



**TOWN OF OAK BLUFFS, MA
PLANNING BOARD**

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June 14, 2021

Matt D'Andrea
Kimberly Kirk

Hi Matt and Kim,

As you know, the Martha's Vineyard Commission had your proposed synthetic field materials tested for PFAS and other toxins. The results of that testing indicated the presence of a number of known contaminants including but not limited to: *Bis(2-ethylhexyl) phthalate, Phenol, PFBA, PFPeA, PFHxA, PFHpA, PFOA, PFDS, PFPeA, 2,4-Dimethylphenol, 2-Methylphenol, 3-Methylphenol/4-Methylphenol, Benzyl Alcohol, 6:2 FTS*.

It is my understanding that, even in trace quantities, many of these contaminants pose a distinct and potentially compounding risk to our water. MASSDEP has established requirements for public water systems to test for PFAS (Per-and polyfluoroalkyl substances).

It appears that two of the identified PFAS chemicals present in the proposed synthetic turf system (PFOA and PFHpA) are among the six PFAS compounds now being regulated by the State of MA. The result of town tests shows the presence of these now regulated compounds at the Oak Bluffs Water Department's Lagoon and Farm Neck wells. At the State Forest wells, regulated PFAS were not detected in the latest published testing results.

Prior to the most recent DRI referral the town's Planning Board was assured the proposed field materials were PFAS-free, therefore not triggering the need for a special permit under 8.2 WATER RESOURCE PROTECTION OVERLAY DISTRICT (WRPOD).

Following the suggestion of the town's attorney (see below), I ask that you inform me of your position on the applicability of Section 8.2 to your project application prior to me taking any formal action.

Sincerely,

Ewell Hopkins, Chairperson
Oak Bluffs Planning Board

From: Michael Goldsmith <mgoldsmith@rrklaw.net>

Date: June 14, 2021 at 10:26:38 AM EDT

To: T E Hopkins <ewellhopkins@mac.com>

Cc: planningboard@oakbluffsma.gov

Subject: FW: MVRHS permits

Ewell. The question has arisen whether MVRHS must satisfy the requirements of Section 8.2 of the Zoning By-laws (ZBL) (prompted by an email inquiry from the MVC), which contains regulations for projects located within the Water Resource Protection Overlay District (WRPOD). While I understand that at least a portion of the facilities are located within the WRPOD, I am not aware of prior communications between the Board and MVRHS regarding a process to address Section 8.2. The Planning Board is the special permit granting authority for the WRPOD. Section 10.4.3(3)(site plan review) provides that, when the Planning Board is the special permit granting authority, the site plan review and special permit procedures are consolidated.

Assessing the applicability of Section 8.2 involves several steps, including: a.) whether or what portion of the project lies within the WRPOD; b.) what provisions, if any, of Section 8.2 apply to the project; and c.) the impact of the Dover Amendment on the Planning Board's authority under Section 8.2. I think we are well-versed at this point that a municipality cannot require a special permit for a Dover-protected use. Having said that, there is a line of cases, at first glance, exploring whether certain types of land-use regulations - with non-zoning underpinnings but adopted or incorporated into local zoning - fall outside of Dover's exemption. E.g., *Southern New England Conference Assoc. of Seventh-Day Adventists v. Burlington*, 21 Mass. App. Ct. 701 (1986)(Dover Amendment did not exempt a proposed church building and related parking area from provisions of a town's zoning by-law requiring a special permit for construction within a wetlands district which had been superimposed upon the other zoning districts in the town).

I make note of this not to suggest that I have reached any conclusion about the three points identified in the preceding paragraph, but to respond to your inquiry (again, prompted by the MVC) whether Section 8.2 of the ZBL applies to this project. The answers are not necessarily clear without further research and due diligence.

I have not been pointed to a specific provision governing a lightning special permit, but perhaps the MVC representative was referring to that prong of the site plan review section.

As I understand the MVC proceedings are winding down, it would make sense for you to ask MVRHS representatives whether it has a position on the applicability of Section 8.2 to the project. Please don't hesitate to call with other questions.

-Michael

Michael A. Goldsmith

Director

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