

COMMONWEALTH OF MASSACHUSETTS  
The Trial Court

HAMPDEN, ss.

Superior Court  
Civil Action No: 09-935

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Town of Holland Fire Dept )  
 )  
 )  
Plaintiffs )  
 )  
Vs. James P LaMountain, Chad Brigham and )  
Northeast Concepts Inc. Defendants )

**DEFENDANTS ANSWER TO COMPLAINT AND REQUEST FOR INJUNCTIVE  
RELIEF & COUNTERCLAIM BY DEFENDANTS WITH REQUEST FOR  
SANCTIONS AND ORDERS**

**Introduction**

NOW COME THE DEFENDANTS WHO OFFER RESPECTFUL AND HONORABLE GEREETINGS TO THIS COURT.

The Defendants as captioned above hereby answer AND challenge the verified complaint in the following manner.  
This Burning issue has been successfully litigated and re-litigated by the Defendants in front of multiple tribunals or Justices including the Honorable Springfield Housing Court Justice Dina Fein, (**exhibit 1**) DEP, Division of Administrative Law Review (DALA) Magistrate Rooney (**exhibit 2**), who have ruled on the matter..  
**Further** the denial of burning permits as admitted to by the Fire Chief in Paragraph 5 of the Verified Complaint puts the Fire Department in violation and or contempt of an outstanding Court Order issued by Justice Dina Fein who ruled “I therefore conclude that open burning on the property is permitted.” (**Exhibit 1 pg. 6 paragraph 14**). Justice Fein further ruled that the fire Chief could only restrict the burning based on meteorological conditions. (**EXHIBIT 1 Pg. 6 and 7 paragraph 16**) and within the

regulatory framework of MGL 111 sec 142L and 310 CMR 7.07 (3) (**Exhibit 1 Pg. 4 paragraph 10**).

**FURTHERMORE:** a companion case (**exhibit 2**) filed on behalf of the town of Holland Fire Chief by the DEP and heard by Magistrate Rooney was ruled on in Favor of James LaMountain with the matter against him being vacated as a recommended final decision. Page 23 of exhibit 2 goes on to discuss the rancor of Officials.

**ALSO A RULING BY THE HONORABLE HAMPDEN COUNTY SUPERIOR COURT JUSTICE CORNELIUS MORIARTY (EXHIBIT 3)** clearly addresses the issue of the Fire Chief withholding of a permit beginning on **Exhibit 3, PAGE 6, Count II and continues on Page 7** which clearly states that the denial of the permit is in itself a cause of action for a Civil Rights Complaint for “..Deprivations of Federally protected rights by those acting under color of State Law. “..**Exhibit 3** continues to mention that the denial of the permit by those acting under color of law is a policy decision and reaches the threshold for a violation by the plaintiff of a denial of due process.

**Notwithstanding the above,** All burns mentioned in the Verified Complaint of the plaintiff in paragraph 4 were for the primary purpose of cooking by farmhands and watchmen on the farm and in compliance with MGL Ch. 48 Section 13 and do not require a permit to issue or official notification to ignite.

The following are point by point answers to the Plaintiffs Complaint and request for a preliminary injunction..

1. No challenge to Statement 1 in the plaintiffs complaint
2. False. The Defendant James P LaMountain lives at 41 Lakeridge Drive Holland Ma 01521.
3. True
4. False. Any Burning on the above dates was not in the control of any of the Defendants named in this action. Further All burns mentioned in the Verified Complaint paragraph 4 were for the primary purpose of cooking and are allowed without a permit according to MGL CH 48 section 13 which clearly states in pertinent part that ..... *“persons eighteen years of age or older may, without a permit, set, maintain or increase a reasonable fire for the purpose of cooking, upon sandy or gravelly land free from living or dead vegetation or upon sandy or rocky beaches bordering on tidewater, if the fire is enclosed within rocks, metal or other nonflammable material”* ... “See sworn affidavit of Jared Haggerty.
5. False.
6. False. None of the defendants have a blatant disregard for laws rather the Fire Chief is in contempt of a prior Court order By the Housing Court that states Burning is allowed on the property. Exhibit 1.

7. James LaMountain was arrested for open burning in what he believes is retaliation for Political Activities and did not light the fires in question. This statement by the Plaintiff clearly shows the continued litigation of this issue by the plaintiffs who refuse to abide by prior rulings of other Courts. Also the fires mentioned in paragraph 7 were not lit by LaMountain and were not “brush fires” but ember piles used for the primary purpose of cooking and providing the earth ovens of farm hands with coals for cooking. See affidavit of Jared Haggerty. The burns to produce the embers were ignited by farm hands more than 24 hours before the actions of Massachusetts Environmental Police and Holland Fire Department and were supervised and in compliance with the requirements of MGL Ch 48 sect 13 in part dealing with cook fires.
8. There was no “brush fire” and the defendants have no knowledge of the cost to put foam on smoldering and controlled piles of cooking embers.
9. Neither LaMountain, Brigham nor Northeast applied for any burning permits in 2009 nor did they conducted or authorize the cooking fires for any of the burns mentioned in paragraph 9 of the complaint nor is a permit required to conduct burns for cooking under MGL c. 48, s.13 or 310 CMR 7.07 (2).
10. The purpose of this statement is an extreme exaggeration whose only purpose can be to mislead this Honorable Court. It is an egregious attempt to mislead and dupe this honorable Court as Exhibits 1 through 3 clearly show which relevant laws or regulations permit burns on the Farm in question. Justice Fein has issued ACTIVE RULINGS on the matter. This statement by the Plaintiff reaches the threshold for action under MGL 268 section 1 as the Fire Chief swore an oath under the pains and penalties of perjury in the form of a notarized affidavit attached to the verified complaint.

#### COUNT I

11. The answers to paragraph 1-10 are reiterated as if set forth fully herein.
12. False, 310 CMR 7.07 (2) clearly states that 310 CMR 7.07 “shall not apply” to “open burning conducted primarily for cooking purposes.” Neither LaMountain or Brigham or Northeast conducted or authorized any burns in 2009.
13. False , the fires are supervised there is a pressurized water source on site capable of delivering hundreds of gallons of water a minute to the fire, The fires are contained or conducted on gravel or sand and conducted during periods of appropriate meteorological conditions as per 310 CMR 7.07 (3).

#### COUNT II

14. The answers contained in Paragraphs 1-13 are repeated, reiterated, and answered as if fully set forth herein.

15. False. Neither LaMountain, Brigham, or Northeast conducted or authorized any burns in 2009 further MGL c. 48 s.13 allows cooking fires without permits.

16. False.

### **ARGUMENT AND COUNTERCLAIM**

The Defendants allege the plaintiffs have ignored prior rulings, guidance and judicial orders as demonstrated in exhibits 1,2 and 3. Further this issue has been litigated between the same parties and for the same set of facts and collateral estoppel and res judicata should certainly apply here. The Conduct of the Plaintiff and their admission in paragraph 5 of the verified complaint of the fact they continue to deny permits for reasons other than allowed under the regulatory framework or meteorological conditions mentioned by Justice Fein in her ruling show a blatant disregard for laws by the Holland Fire Chief and other officials of the Town Of Holland. The ruling by DALA vacating action for open burns against James LaMountain individually is clear.

Furthermore the Fire Chief and Town of Holland agreed that the entire matter hinged on whether or not the Defendants are engaged in agriculture. **(exhibit 4 paragraph 2) and (exhibit 1 paragraph 1).**

### **FACTS**

- A. The property is a farm engaged in commercial agriculture **(exhibit 1 pg.6, paragraph 14) and (exhibit 5 map) and (exhibit 6)**
- B. All fires are supervised.
- C. All fires are conducted more than 250 feet from the closest neighbors' property.
- D. All fires are conducted during periods of appropriate meteorological conditions.
- E. There is a 75,000 pound excavator, a 10,000 pound front loader, a pressurized water source in the form of a 200 plus gallon 3" centrifugal pump, a lake, and a 175 foot deep drilled water well all within reach and in the control of farm hands during any and all burns.

For the above reasons we respectfully ask the following sanctions and or orders be issued by this Honorable Court.

- 1. ORDER the Town of Holland fire Chief to stop initiating actions for exempted cook fires on the farms property.
- 2. Order the Holland Fire Chief to comply with the orders of the Springfield Housing Court Justice Dina Fein and issue agricultural burning permits based "solely" on weather or not appropriate meteorological conditions exist.
- 3. Take the fire Chief into custody forthwith as per MGL 268 for his false statements under oath in the verified Complaint at paragraph 10.
- 4. Pay any reasonable costs for the defense of this matter.
- 5. Make the above orders in the form of a permanent injunction.

6. Any other sanction or ruling this Honorable Court finds just or appropriate.
7. Dismiss the case under the doctrine of collateral estoppel and res judicata.  
We respectfully ask this Honorable Court to GRANT the above requested orders in the interest of protecting commercial agriculture which has been determined to be a protected public purpose under the 97<sup>th</sup> amendment to the Constitution of the Commonwealth of Massachusetts. Your Honor.....  
We all eat ,

Sincerely, James P LaMountain  
41 Lakeridge Drive  
Holland Ma 01521 413 245 4502

Chad Brigham  
16 Lakeridge Drive  
Holland Ma 01521

I swear the above has been served on the plaintiff with all exhibits through their attorney.