



## ZONING BOARD OF APPEALS

### *Town of Montague*

1 Avenue A  
Turners Falls, MA 01376

(413) 863-3203  
FAX: (413) 863-3231

### **NOTICE OF DECISION**

#### **Case #00-22**

**Date** October 24, 2000

**Date of Filing** November 8, 2000

#### **Applicant**

William Evans, trustee Steeplegate Trust

**Address** 194 Wood Hill Hookset Road  
Bow, NH 03304

#### **Owner**

Franklin Trust, John R Evans, trustee

**Address** 12 Evans Lane  
Deerfield, MA 01373

#### **Premises Affected**

Assessors Map 23 Lot 66  
Franklin Commons  
Turners Falls, MA 01376

Appeal Petition (40A Section 8) (X)  
Special Permit Application (X)  
Site Plan Review (X)

The Board of Appeals held a public hearing on October 24, 2000 to decide the Appeal Petition of the Inspector of Buildings' Zoning Opinion of August 30, 2000 that self-storage is not a permitted use in the General Business District. The assertion of the appeal was that "self storage" is "retail sales or service."

The Board finds that:

1. Self-storage is not listed as a Permitted Use by right or by special permit in the General Business District.
2. Warehousing is a Permitted Use in the Industrial District.
3. The Montague Board of Assessors, the Massachusetts Department of Revenue and the Montague Planning Board classify self-storage as a form of warehousing.
4. Chapter 105 and 105A of Mass General Laws regulate warehousing and self-storage respectively.
5. Chapter 105 defines custodial responsibilities of the operator of a warehouse for the goods or materials stored. Chapter 105A defines when and how an operator of a self-storage facility may assume custody of goods and materials stored.
6. Chapter 105A does not prohibit the operator from using the premises as a warehouse otherwise regulated by Chapter 105.
7. The financial transaction between the owner of the units and the customers is in the form of a lease, which is a real estate agreement rather than a retail sales or service.

The Board of Appeals concludes that:

Self-storage is warehousing based upon the distinct similarities of MGL Chapter 105 and 105A, Assessing conventions, Planning Board opinion and the common understanding of the words “sales”, “warehousing” and “retail”.

Self-storage is not “retail sales or service.” Goods and services are not exchanged on the premises, the transaction is for leased space for storage. The storage of goods constitutes warehousing, and warehousing by all definitions available, is not a retail sales or service.

The Board VOTED to DENY the Appeal and uphold the Zoning Opinion of the Inspector of Buildings.

**RECORD of VOTE**  
**APPEAL of: INSPECTOR of BUILDINGS ZONING OPINION**  
**The vote of the Zoning Board of Appeals was as follows:**

1. <u>Ernest Brown</u>	<u>NO</u>	Chairman	4. <u>John Burek</u>	<u>NO</u>
2. <u>Dennis Booska</u>	<u>NO</u>		5. <u>John Reynolds</u>	<u>NO</u>
3. <u>Walter Sojka</u>	<u>NO</u>			

At the same public hearing, the Board of Appeals considered the application for a special permit and site plan review pursuant to Sections 5.2.5(b) and 5.2(c) of the Montague Zoning Bylaws, to construct 11 self-storage units. After reviewing materials submitted, including *Project Manual, Montague Self Storage, dated August 23, 2000; Site Plan, Montague Self Storage, dated August 2000.*

The Board of Appeals found that:

1. Self-storage is not a “retail sales or service”.
2. That self-storage is warehousing.
3. Warehousing is not an allowed use in the General Business Zone.

The Board concludes that it is beyond its authority to grant the requested Special Permit and so must deny the application.

**RECORD of VOTE**  
**SPECIAL PERMIT**  
**The vote of the Zoning Board of Appeals was as follows:**

1. <u>Ernest Brown</u>	<u>NO</u>	Chairman	4. <u>John Burek</u>	<u>NO</u>
2. <u>Dennis Booska</u>	<u>NO</u>		5. <u>John Reynolds</u>	<u>NO</u>
3. <u>Walter Sojka</u>	<u>NO</u>			

The Board of Appeals found that detailed review of the Site Plan was unnecessary and meaningless since the use could not be approved under the Zoning Bylaws. The Board therefore voted to DENY APPROVAL of the site plan.

**RECORD of VOTE**  
**SITE PLAN REVIEW**

**The vote of the Zoning Board of Appeals was as follows:**

1.	Ernest Brown	<b>NO</b>	Chairman	4.	John Burek	<b>NO</b>	
2.	Denis Booska	<b>NO</b>		5.	John Reynolds	<b>NO</b>	
3.	Walter Sojka	<b>NO</b>					

**IMPORTANT:** Any appeal from the decision of the Town of Montague Board of Appeals must be made to the Court pursuant to Section 17, Chapter 40A (MGL) as amended, and must be filed in the office of the Town Clerk within twenty (20) days after the date of filing of this decision with the Town Clerk.

Board of Appeals

By \_\_\_\_\_  
Ernest L. Brown, Chairman

\_\_\_\_\_  
Wendy M. Bogusz, Clerk