Mead, Talerman & Costa, LLC
Attorneys at Law

730 Main Street
Suite 1F
Millis, MA 02054
Phone/Fax 508.376.8400

www.mtclawyers.com

March 31, 2022

BY HAND DELIVERY

Ellen Agro, CMMC
Mendon Town Clerk
20 Main Street
Mendon, MA 01756

Re: Zoning Appeal – 106 Millville Road

Dear Ms. Agro:

Please be advised that I represent Kathleen Farrell-Alexander, Mark Alexander, Dana Yurach and Sylvain Cormier with respect to the above-referenced matter. On behalf of my clients and pursuant to G.L. c. 40A, §§ 7, 8 and 15, please let this letter serve as formal notice of the appeal of a certain decision of the Mendon Building Commissioner, dated March 3, 2022. In his letter, the Building Commissioner declined to take enforcement in response to the request I made on behalf of my clients on October 29, 2021.

This matter concerns my client's concerns regarding a massive filling operation that is taking place on abutting property located at 106 Millville Road (the "Property"). In short, we disagree with the conclusions of the Building Commissioner and seek zoning enforcement against owner of the Property, substantially for the reasons outlined in my letter of October 29th.

Enclosed with this Notice are the following:

- Zoning Appeal Application Form;
- My Enforcement Request of October 29, 2021;
- The Building Commissioner's letter of March 3, 2022;
- Certified abutter's list;
- Check for filing fee in the amount of $50.00.

We look forward to the ZBA's scheduling of a hearing on this matter.

Sincerely,

Jason R. Talerman

Cc: Building Commissioner
Zoning Board of Appeals

Newburyport Office
30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

New Bedford Office
227 Union Street, Suite 606
New Bedford, MA 02740

APPLICATION FOR APPEAL OF ENFORCEMENT ORDER

Under M.G.L Ch. 40A, Sect. 7, 13, 14; Mendon Zoning By-Laws Sect. IX, Item 5

This application form must be completed, signed and submitted with the filing fee by the applicant or his/her representative in accordance with the Board's rules and regulations as supplied with this application by the Town Clerk

APPLICANT: KATHLEEN FARRELL - ALEXANDER + MARK ALEXANDER
DANA TURACH + SYLVAIN CORMIER

ADDRESS: 14+16 LOVELL ST., MENDON

TELEPHONE # (Days): C/O COUNSEL 508 376-8400

PETIONER IS: Owner___; Abutter X; Other_____(Identify)

****

IF REPRESENTATIVE OF APPLICANT, OWNER MUST IDENTIFY BELOW:

NAME of REPRESENTATIVE: JASON TALERMAN, ESQ
MEAD, TALERMAN + COSTA, LLC

ADDRESS: 730 MAIN ST., SUITE 1F
MILLIS, MA 02054

TELEPHONE # (Days): 508 376-8400

RELATIONSHIP TO APPLICANT: COUNSEL

I/we hereby authorize the above party to represent out interests before the Board of Appeals with regard to this Petition:

Applicant: Dana C Murach Sylvain Cormier
Kathleen F Alexander Mark Alexander

****

SUBJECT PROPERTY

STREET ADDRESS: 100 MILLVILLE ROAD

ASSESSORS' MAP & LOT: 16-106

NATURE OF RELIEF SOUGHT

Massachusetts General Laws & Mendon Zoning By-Laws allow appeals to the Zoning Board of Appeals of decisions of the local Building Inspector/Zoning Enforcer

DETAILED EXPLANATION: PETIONERS SEEK REVERSAL OF DECISION OF BLDG COMMISSIONER TO DENY ENFORCEMENT AGAINST ILLEGAL FILLING ON PROPERTY - SEE ATTACHED

I/We hereby certify under the pains and penalty of perjury that the information contained in this Application is true and complete and that I/We have received a copy of the rules and regulations of the Mendon Zoning Board of Appeals.

Kathleen Cummin 30MAR2022 Dana C Murad 30MAR2022

Signature of Applicant(s) Date

Kathleen J Alexander Mark Alexander

****

OFFICE OF TOWN CLERK **MENDON, MA**

Exhibits submitted:

X Completed application

N/A (8) Copies of Site Plan (per Board Rules & Regulations)

X Certified Abutters List from Assessors' Office

N/A Copy of Deed for Subject Property

X Copy of Building Permit Application and/or any pertinent correspondence

Petition, Application or Appeal (including required documents listed above) along with filing fee of $50.00 received this date:

Ellen L Ogno 3/31/22

Town Clerk Date

TOWN OF MENDON
BOARD OF ASSESSORS
20 Main Street
MENDON, MA 01756
508-473-2738
508-478-8241 (Fax)
e-mail: assessor@mendonma.gov

REQUEST FOR ABUTTERS

Date: March 29, 2022

Name: Jason Talerman

Company: Mead, Talerman & Costa

Address: 730 Main St, Ste 1F

Phone Number: 774-993-5000 *Email address:* jay@mtclawyers.com

Owner of Subject Property: Neto Joao - 106 Millville

Map: 16 *Street Code:* 178 *Parcel:* 106

Number of feet from subject required: 300
(if left blank, 300' will be utilized)

☐ *Check here for mailing labels* *Number of sets:* _____

Board for which abutters are requested: ZBA

Fees: $1.00 per name on the abutters list - $1.00 per sheet of labels

**The Board of Assessors reserves 10 working days to provide all certified lists of abutters. This list is valid for 30 days from the date of certification.*

TOWN OF MENDON

BUILDING DEPARTMENT
Mendon Town Hall
18 Main Street
Mendon, MA 01756
Telephone: (508) 473-2679 Fax: (508) 634-2909

March 3, 2022

Attorney Jason R. Talerman
730 Main St.
Suite 1F
Millis, MA 02054

RE: Request for Zoning Enforcement
106 Millville Road, Mendon, MA (the "Property")

Dear Attorney Talerman,

I am in receipt of your request for zoning enforcement at the above referenced property, pursuant to G.L. c. 40A, §7.

I do not find this property to be in violation of the Mendon Zoning By-Law for any of the reasons alleged.

Specifically, you allege that "the owner of the property has decreased or ceased farming activities and has made arrangements to use his land for the receipt and stockpiling of fill and associated construction materials." My inspection and observations indicate that the owner has indeed brought in large amounts of dirt, gravel, and or fill; and has done so to grade or regrade his property. I did not find that he is "stockpiling" the material, or using it in any way that violates the zoning bylaw. To this extent, you allege:

- "Commercial fill operations are a separate primary use of property that are not listed in your Zoning By-Laws". Upon inspection, I do not consider the activity at this property to be a commercial fill operation. I have reviewed your comparison to the case of Richardson-North Corp v. ZBA of Uxbridge. I do not find the activities at 106 Millville Rd. to be similar, identical, analogous, pertinent, or otherwise comparable to the aforementioned case.
- "If such.use could plausibly be determined to be allowed under the zoning bylaws (which it can't), Site Plan Review would be required." I agree that "such use" would require site plan review, however, my inspection as stated above, did not reveal a commercial fill operation to be the use.
- "The use of the site for an industrial filling operation is also in violation of XXVI of the Town's General Bylaws, which regulates Stormwater Management". Whether this is in fact true, as

Building Commissioner I do not enforce this regulation, nor is this general bylaw a zoning bylaw

- "I am also providing you with notice that large scale filling operations require oversight and approval by the Massachusetts Department of Environmental Protection pursuant to the Department's "*Interim Policy for Re-Use of Soil for Large Reclamation Projects*"." As I'm sure you are aware, as Building Commissioner, I do not enforce DEP regulations, nor does a DEP violation inherently violate the Zoning By-Law.

You have further stated that this property is in violation of additional regulations and at least one department or board has issued a cease-and-desist order.

As stated previously, as result of several in-person inspections along with review of photographic evidence provided for my consideration, I do not find the activities described in your letter to be in violation of the Town of Mendon Zoning By-Law.

Please be aware that you and your clients have the right to appeal this decision, as provided in MGL c. 40A.

Sincerely,

John Erickson
Building Commissioner

cc: Town Administrator

Mead, Talerman & Costa, LLC
Attorneys at Law

730 Main Street
Suite 1F
Millis, MA 02054
Phone 508.376.8400

www.mtclawyers.com

October 29, 2021

Loriann Braza
Zoning Enforcement Officer
Mendon Town Hall
18 Main Street
Mendon, MA 01756

Re: Request for Zoning Enforcement
106 Millville Road, Mendon, MA (the "Property")

Dear Ms. Braza:

Please be advised that this office represent Dana Yurach and other abutters to the above referenced Property. In that capacity, please consider this letter to be a formal request for zoning enforcement, pursuant to G.L. c. 40A, §7. Specifically, please consider this letter to be a formal request for an order that prohibits the continued illegal earth importation activities at the Property.

As you are likely aware, the Property, for many years, was used primarily for farming purposes. However, more recently, farming activities have substantially decreased or ceased altogether. Rather than continuing to conduct farming activities, the owner of the Property has made arrangements to use his land for the receipt and stockpiling of fill and assorted construction materials. Attached hereto as Exhibit A are photographs that depict the massive amount of fill that has been brought onto the Property. Such activities violate the Town's zoning and general bylaws as well as Massachusetts Law in several respects. To wit:

- Commercial fill operations are a separate primary use of property that are not listed in your Zoning Bylaws. As you know, any use not permitted by your zoning bylaws is expressly prohibited. *See Section 3.01(a, b).* To the extent that the owner of the Property may claim that a massive commercial filling operation is accessory to agriculture, please be advised that the Massachusetts Appeals Court has recently rejected such argument in a matter pertaining to a similar operation neighboring Uxbridge: Richardson-North Corp v. ZBA of Uxbridge (a copy of which is attached hereto as Exhibit B). In that case, which we prevailed on as Town Counsel to Uxbridge, the property owner claimed that a commercial filling operation was accessory to small farming operation. The Appeals Court disagreed and upheld the underlying enforcement order to cease such operations and restore the property.
- Even if such use could plausibly be determined to be allowed under the zoning bylaws (which it can't), Site Plan Review would be required under Article IV of the Zoning Bylaws. Specifically, Site Plan Review is triggered by any of the following: (1) "Any change in the existing use of

Newburyport Office
30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

the land ... to a non-single family residential use" *§4.02(b)(iv)*; (2) "Any land disturbance of more than one acre." *§4.02(b)(vi)*; (3) "Any new business, commercial or industrial use." *§4.02(b)(vii)*. Again, the Property owner has introduced a new industrial use that is plainly in excess of one acre of disturbance.

- The use of the site for an industrial filling operation is also in violation of XXVI of the Town's General Bylaws, which regulates Stormwater Management. Under §4.0 of that Chapter, disturbances of more than one acre require approval of the Planning Board (cc'd here). While such bylaw exempts activities are characterized as the normal maintenance and improvement of agricultural land, the massive filling operation obviously bears no relationship to any ongoing farm uses on the Property, as discussed above. That Mendon is a "Right to Farm" community cannot be used to excuse a plainly illegal use that is not otherwise compliant with local bylaws. Accordingly, either your office or the Planning Board should immediately require compliance.
- By this letter, with a cc to the Mendon BOH, I am also providing you with notice that large scale filing operations require oversight and approval by the Massachusetts Department of Environmental Protection pursuant to the Department's "*Interim Policy for Re-Use of Soil for Large Reclamation Projects*," a copy of which is attached hereto as Exhibit C. Even if the filling operation in question does not exceed 100,000 cubic yards, the Mendon BOH has substantial authority to monitor the same so as to ensure that drinking water, the environment and neighboring properties are not adversely affected.

Accordingly, based upon the foregoing, my clients hereby request that, within the fourteen (14) prescribed under c. 40A, you order the Property owner to immediately cease all importation of materials and restore the property to its original condition. The Conservation Commission has already issued a cease and desist order and your office should similarly act in furtherance of the public's health, safety and welfare. Furthermore, if the Property owner has a reasonable rebuttal to any such order, they are free to appeal to the Zoning Board of Appeals, which will hold a hearing at which these uses may be further examined.

Please do not hesitate to contact me with any questions that you may have.

Sincerely,

Jason R. Talerman

Cc: Clients
Town Administrator/Board of Selectmen
Board of Health
Land Use Committee
Building Commissioner
Planning Board
Conservation Commission

EXHIBIT A

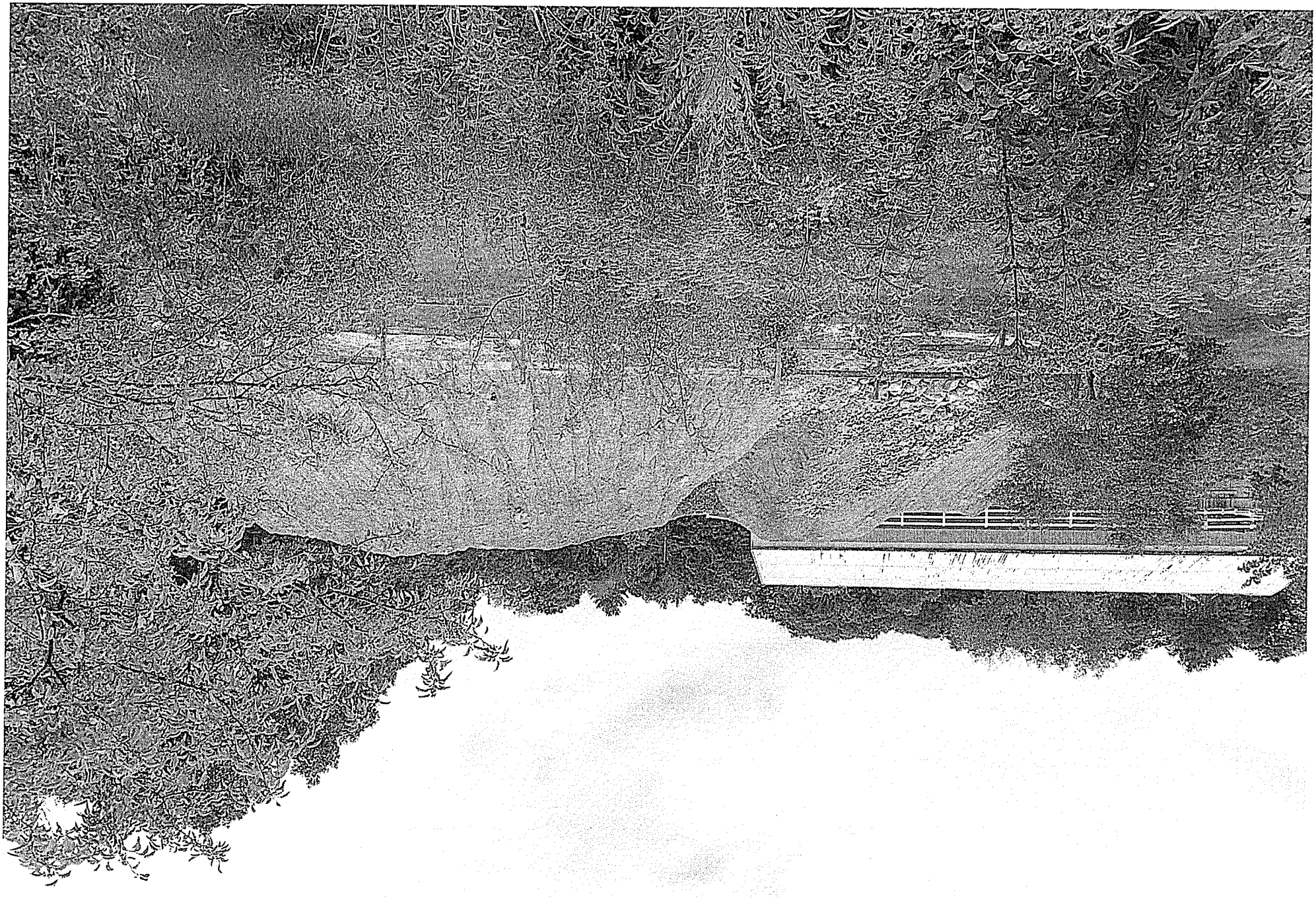

EXHIBIT B

97 Mass.App.Ct. 1128
Unpublished Disposition

Appeals Court of Massachusetts.

RICHARDSON-NORTH CORP. & another[1]

v.

ZONING BOARD OF APPEALS OF UXBRIDGE.

19-P-756

Entered: July 7, 2020.

By the Court (Vuono, Lemire & McDonough, JJ.[2])

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

*1 The zoning board of appeals for the town of Uxbridge (board) appeals from a judgment of the Land Court vacating the board's final decision requiring Elias Richardson, Third (Richardson), to cease his soil importation operation on his property. On appeal, the board argues that its determination that the soil importation was neither lawful as a primary, agricultural use nor as a use incidental to the property's farming activities was reasonable and supported by the record. The judge, the board argues, thus erred in declining to defer to it. We agree and, accordingly, reverse the judgment and order a new judgment to be entered affirming the board's decision.

Background. We recite the relevant facts as found by the judge. The property at issue contains approximately 202 acres of land in Uxbridge, and an additional eighteen acres situated across the border in Rhode Island.[3] The property consists of six parcels of land which together comprise the Richardson farm.[4] The entire property is located in the town's agricultural zoning district. The property has been in the Richardson family for several generations, and at least some portion of the land has always been designated for farming purposes. In its current state, portions of each of the component lots of the property are used for pasturing cattle and horses, growing hay and corn, storing animal feed and farm equipment, and commercial forestry.

Richardson purchased the property around 1990. To finance the purchase, Richardson entered into a contract to sell gravel from the property. Gravel was removed from an approximately forty-five acre area, and removal continued until 2016, when Richardson was forced to stop due to a dispute with the town over the earth removal permit. The result of the graveling operation is a gravel pit that is approximately forty-five acres and approximately forty feet deep.

Around 2015, Richardson entered into an agreement with a soil broker, pursuant to which the broker would be allowed to import a minimum of 200,000 tons of fill to the gravel pit each year for a period of ten years. Filling operations began in 2016.

On January 10, 2017, following an investigation, the zoning enforcement officer for Uxbridge issued a written notice to Richardson notifying him that his soil importation operation was in violation of the town's bylaws. On February 1, 2017, the officer issued a cease and desist order to Richardson ordering him to discontinue all soil importation activities, and on February 6, sent an amended cease and desist letter to Richardson. Richardson appealed the January 10 notice and the February 6 cease and desist order to the board. He argued that while the operation was not agricultural in nature, it was nonetheless exempt from the town's bylaws since it was incidental to the property's primary use as a farm. On April 19, 2017, following a hearing, the board upheld the notice and order, concluding that the operation was "a separate principal use of the Property, which is not allowed by the Town's zoning by-laws, and also is not customarily incidental to or subordinate to, any

agricultural use of the Property."

*2 Discussion. General Laws c. 40A, § 3, authorizes a town to regulate the use of privately-owned property within its borders. However, the town may not "prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture." G. L. c. 40A, § 3. This exemption also applies to uses related to, or incidental to, the primary agricultural use of land. See Henry v. Board of Appeals of Dunstable, 418 Mass. 841, 844 (1994). Richardson does not claim that the filling operation was permitted pursuant to G. L. c. 40A, § 3. Rather, he claims that the use is permitted under the exemption's extension to incidental uses. The question in this case therefore devolves to whether the filling activities on the property are incidental to the property's principal use as a farm.

"Determining whether an activity is an 'incidental' use is a fact-dependent inquiry, which both compares the net effect of the incidental use to that of the primary use and evaluates the reasonableness of the relationship between the incidental and the permissible primary uses" (quoting G. L. c. 61A, § 2). Henry, 418 Mass. at 844. "The word 'incidental' .... 'means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance.... But "incidental," when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant.' " Id. at 845, quoting Harvard v. Maxant, 360 Mass. 432, 438 (1971).

"On appeal to the [Land Court], the judge is required to hear the matter de novo and determine the legal validity of the decision of the board upon the facts found by him." Josephs v. Board of Appeals of Brookline, 362 Mass. 290, 295 (1972). See G. L. c. 40A, § 17 ("The court shall ... determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board"). "Judicial review is nevertheless circumscribed: the decision of the board 'cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary.' " Roberts v. Southwestern Bell Mobile Sys., Inc., 429 Mass. 478, 486 (1999), quoting MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 639 (1970). In reviewing the judge's decision, we accept his findings of fact, unless clearly erroneous, but determine independently the application of law to those facts. See Wendy's Old Fashioned Hamburgers of New York, Inc. v. Board of Appeal of Billerica, 454 Mass. 374, 383 (2009).

In this case, the judge did not identify any of the board's grounds for upholding the notice and order as unreasonable or legally untenable. Instead, the judge simply found that, in his view, the filling operation was incidental to the agricultural use of the property, and was therefore lawful. By reversing the board's decision based only on his own consideration of the applicable law, the judge improperly substituted his judgment for that of the board. See Pendergast v. Board of Appeals of Barnstable, 331 Mass. 555, 558-559 (1954).

Upon the facts found by the judge,[5] recited above, the board's finding that the filling operation did not constitute an incidental use was not legally untenable or unreasonable. In concluding that the operation was incidental to the property's agricultural use, the judge attempted to differentiate the facts from two factually-similar cases, Henry v. Board of Appeals of Dunstable, 418 Mass. 841 (1994), and Old Colony Council—Boy Scouts of America v. Zoning Bd. of Appeals of Plymouth, 31 Mass. App. Ct. 46 (1991) (Old Colony). In Henry, the Supreme Judicial Court held that a proposed removal of 300,000 to 400,000 cubic yards of gravel over a three to four-year period for the purpose of establishing a Christmas tree farm was not incidental to such a proposed use. Henry, 418 Mass. at 845. In Old Colony, this court ruled that an organization's proposed removal of 460,000 cubic yards of fill over a two and one-half year period for the purpose of establishing a new cranberry bog was not incidental to the proposed agricultural use. Old Colony, 31 Mass. App. Ct. at 49.

*3 In distinguishing the cases, the judge focused on the "net effect" of the proposed incidental use on the surrounding area, a factor which the courts in Henry and Old Colony put great emphasis on. See Henry, 418 Mass. at 846; Old Colony, 31 Mass. App. Ct. at 49. In Henry and Old Colony, the judge noted, the proposed excavations would have substantially altered the nature of the land and would have served an agricultural purpose that did not exist prior to the start of the excavation. By contrast, the judge found that if the soil filling operation in this case was "allowed to go forward, the end result — of a concededly large operation — would be improved farmland which approximates the historical condition of the land.... [The operation] would incrementally, over a period of ten years, reclaim the existing gravel pit returning the property to exclusively" agricultural use. The judge further found the operation to be sufficiently minor in relation to the agricultural uses of the property, noting that it would occupy less than a quarter of the acreage of the entire farm.

While the distinctions drawn by the judge between this case and the others are well-taken, we cannot say that the judge's reading of Henry and Old Colony compels a conclusion contrary to the board's. See ACW Realty Mgmt., Inc. v. Planning Bd. of Westfield, 40 Mass. App. Ct. 242, 246 (1996) (holding that where reasonable minds may differ on conclusion to be drawn from evidence, board's judgment is controlling). First, even if the filling operation would ultimately result in land that is level and similar to its condition that existed before the land was graveled, the scope of the operation necessary to arrive at that result is significant. The agreement struck by Richardson contemplates delivery of at least two million tons of fill over a period of ten years, which would equate to three million dollars in income to Richardson. The scale of the filling operation, in terms of soil moved, duration, and profits, far exceeds the excavations proposed in Henry and Old Colony. See Henry, 418 Mass. at 841; Old Colony, 31 Mass. App. Ct. at 47. Furthermore, while the judge emphasized the proportionately small physical size of the subject area, the larger property -- regardless of its size -- supports a modest amount of farming activity, and currently produces very little income. Accordingly, we cannot say that a rational basis did not exist for the board's determination that the filling operation is not "subordinate and minor in significance" to the property's primary use. Henry, 418 Mass. at 845. See Eastern Point, LLC v. Zoning Bd. of Appeals of Gloucester, 74 Mass. App. Ct. 481, 486 (2009).

Second, the board's decision is further supported by evidence in the Land Court record that the gravel pit area could be returned to agricultural use with a small amount of fill, rather than the amount of fill it would take to realize the same grade as the surrounding land. While the land may be more suitable for farming if it were level with the surrounding land, the proposed incidental use here, as opposed to the excavations in Henry and Old Colony, does not appear to be necessary to support the primary, agricultural use of the area. See Henry, 418 Mass. at 841; Old Colony, 31 Mass. App. Ct. at 47. Contrast Jackson v. Building Inspector of Brockton, 351 Mass. 472 (1966) (construction of new building necessary to operate agricultural machine on farm in residential district was reasonably related to farming activities and thus permitted under zoning ordinance). We therefore also cannot say that the board's determination that the filling operation was not reasonably related to the property's farming activities was unwarranted.

The board, in its discretion, could reasonably find that the filling operation was not an incidental use. Accordingly, its decision was not legally untenable, nor was it arbitrary or capricious. The judgment is reversed, and a new judgment shall enter affirming the decision of the board.

*4 So ordered.

All Citations

97 Mass.App.Ct. 1128, 150 N.E.3d 1145 (Table), 2020 WL 3708908

Footnotes

1 Elias Richardson, Third.

2 The panelists are listed in order of seniority.

3 We need not reach whether the parties, during proceedings in the Land Court, stipulated to how much of the property was at issue.

4 Title to the farm is currently in Richardson-North Corporation, a now-dissolved Massachusetts corporation. Richardson was an officer and shareholder of the company, and is the apparent successor in interest to its assets, including the property.

5 The parties dispute whether it was proper for the judge to have considered the entire property, rather than only the plot on which the gravel pit sits, in his analysis. Because we conclude that the board could have arrived at the same conclusion had it applied the same facts as the judge, we decline to address the matter.

EXHIBIT C

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection
One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

Interim Policy on the Re-Use of Soil for Large Reclamation Projects

Policy # COMM-15-01

August 28, 2015

Policy Statement

This Interim Policy provides notice of MassDEP's intent to issue site-specific approvals, in the form of an Administrative Consent Order, to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of oil or hazardous materials.

During the effective period of this policy, MassDEP approval for the filling of sand pits, gravel pits and quarries to which this policy applies will be provided only through Administrative Consent Orders completed by the terms of this policy. Filling operations conducted without MassDEP approval operate at risk of Department enforcement for violations of rules governing solid waste management and oil and/or hazardous material releases.

The use of soil for the reclamation of a quarry, sand pit or gravel pit under the conditions of this policy is considered approved re-use for the purposes of the notification exemption described at 310 CMR 40.0317(13).

Effective Date

This Interim Policy is effective on August 28, 2015. This Interim Policy will remain in effect until it is specifically rescinded or superseded by MassDEP regulations governing soil fill projects promulgated pursuant to Section 277 of Chapter 165 of the Acts of 2014, M.G.L. c. 21E, Section 6, and M.G.L. c. 111, Section 150A. While such future regulations will likely differ in scope and detail from this Interim Policy, the Department anticipates that regulations and policies developed to implement the final approach will specifically accommodate projects commenced under an Administrative Consent Order issued pursuant to this Interim Policy through the incorporation of transition provisions.

Authority

This Interim Policy is implemented pursuant to Section 277 of Chapter 165 of the Acts of 2014[1], M.G.L. c. 21E, § 6[2] and 310 CMR 40.0000, and M.G.L. c. 111, § 150A[3] and 310 CMR 16.00 and 19.000.

Section 277 of Chapter 165 of the Acts of 2014 directs the Department to "*establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.*"

M.G.L. c. 21E, § 6 establishes the Department's authority to "*specify reasonable requirements, applicable to sites and vessels where releases of hazardous material or oil might occur and to activities which might cause, contribute to, or exacerbate a release of hazardous material or oil, to prevent and control, and to counter the effects of, such releases. Such requirements may be prescribed… by order under section nine[4] for specific sites and vessels which the department has determined to… be conducting an activity which poses a threat of release of hazardous material or oil.*"

The placement, dumping, disposing or reuse of soil containing oil and/or hazardous material (OHM) into the environment is a "release" as that term is defined in M.G.L. c. 21E § 2[5]. Such dumping, disposing or unapproved re-use of soil is potentially a notifiable release (310 CMR 40.0300) requiring assessment and, where indicated, remediation. Depending upon site-specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects. Examples of such effects include:

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[1] https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter165
[2] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section6
[3] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section150A

[4] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section9
[5] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section2

- contamination of the underlying aquifer through leaching of the OHM;
- human exposure through direct contact with the soil or inhalation of vapors or particulates emanating from the soil;
- degradation of wildlife habitats;
- degradation of neighboring properties, wetlands, and waterways through stormwater runoff; and
- exacerbation of localized flooding.

Applicability

This Interim Policy is applicable to any quarry, gravel pit, or sand pit reclamation project that receives, or plans to receive greater than 100,000 cubic yards of soil for the reclamation/filling of said quarry, gravel pit, or sand pit after August 28, 2015 including:

- Reclamation projects that will begin to receive on site more than 100,000 cubic yards of soil after August 28, 2015;

- Reclamation projects that have commenced physically receiving soil on site on an "at risk" basis prior to August 28, 2015 subject to the regulations, policies and procedures in place prior to August 28, 2015 and which will receive more than 100,000 cubic yards after October 31, 2015;

To be eligible for MassDEP approval pursuant to this Interim Policy, the soil accepted by the quarry, gravel pit or sand pit can contain no more than de minimis quantities of Solid Waste (e.g. Municipal Solid Waste and/or Construction and Demolition Waste) as defined in 310 CMR 16.00 and 310 CMR 19.000.

Soil fill projects to which this policy applies and that are not managed in compliance with this policy may be found to have caused, contributed to, or exacerbated a release of OHM and may be subject to enforcement pursuant to Section 277 of Chapter 165 of the Acts of 2014[6], M.G.L. c. 21E, § 6[7] and 310 CMR 40.0000, and/or M.G.L. c. 111, § 150A[8] and 310 CMR 16.00 and 19.000.

Fill projects that accept any amount of soil (whether pursuant to this Interim Policy or otherwise) must ensure that the filling does not create new, reportable releases of oil or hazardous materials to the environment pursuant to M.G.L. c. 21E and 310 CMR 40.0000, or will not violate M.G.L. c. 111, section 150A, 310 CMR 16.00, or 310 CMR 19.000.

Nothing in this Interim Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that apply to the management of soil, including any local, state or federal permits or approvals necessary before placing the soil at the receiving location, including, but not limited to, those related to placement of fill, noise, traffic, dust control, stormwater management, wetlands, groundwater or drinking water source protection.

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[6] https://malegislature.gov/Budget/CurrentBudget
[7] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E/Section6
[8] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section150A

Implementation

A reclamation project proponent should contact the Regional Director in the MassDEP Regional Office for the region in which the reclamation project is located to initiate the approval process.

In determining whether to issue an Administrative Consent Order to a project proponent for a specific quarry, gravel pit or sand pit reclamation project, MassDEP will review data describing the types and concentrations of OHM contained in the excavated soil proposed to be used for reclamation, data describing the relevant characteristics of the location proposed to receive this soil and the surrounding area, proposed soil management plans, and any other information necessary to ensure the proper handling of the fill material.

As a case-specific approval, the development of an ACO for a reclamation project will necessitate discussions between the Department and the project proponent to identify all the information necessary as a basis for approval. These discussions will likely occur concurrent with the project proponent's discussions with local officials and the development of final soil management plans.

MassDEP will review documentation submitted by project proponents to demonstrate that the appropriate local officials are aware of the project and have been afforded the opportunity for meaningful input. Examples of such documentation may include:

- a copy of any local permit or other approval specific to the use of large volumes of fill material that may be required (municipal approval of an up-to-date reclamation plan for the receiving location, and/or or a municipal permit under an "earth filling" ordinance, and/or any other approval required by a municipality for activities that involve the transportation of soil onto the receiving site); or
- where such local approvals are not required:
    - a copy of any notification to the public in the area surrounding the fill project and the Chief Municipal Official (CMO) and the Chair of the Board of Health (BOH) of the city or town in which the fill project is located of the proposal to use the excavated soil (including a description of the oil and/or hazardous materials that it contains) and
    - a summary of the steps taken to solicit meaningful input from those local officials, copies of comments received, and a description of the ways in which these comments have been (or will be) addressed.

MassDEP will not finalize an Administrative Consent Order on the proposed quarry, gravel pit or sand pit reclamation project unless and until all comments from such local officials on project impacts related to noise, dust, odor and/or trucks have been appropriately addressed by the project proponent.

Administrative Consent Orders will include, as appropriate, requirements for:

- Implementation of a detailed Soil and Fill Management Plan that specifies how material will be sampled[9], documented, tracked, transported and managed as well as what materials are permitted and not permitted;
- Detailed plans that specify how material will be managed at the reclamation project to prevent nuisance conditions, such as noise, odor, litter and dust;
- Detailed Stormwater Management Plan to prevent impacts to sensitive receptors;
- Detailed Wetlands Impact provisions, including, as applicable, a requirement to obtain an Order of Conditions, Determination of Applicability or other approval or permit to proceed with the project as designed;
- A plan for communicating with the public and involving interested parties at key points in the implementation of the reclamation project;
- Oversight by an LSP or other qualified environmental professional and/or Third Party Inspection program;
- Knowledge of and intention to comply with all applicable laws and regulations; and
- Stipulated penalties for noncompliance with the Administrative Consent Order.

August 28, 2015
Date

Gary Moran
MassDEP Deputy Commissioner

[9] Soil that has been pre-characterized *in situ* prior to August 28, 2015 using standard practices, procedures and methodologies in place at the time of sampling (for example, characterized for RCRA-8 metals) may be evaluated for use as reclamation soil on the basis of that pre-characterization through August 28, 2016.

Key: 1537

Town of MENDON - Fiscal Year 2022

12/7/2021 5:09 pm SEQ #: 1,512

LEGAL

CURRENT OWNER	PARCEL ID	LOCATION
NETO JOAO 635 MAIN STREET WATERTOWN, MA 02472	16-178-106-0	106 MILLVILLE STREET

TRANSFER HISTORY	DOS	T	SALE PRICE	BK-PG (Cert)
NETO JOAO	06/22/2018	QS	320,000	58986-219
MURPHY MICHAEL P	06/27/2006	QS	475,000	39254-312
BELLEVILLE DONALD L &	12/19/1997	QS	250,000	19455-130

CLASS	CLASS%	DESCRIPTION	BN ID	BN	CARD
0310	75	MIXED USE (COMM)		1	1 of 1

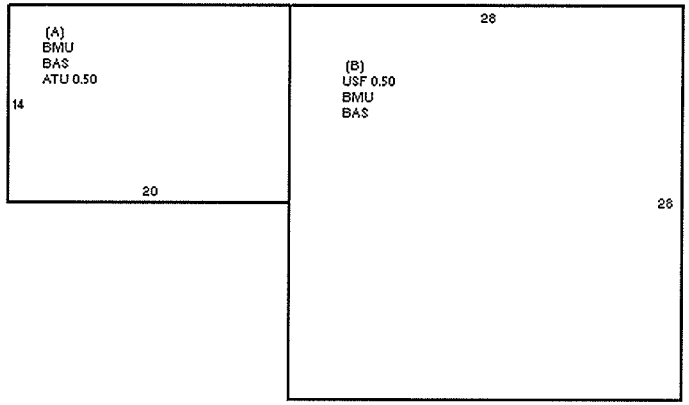
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st	%
	11/08/2005	9	SPLITS/SUBS				0	100
95-13	01/30/1995	2	ADDITIONS	7,500	08/06/1996	PSK	0	100

LAND

CD	T	AC/SF/UN	Nbhd	Infl1	Infl2	ADJ BASE	SAF	Infl3	Lpi	VC	CREDIT AMT	ADJ VALUE
100	S	40,000	CIM 1.00	A 1.00	A 1.00	110,000	1.29	A 1.00	C3 1.10			130,270
300	A	1.917	CIM 1.00	A 1.00	A 1.00	3,630	0.98	A 1.00	C3 1.10			6,820

TOTAL	2.835 Acres	ZONING	1	FRNT	283
Nbhd	CIM	NOTE	KELLEY GREEN ACRES, HORSE FARM - SLOPE IN REAR SECTION.		
Infl1	AVERAGE		CHANGE IN AC 1-1-95 SEE 81P PLAN - COMBINED W/108 MILLVILLE AND AC CHANGE IN FY06.		
Infl2	AVERAGE				

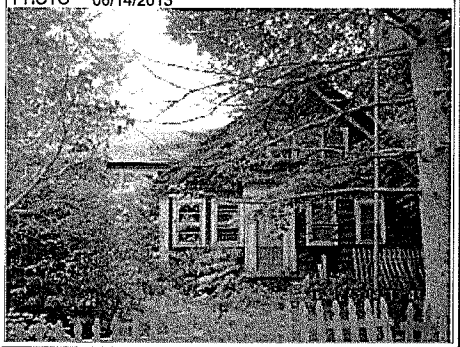
ASSESSED	CURRENT	PREVIOUS
LAND	137,100	133,000
BUILDING	3,000	2,400
DETACHED	196,400	178,900
OTHER	0	0
TOTAL	336,500	314,300



DETACHED

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD
LBN	+ 1.10	30 0.70	36X50		1,800	26.95	34,000
FBN	A 1.00	30 0.70	12X40		480	27.15	9,100
STB	L 0.80	30 0.70	152X34		5,168	10.88	39,400
RID	- 0.90	30 0.70	144X72		10,368	14.22	103,200
RID	- 0.90	30 0.70	95X10,10X12		1,070	14.22	10,700

PHOTO 06/14/2013



BLDG COMMENTS

FORMERLY 108 MILLVILLE STREET - COMBINED WITH 106 IN FY06.
FY13 = HOUSE IN TEARDOWN CONDITION

BUILDING

BUILDING	CD	ADJ	DESC
MODEL	1		SINGLE FAMILY
STYLE	7	1.40	CONV/OLD STYLE [100%]
QUALITY	A	1.00	AVERAGE [100%]
FRAME	1	1.00	WOOD FRAME [100%]

MEASURE	6/12/2013	RJM
LIST	6/12/2013	RJM
REVIEW	6/18/2013	JMB

YEAR BLT	1800	SIZE ADJ	1.050
NET AREA	1,456	DETAIL ADJ	1.000
$NLA(RCN)	$208	OVERALL	1.420

CAPACITY	UNITS	ADJ
STORIES	1.5	1.00
ROOMS	6	1.00
BEDROOMS	2	1.00
BATHROOMS	1	1.00
FIXTURES	3	$4,472
GARAGE SPACES	0	1.00
% BSMT FIN	0	1.00
# 1/2 BATHS	0	1.00
# OF UNITS	1	1.00

ELEMENT	CD	DESCRIPTION	ADJ
FOUNDATION	4	FLR & WALL	1.00
EXT. COVER	1	WOOD SHINGLE	1.00
ROOF SHAPE	1	GABLE	1.00
ROOF COVER	1	ASPH/CMP SHIN	1.00
FLOOR COVER	31	COMBINATION	1.00
INT. FINISH	1	PLASTER	1.00
HEATING/COOL	2	HOT WATER	1.02
FUEL SOURCE	1	OIL	1.00
CONDO NAF	0		1.00

S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN
A	ATU	N	ATTIC UNF	140		47.71	6,680
+	BMU	N	BSMT UNFINISHED	1,064		40.67	43,269
+	BAS	L	BASE AREA	1,064	1800	180.33	191,872
B	USF	L	UPPER STORY FIN	392	1800	142.88	56,011

TOTAL RCN	302,303

CONDITION ELEM	CD
EXTERIOR	P
INTERIOR	P
KITCHEN	P
BATHS	P
HEAT	O
ELECT	O

EFF.YR/AGE	1949 / 71		
COND	54	54 %	
FUNC	45	TO DEMO	
ECON	0		
DEPR	99	% GD	1
RCNLD			$3,000