

ANDREA ROGERS, CHAIRMAN
ZONING BOARD OF APPEALS
TOWN OF OAK BLUFFS
56 SCHOOL STREET
OAK BLUFFS, MA 02557

Re: Appeal of November 17, 2021 Building/Zoning Official Determination
Goodale Construction Co. and Working Earth Landscaping
194 Edgartown Vineyard Haven Road, Oak Bluffs, MA 02557

Dear Ms. Rogers and Members of the Zoning Board:

We are neighbors of the above 55 acre property owned by Goodale Construction Co. located at 194 Edgartown Road. In accordance with Section 10.2.2.3 of the Oak Bluffs Zoning By-law, we are appealing the determination of the Oak Bluffs Building/Zoning Official, Tom Perry which he made after a site visit on November 17, 2021. We are in receipt of email correspondence (see the attached determination) from Mr. Perry in which he states that:

“Matt and I conducted a site visit here on Wednesday November 17th to observe the progress of the vacating of the contractor stored materials and equipment. All the materials and equipment that were to be removed have been taken out. The one landscaper that is remaining has been determined to be an agricultural use and is therefore exempt from Zoning, they can remain.”

We do not believe that a landscaping business can be construed as an agricultural use, which is afforded protection by Massachusetts General Law Title VII, Chapter 40A, Section 3. This State Law applies to commercial agriculture, aquaculture, silviculture, horticulture, floriculture and viticulture. A landscaping business is an entirely different type of land use than agriculture.

First, agriculture and its related activities are concerned with the science of growing plants and animals in soil or water and preparing and distributing crops and livestock to the public for consumption as food. Agriculture is devoted exclusively with living things. Landscaping on the other hand is concerned with the art and science of improvement or ornamentation of the built environment and this includes both living and non-living things such as those noted below. Thus, a landscaping business is primarily engaged in the creation of decorative gardens and grounds related to residential and non-residential uses. While an agricultural use is exclusively a soil based land use (even greenhouses require soil), a landscaping business could be sited entirely within a building and is not a soil based land use. As such, a landscaping business could theoretically be sited anywhere because it simply requires storage of its tools, supplies and equipment and then transport of those things to its customers in order to plan, plant, and maintain ornamental gardens, lawns, driveways and other contractor type services it provides. Farmers are stuck with the land and soils they have to grow their crops and animals.

A landscaping business goes well beyond simply planting plants to grow like agriculture. Here are the ways a landscape business differs from an agricultural business:

- Landscaping businesses engage in practices such as re-grading the land to create decorative gardens and grounds. Disturbing the soil profile by re-grading productive farmland may irretrievably destroy the very characteristics that make the soil productive for growing things that people consume and use.
- Landscaping businesses involve planting decorative flowers, shrubs and trees for ornamental purposes but not normally for human consumption, although that sometimes occurs when edible flowers or herbs are included in

an ornamental garden. Landscaping also involves placement of stones, installing statues, fountains and other non-plant decorations. A farmer conducting agriculture would normally have no interest in installing stones, fountains, or statues for growing food.

- Landscaping may include the creation of ponds for decorative purposes. However, ponds on a farm are normally reserved for the use of farm animals. How many landscaped ponds behind a home that are created by a landscaping business have animal watering or crop irrigation in mind?
- Landscaping integrates gardens with patios, decks, and homes. Farming usually separates the areas that are planted or where animals are fed from the farmer's home due to the nuisances.

A landscaping business therefore, is concerned with designing a garden, transforming the land so it is appealing as a decorative element in the landscape, planting flowers, shrubs, and trees grown by others, and then maintaining them for aesthetic purposes. While farmers must plan their fields and rotate their crops to maintain fertility, landscaping businesses rely on the addition of soil amendments to make the gardens look good and survive. Farmers are primarily concerned with crop yields, whether it is the crop itself that is to be consumed by people and with the fertility of the soil so their crops grow naturally. In summary, we need food and food security and this is the reason why State Law protects agriculture as an essential land use. The same cannot be said for landscaping.

The Oak Bluffs Zoning By-law does not define agriculture (except for "Agricultural use, nonexempt") nor does it define a landscaping business. The common ordinary use of words lacking definitions in a zoning By-law therefore, must be applied to any terms that are not specifically defined in the Law. For this, there are a variety of dictionaries, such as Merriam-Webster, Oxford, Webster's, Collier's and others. But the authoritative dictionary for zoning purposes is Black's Law Dictionary. The reason why this particular dictionary is so pertinent to zoning is because Black's Law Dictionary cites specific case law on unique aspects of the term or terms in zoning rules. Here is Black's Law Dictionary definition of Agriculture:

"The science or art of cultivating the ground, especially in fields or large areas, including the tillage of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing of live stock. *Dillard v. Webb*, 55 Ala. 474. And see *Binzel v. Grogan*, 67 Wis. 147, 29 N. W. 895; *Simons v. Lovell*, 7 Ileisk. (Teun.) 510; *Springer v. Lewis*, 22 Pa. 191. A person actually engaged in the "science of agriculture" (within the meaning of a statute giving him special exemptions) is one who derives the support of himself and his family, in whole or in part, from the tillage and cultivation of fields. He must cultivate something more than a garden, although it may be much less than a farm. If the area cultivated can be called a held, it is agriculture, as well in contemplation of law as in the etymology of the word. And if this condition be fulfilled, the uniting of any other business, not inconsistent with the pursuit of agriculture, does not take away the protection of the statute. *Springer v. Lewis*, 22 Pa. 193."

Upon review of the above, none of the phrases can be construed as including the types of activities engaged in by a landscape business. Black's Law Dictionary does not provide a definition for a landscaping business. While an agricultural business and a landscaping business do share the similarity of working the land, they do so in far different ways and produce different impacts that clearly discern the two uses.

A landscaping business is dependent upon different equipment than an agricultural business. These include trucks that are only parked temporarily at their home base and then must travel in and out all day long to also drive trailers for towing equipment, Bobcats, snow blowers and snow plows, leaf blowers, lawn mowers, and grass cutters among many other specialized tools, equipment, and landscaping materials.

A landscape business will have signs on its trucks and must travel from their home base out to their client's premises for installation and maintenance of ornamental gardens at residences and businesses. Farmers do not do this for they are concerned solely with working the farmland they occupy, producing crops and animals and agricultural products that can be sold on the farm or distributed to retailers for sale when the crops or animals are ready for harvest and consumption.

Landscaping trucks associated with a landscaping business will come and go throughout the day to pick up or drop off equipment (wheel barrels, mowers, trimmers, leaf blowers, etc.), soil, fertilizers, pesticides, compost, rocks, and so on. Landscape business workers will also return to the landscaping businesses home at the end of the day with grass clippings, leaves, tree branches and other materials generated by the landscaping process. Landscaping trucks and landscaping equipment are normally stored and maintained at its home business location. Loam, mulch, and more are also stored at a landscaping businesses home location.

We implore the Zoning Board of Appeals for a common sense ruling that a landscaping business is not an agricultural business. To do otherwise invites additional landscaping businesses to claim protection as agricultural businesses on the Goodale site and other sites. This would lead to a condition in Oak Bluffs where landscaping businesses, in effect, are protected land uses since they would henceforward be considered agriculture. We seriously doubt that this outcome would be consistent with Massachusetts General Laws. In addition, ruling in favor of the Building/Zoning Official may invite other businesses to claim they are related somehow to farming, when the facts reveal that farming is a unique endeavor with historical roots that go back more than 10,000 years. Landscaping does not, is unique to serving aesthetic interests, and is not protected by the Massachusetts General Laws.

Finally, we ask that the Zoning Board of Appeals make a determination concerning what we believe is a conflict in the Building/Zoning Official's actions. In a Cease and Desist order Mr. Perry sent to Goodale Construction on July 7, 2021 (see attached correspondence) concerning the use of his 55 acre property as a Contractor's Yard, we note that such Contractor's Yard is a Residential Accessory Use as per the Table of Uses from the Zoning By-law. This use requires approval by the Planning Board or Board of Selectmen. We believe that Mr. Perry correctly made the call that a Contractor's Yard would only be permitted as a Residential Accessory Use and thus, directed Mr. Goodale to remove any contractor that has leased space on his property. However, we see that Storage or Parking of Commercial Landscaping Equipment is also a Residential Accessory Use as per the Zoning By-law's Table of Use Regulations which also requires approval by the Planning Board or Board of Selectmen. How is it that the Storage or Parking of Commercial Landscaping Equipment as a Residential Accessory Use is any different than a Contractor's Yard as a Residential Accessory Use? Our understanding is that Mr. Perry's, July 7, 2021 Cease and Desist order applied broadly to all commercial activity. We believe that this has created a direct conflict in the Building/Zoning Official's actions as they pertain to the types of uses that are both considered by the Zoning By-law as residential accessory uses. How is that one of the two uses identified as a Residential Accessory Use is now considered an Agricultural use, which enjoys the exemptions afforded Exempt and Institutional Uses?

Very Truly,

Kristina Almquist

LeShann DeArcy Hall

Bruce Merrill

Ben Scott

Hannah Bedford

David Hannon

Donald Milardo

Lainey Scott

Lenny Bedford

Patricia Ingalls

Ann Palches

Danny Williams

Zabeth Billingham

Sloane LeRoux

Peter Palches

Elizabeth Wilson

Marsha Eldridge

Gino Mazzaferro

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Paige Guizzardi

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Barbara Ronchetti



DEPARTMENT OF BUILDING & ZONING

Tom Perry, Building / Zoning Official
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Ph. 508-693-3554 X123 Fax 508-693-5375

July 7, 2021

Goodale Construction Co
C/O Peter Goodale
PO Box 506
Vineyard Haven MA 02568

Mr Goodale,

RE: Cease and Desist of Commercial Activity-194 Edg/VH rd (Map 40 Parcel 10)

This notice is in regards to 194 Edgartown/Vineyard Haven Rd (Map 40 Parcel 10). We have no record of special permits or variances for this property to allow for the commercial activity that is being conducted. This parcel is located in R3, which is a residential zone.

All commercial activity must cease and desist. All commercial equipment, vehicles, and storage must be removed from the property by August 10, 2021.

Failure to comply with this notice will result in daily fines.

Tom Perry
Building and Zoning Official
Town of Oak Bluffs