

Petitioner: JOSEPH CATALDO
Case No. 910A
Date Filed: October 15, 2018

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The Littleton Board of Appeals conducted a public hearing on November 15, 2018 at 7:50 P.M. at the Shattuck Street Municipal Building, 37 Shattuck Street, Littleton, on an appeal from the decision of the Zoning Enforcement Officer pursuant to MGL Ch. 40A Section 15, and Littleton Zoning Bylaw Section 173-26 Use Regulations and Section 173-78 Noise, regarding property at 563 King Street, Littleton, Ma. Notice of the hearing was given by publication in the Littleton Independent, a newspaper circulated in Littleton, on October 26, and November 2, 2018, and by mail to all abutters and parties in interest. Present and voting: Sherrill R. Gould, Chairman, Jeff Yates, Cheryl Hollinger, Rod Stewart, and Alan Bell, Members. Present and not voting were alternates, John Sewell, Jillian Shaw and Kathleen O'Connor.

The petitioner, represented by counsel, (hereinafter Petitioner) presented a history of the matters and allegations which culminated in the Assistant Zoning Enforcement Officer (hereinafter Officer), order. Petitioner's family owns the property at 563 King Street, which has been operated as a nursery, a retail garden center, and a landscaping, snowplowing and construction company for many years. The property has been granted various permits and approvals from the zoning board to operate related businesses on the site as customary home occupations, or as incidental to the primary business of agriculture/horticulture which is allowed as of right. In one of the earliest decisions in 1987 there was a finding restricting "the operation of a landscaping business not in connection with the transplanting of nursery stock", but in a later decision in 2010, the Board found that the "Petitioner operates a farm stand and landscaping business as of right within the zoning district." The primary business on this site has long been established as agriculture and horticulture, primarily nursery stock, and activities related to the cultivating, nurturing, transplanting, maintaining, selling and servicing customers who purchase that stock.

Sometime during the past two years, abutters to the site began complaining with increasing frequency about the noise, the hours of operation and the use of large equipment and trucks by this operation on their residential street. In response to the complaints the Petitioner represented to the Officer that he had purchased a large property in Ayer, Massachusetts with the intention of moving all of the construction and commercial landscaping operations and many of the larger vehicles to that site as soon as the site was permitted and a garage structure built. In addition, the Petitioner immediately replaced the loader generating the most noise with a newer, more efficient model with noise suppression devices. The Petitioner did, however, take exception to the complaints about the equipment, stating that the loam screener, loader and most of the trucks and vehicles which were the subject of the complaint were vehicles customarily used in agriculture operations and were therefore allowed as of right.

After a series of continuing complaints, the Officer finally issued a cease and desist letter ordering the operation of the landscaping business to terminate within 30 days. The Petitioner appeals from that decision.

The Board conducted a lengthy hearing on the matter. Several abutters were heard expressing concerns primarily about noise, hours of operation and the increasingly growing construction/landscaping business operation in a residential zone. The Petitioner again represented that his intention is to move the commercial construction/landscaping operation off site completely as soon as his garage in Ayer is completed, but argued that his use of the large commercial construction equipment, mainly the loaders and screeners and trucks to move his nursery and landscaping stock are all part of the agriculture operation allowed as of right. Several abutters also appeared in support of the Petitioner and his operations and his responsiveness to neighbor concerns. At least one Board Member emphasized that every farm operation is dependent upon large scale equipment for a successful operation.

The Board asked the Petitioner what measures he was willing to take to mitigate the impact on the neighbors and reminded the neighbors that they purchased their homes abutting this operation. The Board also took note that the Petitioner has made efforts to mitigate many of the concerns already by replacing the noisy machine and making efforts to locate much of the operation into the neighboring town. The Board also expressed the opinion that the landscaping operation which was ordered to cease is an integral part of the nursery business allowed as of right and it was difficult to separate any commercial construction operation from the uses necessary to the agricultural operation.

In an effort to compromise between the complaining abutters and the rights of the Petitioner, the Board requested all parties to consent to a voluntary review of the matter in the spring, with the expectation that when some of the operations move to Ayer, some of the problems will abate.

FINDINGS: The Board found that the Petitioner was within his rights to operate commercial equipment in conjunction with the agriculture uses allowed as of right and that the order of the Inspector to cease and desist all nursery operations was not justified.

DECISION: The Board found in favor of the Petitioner and GRANTED the Appeal of the Building Inspector's decision.

Appeals, if any, shall be made pursuant to G.L. 40A, Section 17 and shall be filed within twenty days after the date of filing of this Notice in the office of the Town Clerk.

Signed: _____

Alan Bell, Clerk

Dated: December 10, 2018

Deed Reference: Book 15934, Page 186.

I hereby signify that twenty days have elapsed since the filing of the above decision by the Board of Appeals and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

Town Clerk

True Copy Attest: _____

Littleton, Massachusetts