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November 17, 2020

Zoning Board of Appeals
Town of Boxford
Boxford, MA 01921
VIA EMAIL to K. Stickney

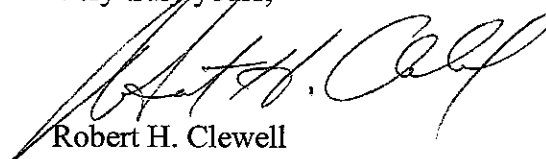
Re: Case # 1012

Board Members:

Enclosed is the Response of the Owner of the property in issue to the Appeal of Shawn Perkins and Jessica Maloney to a Decision of the Inspector of Buildings.

I also enclose a copy of a letter from the Boxford Board of Health, and our response thereto, on these issues.

Very truly yours,



Robert H. Clewell

RHC/h
Encl.
Cc: R. Aldenberg
R. Taylor
K. Longo
P. Delaney
R. Johnson

COMMONWEALTH OF MASSACHUSETTS

TOWN OF BOXFORD

Essex, ss

Zoning Board of Appeals

Case # 1012

OWNER'S RESPONSE TO APPEAL OF PERKINS AND MALONEY

I. **Introduction.**

The owner, Kathryn Borylo, of the parcel at issue, 283 Main Street, Boxford ("The Premises"), hereby **responds** to the substance of the September 22, 2020 Appeal of Shawn Perkins and Jessica Maloney ("The Applicants") from an August 31, 2020 Decision by the Boxford Inspector of Buildings denying the Applicants' Complaint concerning activities being carried out at the premises.

II. **Background.**

These premises have been owned and/or operated as a commercial horse property by different parties since approximately 1985. The current owner is Kathryn Borylo, who acquired the property in August of 2005 and has operated it since that date as a duly licensed equine facility known as Springtide Farm.

The facility consists of a long unpaved drive, barn, indoor and outdoor riding rings, paddocks, and surrounding grounds. The barn has a capacity of thirty-three horse stalls and the number of horses boarded there, owned by both Ms. Borylo and her clients, varies at times from 25 to 32.

As with any horse facility, one immutable fact is that the owner must deal with a large volume of horse manure, in this case a minimum of **3-4 cubic yards per day**. Since Ms. Borylo first acquired the property large (up to 30 feet high) piles of manure accumulated, estimated at four thousand (4000) cu/yd. Some of those piles, over the years, became covered by grass. These manure piles were mis-identified by the applicants as hills of natural soil. Until 2015 Ms. Borylo had to pay to have the manure removed from the property.

In or about 2015 Ms. Borylo hired Philip A. Picariello, Inc. to perform certain tasks associated with a commercial horse facility. Those tasks include:

- (1) maintaining the unpaved drive, by filling and grading, both jobs requiring heavy equipment;

- (2) maintaining the riding rings, indoor and outdoor, by grading and filling, again, requiring heavy equipment;
- (3) snow plowing the drive and parking areas; and
- (4) removing horse manure, both past and present.

It is the method of manure removal which forms the basis of the Applicant's complaint, which method of removal is discussed in both the Building Inspector's August 31, 2020 Decision and the Applicants' September 22, 2020 Appeal from that Decision.

III. **Mixing poor quality soils with manure to create compost.**

Ms. Borylo's contractor, "Picariello", performs numerous tasks related to the maintenance of her equine business.

One of those tasks is the removal of horse manure. The horse business at this location generates up to 21 cu/yd. of horse manure each week. State and local health laws require that such manure be dealt with in ways that promote the health of the neighborhood and Town.

In this case the owner and contractor have a business arrangement (as explained by the Building Inspector in his Decision) whereby the contractor brings inert materials such as sand/gravel/loam onto the premises and mixes it with manure to create compost, then removes the compost, which he sells. In exchange the owner is relieved of paying what she estimates is Twenty-Five thousand dollars (\$25,000.00) per year for manure removal.

Hours and days of raw material and compost hauling.

Perhaps the single most important factor for the ZBA to bear in mind is that the contractor's manure mixing and removal process, including bringing the materials to be mixed with the manure onto the premises, takes place over six weeks spread throughout the year. That is, at most, thirty days of Mondays through Fridays throughout the year, mostly in the spring and fall, are days on which the contractor's trucks either bring materials onto the property or remove the mixed compost. The contractor's hours of operation by agreement with the owner (Kathy Borylo) are 8:00 am to 5:00 pm. The sifting process takes place three times per year, for 3-5 days at a time during the year, when a commercial sifter is rented.

The contractor is present on many more days, such as for driveway and riding ring maintenance,

snow plowing and routine moving of accumulations of new manure to storage up behind the barn, but, the large trucks, which seem to be of greatest concern to the Applicants, come and go over approximately six weeks spread throughout the year on only Mondays through Fridays, 8:00 a. to 5:00 pm.

The Applicants have asserted that the contractor stores his business equipment on this property, in their attempt to support their claim that the premises constitute a contractor's yard. In fact the contractor keeps only two pieces of equipment on the premises for any length of time, one is a loader for moving manure to storage, up and behind the barn, every other day, all year, and one, an excavator, for mixing the manure with other soils brought onto the property, all as has been appropriately reported by the Building Inspector in his Decision. Even the excavator is not present for months at a time as it is used at other locations in addition to the owner's premises.

The contractor rents, three times per year, for one to five days at a time, a commercial sifter. This piece of equipment is used to sort larger rock from the inert materials that will be mixed with the manure. The sorted rock is then removed from the premises.

Thus, (a) the inert materials are brought onto the premises at various times;

(b) the sifting process of inert materials takes place three times per year;

(c) the sifted sand/gravel/loam is mixed with manure to create compost then stored; and

(d) the compost is removed at various times when there is a market for it.

The **only** heavy equipment used is (1) the trucks for bringing raw soils, such as sand/gravel/loam onto the premises, and for later removing the separated rock and the compost; (2) a front-end loader and an excavator for moving and mixing manure with the other materials, and (3) a sifter, rented three times per year for sifting other materials from larger rock. The contractor does not store his equipment at the premises other than equipment used solely on the premises.

IV. **Other allegations.**

The Applicants have asserted that safety issues are present on the premises. Safety issues unrelated to an Application before this Board are not within the jurisdiction of this Board. The Board of Selectmen, the Board of Health, the Fire Department, the Building Inspector and the Police Department all have jurisdiction over various components of Public Safety. Such issues are not before this

Board on an Appeal from a Building Inspector's Decision as the Zoning Enforcement Officer.

Interestingly the Applicants complain about the noise of the backup safety warnings on trucks. The owner has arranged with her contractor, since August, 2020, to not employ those warnings, and such warnings have not been used since August, 2020, this warning abatement is lawful on private property.

The Applicants have asserted that the owner is violating both Board of Health and/or Conservation Commission regulations. We leave it to those boards to address such allegations, but, for the record, note that those allegations are false.

The Applicants assert that the owner is unlawfully removing naturally occurring soils from the Town without a permit. This allegation is addressed above, but, to be clear, **no natural Boxford soils are being mined or removed**. The only soils removed are those which are first brought onto the premises and are subsequently mixed with horse manure before removal. The assertion by the Applicants that Picariello is excavating at the premises is false.

The Applicants would have this Board believe that the owners manure abatement procedures take place 24/7. The only the regular activity that occurs is the moving of manure 3-4 times per week from the barn to outdoor storage (as is regulated by the Board of Health and the Conservation Commission).

V. **Agricultural use.**

As correctly noted by the Building inspector in his Decision, this property is a recognized as an Agricultural Use pursuant to G.L. c. 40A, section 3. The specific agricultural use in question here is the keeping and riding of horses. The proper storage and removal of horse manure is an essential part of such agricultural business, as the Building Inspector properly recognizes.

Section 3 is entitled "**SUBJECTS WHICH ZONING MAY NOT REGULATE;...**". The first sentence thereof provides that zoning ordinances and by-laws shall not regulate ... the use of land for the primary purpose of commercial agriculture...

The agricultural use exemption embodied in 3 is interpreted broadly in order to promote the economic viability of agricultural enterprises in Massachusetts. See *Tisbury v. Martha's Vineyard Comm.* 27 Mass. App. Ct. 1204, 1205, 544 N.E.2d 230 (1989). Where the agricultural use exemption applies, the exemption is "complete and unconditional . . . [and] is not limited to agricultural uses that do not injure a residential neighborhood. Various uses indubitably to be classed as agricultural may be detrimental to a residential neighborhood." *Moulton v. Building Inspector of Milton*, 312 Mass. 195, 197, 43 N. E. 2d 662

(1942) The exemption operates even where the agricultural use in question is retail or commercial in nature. See *Prime v. Zoning Board of Appeals of Norwell*, 42 Mass. App. Ct. 796, 800, 680 N.E.2d 118 (1997).

Nothing in the factual scenario presented here would allow for the conclusion that the owner's manner of dealing with horse manure is either unreasonable or unrelated to a legitimate agricultural use.

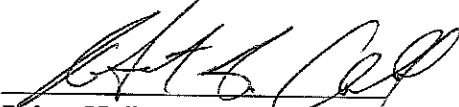
VI. Conclusion

The Building Inspector, as Zoning Enforcement Officer was correct in both his factual and legal analysis and conclusion. The owner of these premises is operating within her rights as an Agricultural activity pursuant to c. 40A M.G.L. 3.

The Applicants' Appeal must be denied.

Respectfully submitted,
Kathryn Borylo,
By her attorney,

11/16/20
Dated:


Robert H. Clewell, BBO#086680
58 Main Street
Topsfield, MA 01983
978-887-2166

ATTESTATION

I, Kathryn Borylo, being sworn, hereby attest that the statements contained in this RESPONSE, are true and accurate to the best of my knowledge and belief. Signed under the pains and penalties of perjury.

Nov 16, 2020
Dated


Kathryn Borylo



Town of Boxford

7A Spofford Road
Boxford, Massachusetts
01921

Board of Health
(978) 867-6000 Ext 172

12 November 2020

Ms. Kathryn Boryto
263 Main Street
Boxford, MA 01921

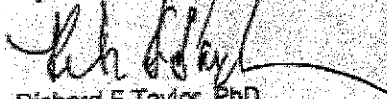
Dear Ms. Boryto:

It has come to the attention of this Board that excessive amounts of soils/earth may have been taken off of your property at 183 Main Street, and, additionally, excessive amounts brought onto the property. Board of Health regulation 1-96, Town Code Section 250 (<https://www.ecode360.com/10134669>) prohibits the removal from or transport to any lot in boxford of soils/earth in excess of 500 cubic yards without a permit from the BOH. As the owner of the land, you are responsible for the permit.

We understand that the movement of soils/earth from your property has been carried out primarily by Philip A. Picaniello, Inc., 1470 Stonecleave Road. Please provide this Board with the total estimates of soils/earth (including rocks) removed from or taken to your property during 2019 and 2020. Include any invoices or forms to substantiate your estimates.

You are hereby Ordered not to remove any additional soils/earth nor bring any soils/earth to your property until this enquiry is resolved. If any future work is proposed to remove or bring soils to your property, you may be required to file an application for a permit from the BOH. You shall cease any further movement of soils/earth from 283 Main Street until a determination is made by this Board.

By Order of the Board


Richard F Taylor, PhD
Chair

cc: Philip A Picaniello, 1470 Stonecleave Road, Boxford
Peter Delany, Boxford Conservation Commission
Paula Fitzsimmons, Zoning Board of Appeals

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November 16, 2020

Boxford Board of Health
7A Spofford Road
Boxford, MA 01921
VIA EMAIL c/o K. Longo

Re: 283 Main Street, Boxford, MA

Dear Members of the Board of Health

This letter is in response to the November 12, 2020 letter to Kathryn Borylo, copy attached.

The letter of Chairman Taylor is hereby disputed. The August 31, 2020 letter of the Boxford Inspector of Buildings addresses the same issues as does Chairman Taylor's letter, and is presently the subject of an Appeal to the Boxford Zoning Board of Appeals.

For the record, no soils are brought to the premises that are not subsequently removed after being mixed with horse manure. See a copy of Owner's Response to the Appeal of Perkins and Maloney attached hereto. No additional soils are brought to the property permanently and no native soils are removed. No earth filling, nor earth removal, as defined in Section 205 of the Boxford Town Code (not section 250 as erroneously stated in the Board's 11/12/20 letter) is occurring.

Your letter to Cease and Desist, without investigation, violates state and federal requirements of procedural due process. The Town of Boxford, through its Inspector of Buildings has jurisdiction of this matter, as does the Zoning Board of Appeals. Unless and until your Board has reliable evidence, AFTER DUE NOTICE, of facts contrary to those within the Zoning Board Matter, your Notice to Cease and Desist is invalid.

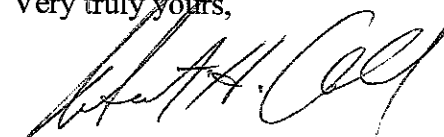
Furthermore, as noted in the August 31, 2020 letter of the Inspector of Buildings, this property is subject to an Agricultural Exemption.

Ms. Borylo presently needs to replace approximately 200 cu/yds of sand in the paddocks of the premises in order to protect the health and safety of the horses in her care. Old mud will be scraped off the top of those paddocks and new sand installed. The old mud/sand will be mixed with manure for subsequent removal consistent with the procedure outlined in the attached Response.

Robert H. Clewell

Regardless of the Board's position on the long terms merits of this matter, and without waiving our previously stated position, request is hereby made that Ms. Borylo be permitted, by agreement with the Board, on an emergency basis, to replace that paddock sand forthwith.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert H. Clewell', written in a cursive style.

Robert H. Clewell

RHC/h

Encl.

Cc: Boxford ZBA
 Peter Delaney
 Robert Aldenberg
 Kendall Longo
 Randy Johnson