

Lauren Galvin, Esq.  
Counsel  
[lgalvin@verrill-law.com](mailto:lgalvin@verrill-law.com)  
617-357-3705

Verrill Dana LLP  
One Federal Street, 20<sup>th</sup> Floor  
Boston, MA 02110  
Main 617-309-2600

March 25, 2024

**Via Fed-Ex and Electronic Mail ([akisselgof@chilmarkma.gov](mailto:akisselgof@chilmarkma.gov))**

Town of Chilmark Zoning Board of Appeals  
Town of Chilmark  
Chilmark Town Hall  
401 Middle Road  
P.O. Box 119  
Chilmark, MA 02535

**Re:** SUMMARY OF LEGAL ISSUES  
**Address:** 16 Clambelly Road, Chilmark, MA 02535  
**Owner:** Wayne Iacono  
**Parcel ID:** 7-32-0

Dear Chilmark Zoning Board of Appeals,

I represent Trina Smith, who owns 9 Clambelly Road, Chilmark, MA. On behalf of Ms. Smith, I previously submitted an appeal of the Town of Chilmark Building Inspector's decision denying enforcement of the Town of Chilmark Zoning By-laws (the "Zoning By-laws") by refusing to order the illegal landscaping operation at 16 Clambelly Road (the "Property") to cease and desist its operation. A hearing was held at the Chilmark Zoning Board of Appeals ("ZBA") meeting on February 22, 2024 and was continued to the ZBA's next meeting. This memorandum summarizes the legal issues relevant to Ms. Smith's appeal seeking an order compelling Mr. Iacono, the owner of the illegal landscaping operation at the Property, to cease and desist its operation.

**SCOPE OF THE APPEAL**

On November 30, 2023, on behalf of my client Trina Smith, I requested that pursuant to G.L. c. 40A, § 7 and Section 9 of the Zoning By-laws that the Building Inspector order the illegal landscaping operation at the Property to cease and desist its operation. The Building Inspector denied the request on December 11, 2023. I filed an appeal of the Building Inspector's denial of our requested enforcement action. Therefore, the Board must decide whether to overturn the Building Inspector's decision and require the illegal landscaping operation at the Property to cease and desist its operation.

### LEGAL ANALYSIS

The clear weight of the evidence at the hearing and the photographs and other documents submitted to the ZBA demonstrate that there is a landscaping business being run at the Property. The Iaconos did not deny this at the hearing. Additionally, the Building Inspector conceded at the hearing that Mr. Iacono has a landscaping business and that he stores some of the equipment and trucks for the business at the Property. There was no address given by the Iaconos for another location that is being used to run the landscaping business.

Mr. Iacono's landscaping business does not fit within any of the as-of-right uses outlined in Article 4, Section 4.1 of the Chilmark Zoning By-laws. As discussed in the memorandum I previously submitted to the ZBA on February 15, 2024, Massachusetts law is clear that a landscaping business is not protected as an agricultural or nursery use. Furthermore, there is no evidence that the landscaping business pre-dates zoning in Chilmark and is, therefore, grandfathered. Therefore, this business is not allowed.

Furthermore, Mr. Iacono does not hold a special permit for any landscaping business. The Zoning By-laws certainly allow the ZBA to issue special permits for "a home occupation." See Article 4, Section 4.2A(2). However, to focus on whether or not Mr. Iacono's landscaping business fits within the definition of a "home occupation" is to ignore the fact that Mr. Iacono does not possess a special permit for any such business. If the landscaping business does not meet the definition of "home occupation" it does not mean it is allowed. By that logic any use at all that was not considered a "home occupation" would be allowed in the Agricultural-Residential neighborhood in Chilmark.

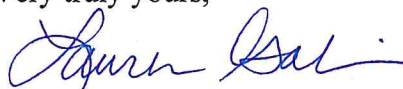
### REQUESTED RELIEF

Running a landscaping business in Chilmark is not a permitted use as of right in the Agriculture-Residential District, the use is not a grandfathered use for the Property and there is no special permit that allows the use at the Property. Accordingly, the ZBA must order the illegal landscaping business to cease and desist at the Property.

Mr. Iacono could then apply for a special permit for the landscaping business. This would allow the ZBA to hold a public hearing and the neighbors would have a chance at the hearing to speak about their concerns. The ZBA would have the opportunity to reasonably regulate and appropriately condition such a business. This would be the most amicable solution for the neighborhood.

We thank you for your consideration of this matter.

Very truly yours,

  
Lauren Galvin

Cc: Ms. Trina Smith, E-Mail  
Adam Petkus, Chilmark Building Inspector, E-Mail  
Mr. Wayne Iacono, via Fed-Ex