT OF SCOTT NEMET, LEE FIRE CHIEF, IN SUPPORT OF COMPLAINT
FOR PRELIMINARY AND PERMANENT INJUNCTIONS**

NOW COMES Scott Nemet, Lee Fire Chief, who, having been duly sworn, does hereby state and aver as follows:

1. I am the Fire Chief for the Town of Lee, New Hampshire.
2. I have read the *Complaint for Preliminary and Permanent Injunctions* to which this affidavit is attached.
3. To the best of my knowledge, information, and belief, the facts alleged in that affidavit are true and accurate.

Date: 9/8/2022

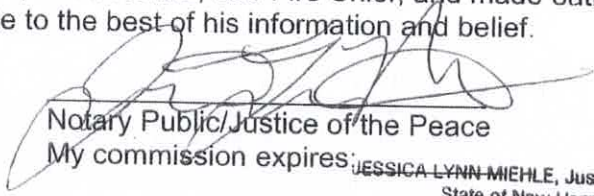


Scott Nemet
Lee Fire Chief

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared before me, Scott Nemet, Lee Fire Chief, and made oath that the foregoing is true and accurate to the best of his information and belief.

Date: 9.8.22



Notary Public/Justice of the Peace
My commission expires: JESSICA LYNN MIEHLE, Justice of the Peace
State of New Hampshire
My Commission Expires September 27, 2022

THE STATE OF NEW HAMPSHIRE

STRAFFORD, S.S.

SUPERIOR COURT

Town of Lee

v.

Jay Scott Grumbling

and

Boulder Brook Stables, LLC

and

Amanda Hanson, Manager

Docket No. 219-2011-CV-00290

SETTLEMENT AGREEMENT

NOW COMES the Town of Lee, by and through its attorneys, Mitchell Municipal Group, P.A., and, Jay Scott Grumbling, Boulder Brook Stables, LLC, and its Managing Member Amanda Hanson, by and through their attorney, John J. Kuzinevich, and hereby stipulate and agree as follows:

1. Jay Scott Grumbling is the owner of property located at 596 Calef Highway ("the property"). That property houses a business known as Boulder Brook Stables, LLC, which operate a horse farm on the property. Boulder Brook Stables, LLC's registered agent is Patricia A. Morris, 840 South Barnstead Road, Center Barnstead, NH 03225, and its managing member is Amanda Hanson.

2. The Town of Lee contends that Mr. Grumbling, Ms. Hanson and Boulder Brook Stables, LLC ("defendants") are currently operating the property in violation of the State Fire Code. Although defendants dispute that claim, they are willing to make the following improvements to the property:

- a. Separate the first floor boiler room from the remainder of the building; separate the stables from the remainder of the building¹; install emergency lights in accordance with applicable codes; install internally illuminated exit signs to mark exists in accordance with applicable codes; complete unfinished walls and ceilings.
- b. Equip the second floor storage space with an exit. The town is willing to consider alternatives to this improvement if they are recommended by a fire engineer and, in the town's sole judgment, they adequately address the safety concern.
- c. Equip the following locations with side-hinged swinging type doors:
 - i. Two front paddock (north) exterior doors. One on each side of the office.
 - ii. One back paddock (south) exterior door.
 - iii. Two exterior doors at eastern exterior wall of east stables. The second exterior exist is required to prevent a dead-end corridor.
 - iv. Two exterior doors at western exterior wall of west stables. The second exterior exist is required to prevent a dead-end corridor.
- d. Upgrade door hardware to not include bolts so doors can be opened with not more than one releasing operation; add risers to the interior stair; add a handrail to the interior stair; add a handrail to the front step; add a guard to the interior stair, which shall also protect the stairs' top landing.
- e. Ensure the chimney is constructed and maintained in accordance with applicable codes.

¹The town is willing to consider alternatives to this improvement if they are recommended by a fire engineer and, in the town's sole judgment, they adequately address the safety concern.

3. The following deadlines shall apply:

- a. By March 31, 2023
- b. By August 31, 2023
- c. By January 31, 2024
- d. By June 30, 2024
- e. By June 30, 2024.

4. The town shall be notified as each item is completed no later than the above dates and shall inspect the property as it deems appropriate to ensure that the improvements are completed in a timely and compliant manner.

5. Provided defendants continue to make timely progress on these improvements, the town will waive, at this time, its request for an injunction to require defendants to cease all occupancy of the horse facility on the property, as well as its claims for attorneys fees and civil penalties.

6. Should the town be required to bring a further action to enforce this Agreement and prevail, defendants agree that the waived attorneys' fees and civil penalties shall be awarded as a contempt sanction.

Respectfully submitted,

TOWN OF LEE

By Its Attorneys
MITCHELL MUNICIPAL GROUP, P.A.

Date: November , 2022

By: /s/ Laura Spector-Morgan
Laura Spector-Morgan, Bar No. 13790
25 Beacon Street East
Laconia, New Hampshire 03246
(603) 524-3885

AND

**JAY SCOTT GRUMBLING, BOULDER
BROOK STABLES, LLC, AND ITS
MANAGING MEMBER AMANDA
HANSON**

By Their Attorney
LAW OFFICES OF JOHN KUZINEVICH

Date: November , 2022

By: /s/ John J. Kuzinevich
John J. Kuzinevich, Bar No.
71 Gurnet Road
Duxbury, MA 02332
(781) 536-8835

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: **Strafford Superior Court**
Case Name: **Town of Lee v. Jay Scott Grumbling, et al.**
Case Number: **219-2022-CV-290**
(if known)

MOTION TO REOPEN

1. I _____ am filing this motion on my own behalf
AND/OR

I am a person authorized by court rules to appear on behalf of another in this case. I am filing this motion on behalf of **the Town of Lee**

2. I am attaching a **Motion for Contempt**

Therefore, I request that the court schedule a hearing and issue Summons for service

Laura Spector-Morgan
Name of Filer
Mitchell Municipal Group, P.A 13790
Law Firm, if applicable Bar ID # of attorney
25 Beacon Street East
Address
Laconia **NH** **03246**
City State Zip code

/s/ Laura Spector-Morgan **05/05/2023**
Signature of Filer Date
(603) 524-3885
Telephone
laura@mitchellmunigroup.com
E-mail

THE STATE OF NEW HAMPSHIRE

STRAFFORD, S.S.

SUPERIOR COURT

Town of Lee

v.

Jay Scott Grumbling, et al.

Docket No. 219-2022-CV-290

MOTION FOR CONTEMPT

NOW COMES the Town of Lee, by and through its attorneys, Mitchell Municipal Group, P.A., and, in moving this Court to find defendants in contempt of the November, 2022 Settlement Agreement in this matter, states as follows:

1. Jay Scott Grumbling is the owner of property located at 596 Calef Highway ("the property"). That property houses a business known as Boulder Brook Stables, LLC, which operate a horse farm on the property. Boulder Brook Stables, LLC's managing member is Amanda Hanson.

2. On or about September 22, 2022, the Town of Lee filed a *Complaint* against Mr. Grumbling, Boulder Brook Stables, LLC, and Ms. Hanson alleging that defendants were operating the property in violation of the State Fire Code.

3. By *Settlement Agreement* filed on or about November 10, 2022 and approved by this Court on November 13, 2022, the parties agreed on certain improvements defendants were willing to make, along with deadline for various categories of improvements.

4. Specific to this motion, the parties agreed that by March 31, 2023, defendants would separate the first floor boiler room from the remainder of the building; separate

the stables from the remainder of the building¹; install emergency lights in accordance with applicable codes; install internally illuminated exit signs to mark exists in accordance with applicable codes; complete unfinished walls and ceilings.

5. Defendants were also required to notify the town as each item was completed and allow the town to inspect the property as it deemed appropriate to ensure that the improvements were completed in a timely and compliant manner.

6. On or about February 27, 2023, undersigned counsel wrote to defendants' counsel expressing the town's concern that as of that date, the town had received no applications for the required building and electrical permits to perform the work identified in paragraph 4, supra. See Exhibit 1.

7. In response, defendants' counsel asserted that no permits were required. See Exhibit 2. Although undersigned counsel attempted to correct that misunderstanding, see Exhibit 2; to date, no applications for permits have been received.

8. Moreover, the town has received no notice that the improvements required to be completed by March 31, 2023 were in fact completed, and has not inspected the same. See Affidavit of Caren Rossi, attached as Exhibit 3.

9. Defendants are therefore in contempt of the *Settlement Agreement*.

10. The town therefore requests that the Court order defendants to cease all use and the occupancy of the barn on the property unless and until the required permits are issued and the required improvements are made and inspected and approved by

¹The town is willing to consider alternatives to this improvement if they are recommended by a fire engineer and, in the town's sole judgment, they adequately address the safety concern.

the town.

11. The town also seeks the attorneys' fees it waived in the *Settlement Agreement*, which defendants agreed would be awarded as a contempt sanction, as well as reimbursement of its attorneys' fees incurred in preparing, filing and pursuing this motion for contempt, which was necessitated solely by defendants' bad faith failure to comply with the obligations they assumed in the *Settlement Agreement*.

12. Finally, the town seeks an additional contempt sanction in the amount of \$275 per day for each day since April 1, 2023 that the property remains in violation.

13. Given the nature of the relief sought herein, the assent of defendants' counsel has not been sought.

WHEREFORE, the Town of Lee respectfully requests that this Honorable Court:

A. Issue an injunction ordering defendants to cease all use and the occupancy of the barn on the property unless and until the required permits are issued and the required improvements are made and inspected and approved by the town;

B. Award, as a contempt sanction, the attorneys' fees the town waived in the *Settlement Agreement* as well as an additional penalty of \$275 per day for each day since April 1, 2023 that the property has remained in violation of that *Agreement*;

C. Award the town its costs and attorneys' fees incurred in preparing, filing, and pursuing this motion; and

D. Grant such other and further relief as the Court deems just and necessary.

Respectfully submitted,

TOWN OF LEE

By Its Attorneys
MITCHELL MUNICIPAL GROUP, P.A.

Date: May 5, 2023

By: /s/ Laura Spector-Morgan
Laura Spector-Morgan, Bar No. 13790
25 Beacon Street East
Laconia, New Hampshire 03246
(603) 524-3885

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served through the Court's electronic service system to John J. Kuzinevich, Esquire, counsel of record.

Date: May 5, 2023

/s/ Laura Spector-Morgan
Laura Spector-Morgan

EXHIBIT 1

MITCHELL MUNICIPAL GROUP, P.A.

ATTORNEYS AT LAW
25 BEACON STREET EAST
LACONIA, NEW HAMPSHIRE 03246
www.mitchellmunicipalgroup.com

WALTER L. MITCHELL
LAURA A. SPECTOR-MORGAN
JOSEPH H. DRISCOLL, IV
NAOMI N. BUTTERFIELD - OF COUNSEL

TELEPHONE (603) 524-3885

February 27, 2023

John J. Kuzinevich, Esquire
Law Offices of John Kuzinevich
71 Gurnet Road
Duxbury, MA 02332

Re: Town of Lee v. Jay Scott Grumbling, et al.
Docket No. 219-2022-CV-00290

Dear John:


I am writing to follow up on the above captioned matter. As you will recall, under the Settlement Agreement executed in this case, Mr. Grumbling has until March 31, 2023 to "[s]eparate the first floor boiler room from the remainder of the building; separate the stables from the remainder of the building; install emergency lights in accordance with applicable codes; install internally illuminated exit signs to mark exists in accordance with applicable codes; complete unfinished walls and ceilings."

In order to effectuate this work, Mr. Grumbling will require a building permit for the framing of the walls and door for the mechanical room and an electrical permit for the installation of the emergency lights. To date, he has not applied for either permit.

The town's goal in this matter is, and has always been, compliance. Would you please remind Mr. Grumbling of his obligations under the Settlement Agreement to avoid the necessity of further litigation between the parties?

Thank you for any assistance you can provide.

Sincerely,


Laura Spector-Morgan
laura@mitchellmunigroup.com

cc: Andrew Robinson, Town Administrator
Caren Rossi, Planning, Zoning and Health Administrator
Scott Nemet, Fire Chief

EXHIBIT 2

Laura Spector-Morgan

From: Laura Spector-Morgan
Sent: Monday, March 06, 2023 12:15 PM
To: John Kuzinevich
Subject: RE: Grumbling

John:

It is also a violation of RSA 319-C to do electrical work on a commercial building without a license. Please ask Mr. Grumbling to obtain the required permit, and the town can work with him on how to remedy the issue of having done the work himself.

I will be on vacation from March 29 through April 17, returning to the office on April 18.

Laura

Laura Spector-Morgan, Esquire
Mitchell Municipal Group, P.A.
25 Beacon Street East
Laconia, NH 03246
(603) 524-3885
fax (603) 524-0745
www.mitchellmunicipalgroup.com



From: Laura Spector-Morgan
Sent: Monday, March 06, 2023 11:27 AM
To: John Kuzinevich <jjkuz@comcast.net>
Subject: RE: Grumbling

John:

RSA 674:32-b provides:

674:32-b Existing Agricultural Uses and Activities. –

Any agricultural use or activity which exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing technology or markets, or changed to another agricultural use or activity, as set forth in RSA 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state laws, regulations, and rules,

including agricultural best management practices guidelines adopted by the commissioner of the department of agriculture, markets, and food; subject, however, to the following limitations:

Nothing in that statute exempts agricultural buildings from having to obtain building permits, and in fact, RSA 674:32-c, II provides:

II. Nothing in this subdivision, or in RSA 674:32-b, shall exempt new, re-established, or expanded agricultural operations or activities from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use or activity allowed by this subdivision, or would otherwise be unreasonable in the context of an agricultural use or activity, in accordance with the provisions of RSA 672:1, III-b, the board of adjustment, building code board of appeals, or other applicable local board, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use or activity, unless such waiver would have a demonstrated adverse effect on public health or safety, or on the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use or activity.

Building permits are generally applicable building requirements and, whatever may happen in other towns, are required for all building modifications in Lee, regardless of the agricultural use of the property. I would appreciate it if you would instruct Mr. Grumbling to apply for the required permits.

Thank you.

I will be on vacation from March 29 through April 17, returning to the office on April 18.

Laura

Laura Spector-Morgan, Esquire
Mitchell Municipal Group, P.A.
25 Beacon Street East
Laconia, NH 03246
(603) 524-3885
fax (603) 524-0745
www.mitchellmunicipalgroup.com



From: John Kuzinevich
Sent: Monday, March 06, 2023 11:17 AM
To: Laura Spector-Morgan <laura@mitchellmunigroup.com>
Subject: Re: Grumbling

Jon is relying on 674:32-b which he knows as used in litigation is a neighboring town to not require permits. Also he did his own wiring and the building inspector has not required a permit in the past.

John Kuzinevich
jjkuz@comcast.net

On Mar 6, 2023, at 11:03 AM, Laura Spector-Morgan <laura@mitchellmunigroup.com> wrote:

John:

Forgive me, but I am unaware of any provision in the law which exempts agricultural buildings from having to obtain a building permit. Can you please point me to your legal basis for this conclusion?

I will be on vacation from March 29 through April 17, returning to the office on April 18.

Laura

Laura Spector-Morgan, Esquire
Mitchell Municipal Group, P.A.
25 Beacon Street East
Laconia, NH 03246
(603) 524-3885
fax (603) 524-0745
www.mitchellmunicipalgroup.com

<image003.jpg>

From: John Kuzinevich
Sent: Monday, March 06, 2023 10:08 AM
To: Laura Spector-Morgan <laura@mitchellmunigroup.com>
Subject: Grumbliing

Hi Laura - Jon has about \$10,000 of materials on site and is proceeding with the work. Since it is an agricultural building, he did not need to pull permits. He is making every effort to comply.

John Kuzinevich
jjkuz@comcast.net

EXHIBIT 3

THE STATE OF NEW HAMPSHIRE

STRAFFORD, S.S.

SUPERIOR COURT

Town of Lee

v.

Jay Scott Grumbling, et al.

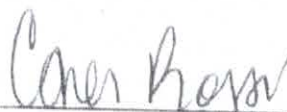
Docket No. 219-2022-CV-290

AFFIDAVIT OF CAREN ROSSI IN SUPPORT OF MOTION FOR CONTEMPT

NOW COMES Caren Rossi, Town of Lee Planning, Zoning, and Health Administrator, who, having been duly sworn, does hereby state and aver as follows:

1. I am the Planning, Zoning, and Health Administrator for the Town of Lee, New Hampshire.
2. I have read the *Motion for Contempt* to which this affidavit is attached.
3. To the best of my knowledge, information, and belief, the facts alleged in that affidavit are true and accurate.

Date: May 1, 2023

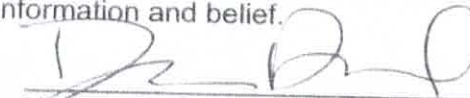


Caren Rossi
Lee Planning, Zoning, and Health
Administrator

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared before me, Caren Rossi, in her capacity as Planning, Zoning, and Health Administrator for the Town of Lee and made oath that the foregoing is true and accurate to the best of her information and belief.

Date: 5/1/2023



Notary Public/Justice of the Peace
My commission expires:

DENISE A. DUVAL, Notary Public
State of New Hampshire
My Commission Expires September 5, 2023

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

Town of lee

v.

Jay Scott Grumbling

Docket No. 219-2022-CV-290

CONTEMPT ORDER

The plaintiff, Town of Lee (“Lee”) filed a motion to bring this action forward along with a motion for contempt, alleging that the defendant has failed to abide by the terms of a settlement agreement into which the parties entered in November, 2022. Counsel has appeared for the defendant. On July 14, 2023, the Court held a noticed hearing on Lee’s contempt motion. The defendant failed to appear. Counsel for Lee offered six exhibits (all admitted as full exhibits) and made offers of proof as to the allegations in the motion, backed by the presence of several town officers in the courtroom. The Court now finds and rules as follows.

Background

The defendant owns a large property in Lee on which he operates an equine business, offering riding lessons to the public, hosting events such as rodeos for the public and the like. Lee became aware of several code violations which gave rise to safety concerns and eventually led to litigation between the parties. By agreement dated November 10, 2022 (Exhibit 1), approved and entered as a court order, the parties resolved the litigation through the defendant’s agreement to perform, by enumerated dates, a series of improvements to the property. The agreement expressly provides (1) that Lee shall be notified as each item is completed, by or before the deadline; (2) that Lee waives its injunction request provided the defendant continues to make timely progress on the issues identified in the agreement; and (3) should Lee have to seek judicial enforcement of the agreement, defendant agrees that sanctions may include Lee’s attorneys fees and civil penalties.

Lee presented uncontroverted evidence at the hearing that the defendant has not complied with the terms of the agreement, nor communicated to Lee as to his progress. The defendant has not communicated to Lee a need for additional time in which to complete the items. Neither has Lee been notified of completion of any of

the settlement agreement items, which would allow Lee to conduct a compliance inspection, nor has the defendant pulled any permits for any of the improvements the settlement agreement obligates him to make. While the defendant failed to appear at the hearing, he did file an objection to the contempt motion, in which he contends that he need not pull permits (a contention Lee effectively debunked at the hearing) and that he is, in essence, working on the issues. The defendant does not contest that he has not completed the required improvements and that he has not been in contact with Lee concerning any of these issues.

Analysis

Lee has established, as a matter of fact, that the defendant has not complied with the terms of the settlement agreement: the defendant has not completed the required improvements by the deadlines the agreement provides. The defendant, therefore, is in violation of the agreement and, by extension, a court order. The defendant's failure to abide by the agreement, moreover, leaves several unattended public safety issues at the property. As a result, the Court finds that the property, in its current condition, constitutes a hazard to the public.

The Court, therefore, further orders as follows:

1. The defendant shall cease and desist all public activities on his property at 596 Calef Highway, Lee New Hampshire, meaning all activities for which the public is invited onto the property for riding lessons, events, or other purposes, until he has come substantially into compliance with the terms of the settlement agreement. This injunction is based on Lee meeting the standard for a preliminary injunction, namely, establishing a likelihood of success on the merits and a risk of irreparable harm.
2. The defendant shall reimburse Lee all reasonable attorneys fees associated with (1) the motion to bring this action forward, and (2) the motion for contempt, preparation for and attendance at the July 14 hearing.
3. The Court will schedule a hearing at which the defendant shall appear, at which the defendant will report on the status of his compliance with the agreement and his plan for completing all remaining, outstanding items. At that hearing, the Court will hear further from the parties on Lee's request for a finding of contempt and sanctions.

So Ordered.

Date: July 21, 2023



Hon. Daniel. E. Will

Clerk's Notice of Decision
Document Sent to Parties
on 07/24/2023