



Town of Chilmark

The Commonwealth of Massachusetts



Lauren Galvin, Esq.
December 11th, 2023

Via E-mail (lgalvin@verrill-law.com)

Lauren Galvin, Esq.
Verrill Dana, LLP
Boston, MA 02110

Re: Zoning Enforcement Request – 16 Clambelly Road, Chilmark, Massachusetts

Dear Ms. Galvin,

I received an email from Maureen Errichetti, a representative of your office on 11/30/23 asking for a zoning enforcement at 16 Clambelly Road (the “Site”) and the applicability of certain provisions of the Town of Chilmark’s (the “Town”) Zoning By-Laws (the “ZBL”) set out in Article 4. Attached to the email was a thoughtfully constructed letter, dated 11/30/2023, outlining various reasons why the activities at the “Site” were in violation of Article 4, Section 4.2A(1).

You and I spoke on the phone on 12/11/23 to discuss the matter further. I have given your arguments careful consideration. It is, however, my determination that the activities and presence of a work truck, stone, dirt and fishing gear is not prohibited under our By-Laws and that the presence of this equipment does not point to the presence of an at-home business which would require a special permit. If you are aggrieved by my decision, you may provide additional information or appeal my zoning determination to the Zoning Board of Appeals.

As the Zoning Enforcement Officer for the Town I have determined that the request for Zoning Enforcement at 16 Clambelly Road is not required under Article 4, Section 4.2A(1) of the ZBL. You have thirty (30) days to appeal my determination to the ZBA.

Please feel free to reach me by phone or email do discuss this matter further.

Sincerely,

Adam Petkus
Building Inspector/Zoning Officer
Town of Chilmark, MA
Email: buildinginspector@chilmarkma.gov
Phone: (508)-645-2103
Cell: (508)-560-5192

cc: Alison Kisselgoff, Administrator, ZBA

Jennifer Christy

From: Lauren Galvin <lgalvin@verrill-law.com>
Sent: Tuesday, January 9, 2024 12:48 PM
To: Jennifer Christy
Subject: NOTICE OF APPEAL OF REQUEST FOR ENFORCEMENT 16 CLAMBELLY ROAD CHILMARK MA OWNER WAYNE IACONO
Attachments: Appeal Letter(25991248.1).pdf; image002.png

Dear Town Clerk:

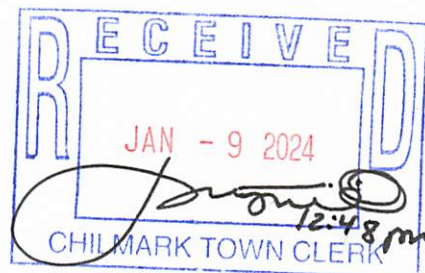
Attached please find the Notice of Appeal of Request for Enforcement at 16 Clambelly Road, Chilmark, MA, Owner Wayne Iacono. In accordance with M.G.L. c. 40A, §§ 8 and 15 and Section 9 of the Town of Chilmark Zoning By-laws, please certify filing including the date and time of receipt. Please email me back a copy of the certified attached appeal letter. Please do not hesitate to contact me if you have any questions.

Lauren Galvin COUNSEL
Verrill Dana LLP
One Federal Street, 20th Floor
Boston, MA 02110
T 617-357-3705

lgalvin@verrill-law.com



Verrill



This email and any attachment was sent from the law firm Verrill Dana, LLP. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it, please delete it and notify us as soon as possible. Thank you.

Lauren Galvin, Esq.
Counsel
lgalvin@verrill-law.com
617-357-3705

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



January 9, 2024

By E-Mail (townclerk@chilmarkma.gov) And Overnight Mail

Jennifer L. Christy, Town Clerk
Town of Chilmark
Chilmark Town Hall
401 Middle Road
P.O. Box 119
Chilmark, MA 02535

By E-Mail (buildinginspector@chilmarkma.gov) And Overnight Mail

Adam Petkus, Chilmark Building Inspector
Town of Chilmark
Chilmark Town Hall
401 Middle Road
P.O. Box 119
Chilmark, MA 02535

By Electronic Mail (akisselgof@chilmarkma.gov) And Overnight Mail

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

Re: NOTICE OF APPEAL OF DENIAL OF REQUEST FOR ENFORCEMENT

Address: 16 Clambelly Road, Chilmark, MA 02535

Owner: Wayne Iacono

Parcel ID: 7-32-0

Dear Chilmark Town Clerk, Chilmark Building Inspector and Chilmark ZBA,

This letter constitutes notice of appeal pursuant to Massachusetts General Laws, Chapter 40A, §§ 8 and 15 and Section 9 of the Town of Chilmark Zoning By-laws (the "Zoning By-laws") of the Chilmark Building Inspector's decision dated December 11, 2023, attached hereto as Exhibit A ("Decision"). I represent Trina Smith, who owns the residence at 9 Clambelly Road, Chilmark, MA. On behalf of Ms. Smith, I previously submitted a request for enforcement of the Zoning By-laws to the Town of Chilmark's Building Inspector for the illegal activities being conducted at 16 Clambelly Road ("Property"). The Building Inspector denied this request. A copy of the Building Inspector's Decision is attached hereto as Exhibit A.

Ms. Smith and her late husband, Clark, purchased their property at 9 Clambelly Road in 1975 and, therefore, Ms. Smith has been familiar with the neighborhood since that time. Ms. Smith herself first came to the Vineyard with her parents and siblings when she was in high school and has returned almost every year since. The illegal activity now occurring at the Property, which includes the operation of a landscaping business and other unpermitted actions, has so cluttered and distorted the natural Vineyard environment that the approach to the Smith property along Clambelly Road has become almost unrecognizable. My letter to the Chilmark Building Inspector attached as Exhibit B, therefore, requested, pursuant to G.L. c. 40A, § 7 and Section 9 of the Zoning By-laws, that the Building Inspector enforce the provisions of the Zoning By-laws and order the illegal activity to cease and desist.

The Property is located within the Agricultural-Residential District 1. According to Article 4 of the Zoning By-laws, Sections 4.1 and 4.2, landscaping businesses are not permitted either as of right or with a special permit from the Board of Appeals. The present business involves frequently parked heavy trucks, storage of landscaping equipment, randomly parked vehicles and unpermitted ground relocation to provide vehicle access. A landscaping truck on the Property clearly displays the name "Creekville Lawn and Landscape" and lists a phone number of 508-939-0594. A photograph of this truck appears on the first page of the exhibits attached to my letter to the Building Inspector included as Exhibit B.

Ms. Smith, concerned by this illegal use, attempted to verify the status of the businesses at the Property with Mr. Iacono. His response to her inquiry is attached as Exhibit C. In this text message, Mr. Iacono stated, "we paid our fee for two home businesses." He also indicated that he "create[d] a new entrance" to the Property and that the "fire chief came up here and inspected it." Ms. Smith and her attorney subsequently conducted a public records request that revealed no permits for any home businesses.

Nevertheless, a landscaping business has continued to be publicly advertised. Attached as Exhibit D is a currently available advertisement on HomeAdvisor which lists "Creekville Lawn and Landscape" with a phone number of 508-939-0594 and an address in Chilmark. This business name and phone number are identical to those displayed on the previously mentioned truck parked at the Property. The listing states that at "Creekville Landscape we pride our company on reliability, great communication, integrity, and quality work. We are experts in our trade and will do our best to keep you as educated as we can on your particular task or project." The listed services include, but are not limited to, "Brick, Stone or Block Wall Repair," "Pavers for Driveways and Floors – Install," "Major Grading or Resloping," "Synthetic Grass for Play Area Install," "Landscape Curbing Install," "Soil, Sand, Mulch and Rock Delivery," "Sprinkler System Install," "Remove & Haul Waste, Junk, Debris, Etc.," "Remove & Haul Building Materials Garbage Pickup and Waste Management" and "Trees-Trim."

Even if this use of the Property were deemed to be permissible with a special permit, no such permit for the landscaping business is on file with the Town. A review of the public records reveals that Mr. Iacono filed a petition under Chilmark's Zoning By-law Article 4, Section 4.2A(1) seeking permission to build a small guesthouse, but that he lacks any special

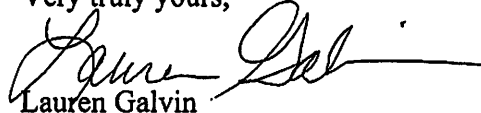
January 9, 2024

Page 3

permits to conduct the landscape business. The landscaping business activities, therefore, violate Section 4 of the Zoning By-laws.

We, therefore, appeal the Decision of the Chilmark Building Inspector and respectfully request that you notice a hearing pursuant to G.L. c. 40A, §§ 8 and 15 and Section 9 of the Zoning By-laws and order the illegal business at 16 Clambelly Road to cease and desist. If you have any questions, please do not hesitate to contact me directly.

Very truly yours,



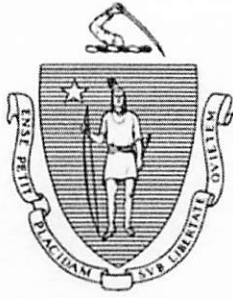
Lauren Galvin

Enclosures

cc: Ms. Trina Smith, E-Mail

Mr. Wayne Iacono, Overnight Mail
25962187_3

EXHIBIT A



Town of Chilmark

The Commonwealth of Massachusetts



Lauren Galvin, Esq.
December 11th, 2023

Via E-mail (lgalvin@verrill-law.com)

Lauren Galvin, Esq.
Verrill Dana, LLP
Boston, MA 02110

Re: Zoning Enforcement Request – 16 Clambelly Road, Chilmark, Massachusetts

Dear Ms. Galvin,

I received an email from Maureen Errichetti, a representative of your office on 11/30/23 asking for a zoning enforcement at 16 Clambelly Road (the "Site") and the applicability of certain provisions of the Town of Chilmark's (the "Town") Zoning By-Laws (the "ZBL") set out in Article 4. Attached to the email was a thoughtfully constructed letter, dated 11/30/2023, outlining various reasons why the activities at the "Site" were in violation of Article 4, Section 4.2A(1).

You and I spoke on the phone on 12/11/23 to discuss the matter further. I have given your arguments careful consideration. It is, however, my determination that the activities and presence of a work truck, stone, dirt and fishing gear is not prohibited under our By-Laws and that the presence of this equipment does not point to the presence of an at-home business which would require a special permit. If you are aggrieved by my decision, you may provide additional information or appeal my zoning determination to the Zoning Board of Appeals.

As the Zoning Enforcement Officer for the Town I have determined that the request for Zoning Enforcement at 16 Clambelly Road is not required under Article 4, Section 4.2A(1) of the ZBL. You have thirty (30) days to appeal my determination to the ZBA.

Please feel free to reach me by phone or email do discuss this matter further.

Sincerely,

Adam Petkus
Building Inspector/Zoning Officer
Town of Chilmark, MA
Email: buildinginspector@chilmarkma.gov
Phone: (508)-645-2103
Cell: (508)-560-5192

cc: Alison Kisselgoff, Administrator, ZBA

EXHIBIT B

Lauren Galvin, Esq.
lgalvin@verrill-law.com
617-357-3705

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

November 30, 2023

By Electronic Mail (buildinginspector@chilmarkma.gov) and Regular Mail

Adam Petkus, Town of Chilmark Building Inspector
Chilmark Town Hall
401 Middle Road
P.O. Box 119
Chilmark, MA 02535

Re: Request for Enforcement of the Town of Chilmark Zoning By-laws
Address: 16 Clambelly Road, Chilmark, MA 02535
Owner: Wayne Iacono
Parcel ID: 7-32-0

Dear Mr. Petkus,

I represent Trina Smith, who resides at 9 Clambelly Road, Chilmark, MA. I write pursuant to G.L. c. 40A, § 7 and Section 9 of the Town of Chilmark Zoning By-laws (the "Zoning By-laws") to request that you enforce the provisions of the Zoning By-laws with respect to certain illegal activities at the above-referenced property (the "Property"). This illegal activity includes the operation of a landscaping business and other unpermitted commercial activity.

The Property is located within the Agricultural-Residential District 1. According to Article 4, Sections 4.1 and 4.2, landscaping businesses are not permitted either as of right or with a special permit from the Board of Appeals. The business involves a number of heavy trucks, storage of landscaping equipment, randomly parked vehicles and unpermitted dirt movement and removal. See the attached photograph of landscaping trucks and other equipment on the property.

Even if this use was deemed to be permissible with a special permit, no such permit for the landscaping business is on file with your office. A review of public records reveals that Mr. Iacono filed a petition under Chilmark's Zoning By-law Article 4, Section 4.2A(1) seeking permission to build a small guesthouse, but that he lacks any special permits to conduct the landscape business. The landscaping business activities, therefore, violate Section 4 of the Zoning By-laws.

I, therefore, respectfully request that you order the owner of the illegal landscaping operation at 16 Clambelly Road to cease and desist its operation. If you do not intend to take the

Adam Petkus, Town of Chilmark Building Inspector
Town of Chilmark
November 30, 2023
Page 2 of 2

requested action, please notify me within fourteen (14) days of receipt of this request, as required by statute and the Zoning by-laws.

I appreciate your time and effort in responding to this request. If you have any questions, please do not hesitate to contact me directly.

Very truly yours,


Lauren Galvin

Enclosures

cc: Ms. Trina Smith
Chilmark Board of Health













EXHIBIT C

11:02

5G E



+1 (774) 563-8084 >

iMessage
Sun, Jul 9 at 6:17 PM

Hi trina—Wayne here. Yes, we paid our fee for two home businesses. The new neighbors blocked off our driveway so we had to create a new entrance. The fire chief came up here and inspected it

Nothing else has changed except a new parking area and turn around. The neighbors plowed down all the trees and shrubs along our property line. I had to have the police up here twice due the that situation.

Hoping you have a wonderful summer.

The sender is not in your contact list.

Report Junk



iMessage



EXHIBIT D

Creeksville Lawn & Landscape

5.0 | 3 Verified Reviews



HomeAdvisor Screened & Approved
Learn about our screening process >

100%
Recommended

8
Years In Business

Achievements



Company Details

Contact

508-939-0594
PO Box 818
Chilmark, MA 02535

[Get a Quote](#)

Hours

Mon: 8:00 AM - 6:00 PM
Tue: 8:00 AM - 6:00 PM
Wed: 8:00 AM - 6:00 PM
Thu: 8:00 AM - 6:00 PM
Fri: 8:00 AM - 6:00 PM
Sat: 8:00 AM - 6:00 PM
Sun: Closed

Details

In Business Since 2015

At Creeksville Landscape we pride our company on reliability, great communication, integrity, and quality work. We are experts in our trade and will do our best to keep you as educated as we can on your particular task or project. We look forward to earning your business!

[Get a Quote](#)

[Book Now](#)

Creeksville Lawn & Landscape

5.0 | 3 Verified
Reviews
Residential Work

Areas of Expertise

Landscaping & Sprinklers
Lawn care
Deliveries

Cities Served

Vineyard Haven
West Falmouth
Falmouth

Cuttyhunk
Menemsha
Oak Bluffs

Chilmark
Edgartown

Product Brands Used

All Services Offered

Brick & Stone

Brick, Stone or Block
Wall Repair
Brick & Stone
Flatwork Repair

Cleaning & Maid Services

Clean Gutters &
Downspouts- For
Business

Concrete

Pavers for Driveways
and Floors - Install
Interlocking Pavers
for Patios, Walks and
Steps - Install

Designers & Decorators

Landscape Designer

Excavation

Major Grading or
Resloping

Landscaping

Landscaping for Yard
or Garden Install
Synthetic Grass for
Play Area Install
Minor Grading or
Resloping
Sod Install
Landscape Curbing
Install
Soil, Sand, Mulch and
rock Delivery

Lawn & Garden Care

Paving

Snow Removal Service

Get a Quote

Book Now

Creeksville Lawn & Landscape

5.0 | 3 Verified Reviews

Mow & Maintain a Lawn
Sprinkler System Install

Tree Service

Trees - Trim

Waste Material Removal

Remove & Haul Waste, Junk, Debris, etc.
Remove & Haul Building Materials
Garbage Pickup and Waste Management

Related Services Available from Other Pros

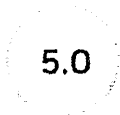


Cost Information

Free Estimates

Credit Cards Accepted

Ratings



3 Verified Reviews

5 ☆
4 ☆
3 ☆
2 ☆
1 ☆

3
0
0
0
0

Highly rated for ⓘ

Quality Value

Customer Service

Get a Quote

Book Now

Creekville Lawn & Landscape

5.0 | 3 Verified
Reviews
Showing 1-3 of 3 results

Newest First ▼

★ 5.0 **Robert B.** Oak Bluffs, MA 5/29/2023
Install Interlocking Pavers for Driveways & Floors
Excellent skilled and great guys!

★ 5.0 **Elza M.** Oak Bluffs, MA 2/8/2023
Remove Trees
service was very professional and very compitent

★ 5.0 **Lynn X.** 1/24/2023
Landscape Designer
Very pleasant young men!

Showing 1-3 of 3 results

⏪ Page 1 of 1 ▼ ⏩

Photos

9

Creekville Lawn &
Landscape

Tisbury Backyard Reno

Bluestone Walkway

Find More Reviews

Get a Quote

Book Now

Creeksville Lawn & Landscape

5.0 | 3 Verified
Reviews

Services

- Vineyard Haven Tree Services
- Soil Testing
- Backyard Designers

Contractors

- Vineyard Haven Waste & Garbage Removal Services
- Retaining Wall Contractors

Removal Services

- Landscape Architects
- Grading Companies

HomeAdvisor allows Service Professionals to post information about themselves and their business on their profile. HomeAdvisor does not review or verify the information representations set forth in those profiles as they are self-reported by the Service Professional.

HomeAdvisor verifies state-level licensing where applicable - note: some states require local or county level licensing and you should verify whether or not your pro is properly licensed.

To find more licensing information for your state, visit our [Licensing Requirements page](#).

Get a Quote

Book Now

Dear ZBA Members, Just a brief history of my property - After returning from a tour in Viet-Nam , I contacted Dave Flanders about purchasing a small piece of land in Chilmark .(I grew up in Vineyard Haven). In 1972 we completed the sale from Dick Smith. At this time Clambelly did not exist.Entry was through what is now Frog Alley. We had a tough time on that narrow road getting equipment in to build my house. Eventually , Dick and I created what is now Clambelly. We also installed underground electricity . With the exception of the old Goff camp , I was the first one to build in there . Jules Worthington was next. Actually Jules designed TRINA SMITH's house which she built I believe in the 1980s.For several years ,I stored fishing gear and boats and would shuck scallops and sea clams there as well. I had paved the road with the shells from my shellfishing. Jules Worthington came up with the name Clambelly for that reason. In 1995, my good friends Dr. Geiger purchased 10 acres next to me and built two homes , one was Adam Geiger. Three of us shared a driveway. In 2015 , My Son started a landscape company called Creekville ,(he also has an oyster grant in Menemsha Pond by that name). Over the years we expanded the business. He and His Wife are presently living in my house . This is the only way They can afford to live and work here. Some of Trina's complaints stem from another new neighbor who cut down all the brush and trees along the property line , thus opening up a view of all three houses on the left side of Clambelly. These neighbors closed off our driveway (that We had used since the 1970s) . We then had to create a new entry to my land which involved cutting more brush and removing a couple trees . This made activity on my land more visible . The dirt removal and piles of wood were not on my property. My Son plows Clambelly for free for all the neighbors , and has planted trees along the road to help shield things. We are only trying to make a living in these expensive times. I am on three committees in town (Shellfish , Harbor and Beach). I am also a USCG Communications Watchstander at Station Menemsha as well as lobstering and caretaking . Trina's house is located on the opposite side of Clambelly , over a hill . She is a long way from my property and cannot see my property from her location. She is only here for a short time during summer and either rents or has family staying there. She creates traffic and has cars coming and going. one of her guests had a party last summer, which went out on social media. Cars parked everywhere up and down clambelly, on my property and neighbors.the party went on all night long, till daylight. Cans and bottles were left everywhere. We never complain. Anyway , I just wanted to let you know our history here. Thankyou. --Wayne V. Iacono

To: Ms. Alison Kisselgof
Board Administrator, Town of Chilmark

Dear Ms. Kisselgof,

I am writing in support of Ms. Trina Smith's appeal of the Zoning Board's decision that a special permit is not needed for the business activities currently being carried out by Mr. Wayne Iacono Jr. at 16 Clambelly Road.

We are one of the houses impacted by the business activities at 16 Clambelly Road (we have to drive by this property—what my grandchildren call “the junkyard”—to get to our house at 9 Rhythm Road). The sprawl grows worse month by month as more equipment is added and more surplus materials are deposited on the property. Mr. Iacono Sr. (Wayne) vacated the house some years ago and it is now vacant (and looks derelict). His son Wayne Jr. (Vinny) has taken over the property and is using it to store trucks and equipment (and every manner of surplus materials) for his “Creeksville Lawn & Landscape Company.”

The property is home to at least two dump trucks, two Bobcats, three heavy equipment trailers, and multiple makeshift sheds that have been constructed to store the implements and equipment for his landscaping business. During the week, employees of the business park their cars on the property. I have attached photos that show some of the equipment being stored on the property.

Mr. Iacono is also storing multiple boats on the property—I presume for a fee—that are unlikely to belong to him or his father (e.g., a commercial Sea Tow boat).

To be clear, I wish Vinny every success in his landscaping business. He is a nice young man (and is even nice enough to plow our driveway in snowstorms). But turning this residential property into a commercial heavy-equipment business and storage site is not fair to his neighbors who want to enjoy the charms of Chilmark. It is an eyesore that is getting worse month by month.

I hope that the Zoning Board will reconsider its decision and conclude that Mr. Iacono should find another site from which to run his landscaping business.

Yours sincerely,

Robert Simons

9 Rhythm Road
Chilmark, MA 02535
508-645-9293

Robert and Lisa Young
27 Clambelly Road
Chilmark, MA 02535

February 20, 2024

Dear Members of the Chilmark Zoning Board of Appeals,

We are Robert and Lisa Young, and we live year-round at 27 Clambelly Road, Mr. Iacono's direct neighbor to the right. We are writing in support of Ms. Trina Smith's appeal of the Zoning Board's previous decision regarding a special business permit not being needed for the business being run at 16 Clambelly Road.

Being directly next to the Iacono property, our property is actually impacted twice. Once by the general ordinance that you have gathered through the other members of our road describing, and secondly by the patch of land cleared along our driveway where trees are regularly being cut down and presumably sold for a profit. In this clearing there are multiple wood piles scattered throughout.

Previously, we have spoken with Wayne (Mr. Wayne Iacono Sr.) and Vinny (Mr. Wayne Iacono Jr.) about the status of their property. In those conversations we expressed our dissatisfaction with the state of their property, and how it seemed to collect more items than when we initially bought our property in 2017. From these prior conversations, we were told that the junk in their yard was being cleaned up by the two of them. While there was a slight clean up in the weeks directly after speaking with them, that seems to have stalled and no progress has been made in quite some time. Additionally, in an effort to keep the impact of their yard's current state at bay we paid Vinny to plant trees (that we paid for) along our property line. Thus creating a bit more of a shield to the current eyesore. Our attempts to create this shield have become null due to the fact that Vinny seems to cut more trees down and make more driveway cut-ins to create additional storage for newly housed items he's collected.

These driveway cut-ins are also used for daily parking spots for Vinny's employees. Vinny is owner of Creekvile Lawn and Landscape. The employees of Creekvile Lawn and Landscape park essentially on the border of the main Clambelly Road drag, in these shallow cut-ins. As business owner's ourselves we understand the pride of setting out to find your own success in the business world. In this regard, we wish him the best of luck. However, your business should not impact your neighbors in the manner that is occurring at 16 Clambelly Road. On this property there are regularly multiple dump trucks, two Bobcats, many lobster traps (as Mr. Iacono Sr. is a fisherman out of Menemsha), and countless other items of various use left around the property. There are multiple makeshift sheds on the property used to house more of their surplus of materials. Additionally, there is no regard for town setback laws as their belongings and property alterations come to their last blade of grass.

This past summer (summer of 2023) we put our house on the market with the main reason being we could no longer stand to abut a piece of land that has been so discarded. In our endeavor to sell our home we were told by nearly everyone who toured that our house and land were lovely, but due to the property next door (16 Clambelly Road) they would be looking elsewhere. Words used by those who toured our home in regards to the Iacono property were “junkyard,” “hoarding situation,” and “garbage dump.” As a result of this we took our house off the market, and are trying to figure out how badly our property value and future plans are being impacted.

We do not feel that the site visit will be accurate due to the current snow accumulation in Chilmark. In order to properly see the status of the property a visit should be conducted once the snow melts.

While we have a strong distaste for the current state of the property, we do not harbor the same distaste for Mr. Wayne Iacono Sr. and Mr. Wayne Iacono Jr.. We appreciate how responsive Vinny has been to our concerns regardless of his ability to properly act upon them. We also appreciate that he plows our driveway during snowstorms. Additionally, we respect the service provided to Martha’s Vineyard by Mr. Wayne Iacono Sr.’s service in the United States Coast Guard. All we are asking for is to have their property under control and to follow the same practices of our other neighbors.

Please do not hesitate to reach out to us with questions or concerns.

Sincerely,
Robert and Lisa Young

Lauren Galvin, Esq.
Counsel
lgalvin@verrill-law.com
617-357-3705

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

February 15, 2024

Via Fed-Ex and Electronic Mail (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: **LEGAL ANALYSIS IN SUPPORT OF APPEAL OF DENIAL OF
REQUEST FOR ENFORCEMENT**
Address: **16 Clambelly Road, Chilmark, MA 02535**
Owner: **Wayne Iacono**
Parcel ID: **7-32-0**

Dear Chilmark ZBA,

I represent Trina Smith, the property owner of 9 Clambelly Road, Chilmark, MA. On behalf of Ms. Smith, I previously filed a Notice of Appeal of Denial of Request for Enforcement dated January 9, 2024 (Notice of Appeal"). This letter offers additional legal support for the arguments stated in the Notice of Appeal.

Ms. Smith seeks an order compelling Mr. Iacono, the owner of the illegal landscaping operation at 16 Clambelly Road (the "Property"), to cease and desist the operation of this illegal business at the Property. This letter summarizes the Chilmark Zoning By-laws ("By-laws") and Massachusetts case law relevant to this appeal. As discussed below, the By-laws do not specifically authorize landscaping for the Property, and, therefore, landscaping is not permitted.

Permissible uses of Chilmark properties are codified in Article 4 of the Chilmark Zoning Bylaws. The Property is located in the Agricultural-Residential District I ("ARD-I"). In the ARD-I the following uses are permitted as provided in Article 4.1 of the By-laws:

- A. Detached one-family dwelling.
- B. Storage on a lot of one or more boats.
- C. Religious, educational, municipal, and governmental or public utility structure or area.

- D. Public Parks, playgrounds, or recreation buildings, for recreation or community use, not for profit.
- E. Renting of rooms or furnishing of board to not more than three (3) people by a family resident in the dwelling.
- F. Farm, barn or silo, riding stable, nursery, including the display and sale of natural products usually sold by farms or nurseries, and the raising of stock, and the storage of equipment used in connection with such uses.
- G. Use of premises or structures for fishing, shell fishing or agriculture; or work related directly or indirectly thereto.
- H. A garage (attached or detached for no more than three cars) and other accessory structures such as a pump house or tool shed.
- I. A shed roof dormer
- J. One Detached Bedroom.

The Chilmark Zoning By-laws do not allow landscaping businesses in the ARD-I. *Skydell v. Tobin*, 2010 WL 1367288 at *1 (Mass. Land Ct. Apr. 5, 2010) (Long, J.) (analyzing Section 4.1(F) and finding that “landscaping operations are not permitted as of right under the [Town of Chilmark Zoning] Bylaw”); affirmed by the Appeals Court in *Skydell v. Tobin*, 81 Mass. App. Ct 1113 (2012). For that reason, the Land Court previously found use of a property in Chilmark ARD-I for “storage of landscape-related materials, overnight parking of the vehicles used on landscape jobs, [and] the assembly and return of landscape crews (including the loading and unloading of landscape-related equipment and materials)” impermissible under Section 4.1(F). *Skydell v. Tobin*, 2010 WL 1367288 at *5.

Furthermore, landscaping is distinct from nursery or agricultural use and is not permitted where not specifically permitted in the by-laws. *Town of Needham v. Winslow Nurseries*, 330 Mass. 95 (1953) (operation of landscaping business not permitted by by-laws allowing “farms, stock farms, greenhouses, nurseries, and truck gardens”); *Lydon v. Town of Milton Board of Appeals*, 2012 WL 1572128 (Mass. Land Ct. May 3, 2012) (Sands, J.) (invalidating a previously issued special permit where the applicable bylaws did not define the term “landscaping business” and finding that such bylaws “authorize neither use as of right nor by special permit the operation of a landscaping business”); *Skydell* at *9 (clear distinction exists between “a nursery and more active conduct such as landscaping services” and a bylaw allowing nursery use “clearly contemplates something far more passive than the daily assembly, dispatch, and return of vehicles, materials, and crews involved in landscape construction and maintenance”). The mere mention of a “nursery” or “agriculture” is not enough to allow operation of a landscaping business. *Brandon v. Zylinski*, 2007 WL 2964882 (Mass. Land Ct. Oct. 11, 2007) (Long, J.) (finding “nurseries,” as defined in the Falmouth zoning by-laws, “do not include landscaping” and enjoining the operation of a landscaping business on the premises at issue).

Mr. Iacono is not entitled to any protection based on “agricultural” use. Though G.L. c. 40A, § 3 protects “agricultural” and “horticultural” uses, this “exemption is based on the primary activity taking place on that land (e.g., ‘the cultivation and tillage of the soil,’ the ‘growing and harvesting’ of agricultural commodities or forest products, the ‘keeping and raising’ of animals)

and *not* the use of the land as a location for a business whose services are provided elsewhere.” *Skydell* at *9 (emphasis in original).


Mr. Iacono is clearly using the Property for illegal landscaping operations. See Photographs of the activities at the Property attached here as Exhibit 1 and Exhibits to the Notice of Appeal. The Chilmark Building Inspector Adam Petkus himself acknowledged that use of the Property includes the “presence of a work truck, stone, [and] dirt” in his letter denying my client’s enforcement request. The truck routinely parked at the Property prominently advertises a landscaping business called “Creekville Lawn and Landscape.” Online advertising for Creekville Lawn & Landscape lists services in Chilmark that include paver installation, brick & stone work, soil, sand, mulch and rock delivery, as well as a variety of lawn and garden care.

Under Massachusetts law, Mr. Iacono may not store landscaping materials or vehicles on the Property without violating the Chilmark Zoning By-laws. *Brandon* at *12 (“It goes without saying that the vehicles, supplies, and equipment used for paving and landscaping must be stored elsewhere”); *Skydell* at *9 (“[L]andscape construction involves the on-site storage and transport of materials – stepping stones and pavers, rocks and stones for walls, cement, sand, stone dust, and the like – that would not be present if the site was just a nursery and thus create different (and increased) noise and visual impacts”); *Town of Needham* at 102 (“maintenance on the premises” of truck used for landscaping business impermissible); *Lydon* at *9 (invalidating condition of special permit allowing storage of pickup trucks). Running a landscaping business is not permitted in ARD-I and Mr. Iacono does not hold a special permit or variance to operate a landscaping business in this district. Therefore, he must be ordered to cease and desist his operation.

CONCLUSION

We, therefore, respectfully request that you overturn the Decision of the Chilmark Building Inspector and order the illegal landscaping business at 16 Clambelly Road to cease and desist. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Lauren Galvin

Enclosures

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

EXHIBIT 1































