

TOWN OF BROOKLYN

P.O. Box 356 - Route 6 and 169

BROOKLYN, CONNECTICUT 06234

OFFICE OF SELECTMEN
TELEPHONE: 779-3411TOWN CLERK
TELEPHONE: 779-5032ASSESSOR
TELEPHONE: 774-5611TAX COLLECTOR
TELEPHONE: 774-4072

ZONING BOARD OF APPEALS (ZBA15-001)
APPEAL OF CEASE AND DESIST ORDER (ZV14-006)

Zoning Enforcement Officer's Testimony for Public Hearing 4/27/15

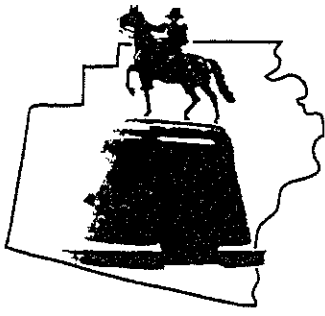
- Contacted by neighbors in May 2014 regarding activity at 133 Wauregan Road. Made inspection 5/27/14 of what appeared to be a commercial/retail contractor's yard in the RA Zone.
Evidenced by:
 - Colored mulch in bins, numerous pieces of commercial equipment including a blue screener, 2 John Deere front-end loaders, 2 dump trucks, a pile of logs, and several large piles of fine grained soil. * EXHIBIT A – photos from initial site visit.
 - 2 customers arrive to purchase mulch.
 - 2 advertising signs (one on-site, the other at intersection of Route 169-205)
* EXHIBITS B & C
 - Asked Mr. Lyon if he had a Home Enterprise Permit. He said yes. I made a note to check the file. Subsequently, I found no Home Enterprise Permit on file nor any evidence of a permitted business on the site.
- Lacking any evidence of a permitted business and with numerous complaints from neighbors, I began an investigation regarding alleged grandfathering of the business (Lyon & Co., Inc.).

Land Record Research

- Dale P. and Valerie A. Lyon became property owners 6/13/2003. Previously, the property was owned by Philip A. and Constance Lyon who purchased the property in 1976 from Robert and Virginia Beardmore. The Beardmores owned the property when Zoning Regulations were first adopted on May 24, 1972. * EXHIBIT D
- Philip A. Lyon subdivided the property in 1981. He cut off three residential building lots of approximately 1 acre each. He kept a 3.74 acre parcel. * EXHIBIT E
- Dale Lyon received a Building Permit for two barns and a kitchen addition in 2002 (subsequently renewed- building permits #006268 & 006403). He also obtained a Zoning Permit in 2002 (#02-125 with attached site plan) for the same work. Nowhere on the application form or permit is a commercial use referenced. The structures are referred to as "barns" as well as "garage" and "horse barn". * EXHIBIT F
- Nothing on the property is taxed as commercial. See EXHIBIT D.

Aerial Photo Research

- Photo dated 3/10/1970; 6.7 acres; one house and chicken coops, no evidence of landscape maintenance business. * EXHIBIT G
- Photo dated Spring 2004; 3.74 acres; enlarged house with two outbuildings (the two barns listed on the building permit), no piles, perhaps some vehicles present but not clear, also three adjacent houses #127, #141, and #145 from subdivision. * EXHIBIT H



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- Photo dated 9/15/2011; 3.74 acres; mulch, soil, and wood piles are very apparent, 3 commercial vehicles (white cabs) and a trailer, two yellow loaders, blue sifter. * EXHIBIT I
- Photo dated 4/7/2013; 3.74 acres; mulch is now in concrete bins, 3 commercial vehicles (white cabs) and a trailer, two yellow loaders, blue sifter, various other equipment, south-east corner of site is completely denuded and covered in soil piles. * EXHIBIT J

Additional Site Photos

- An additional site visit took place on 7/30/2014. * EXHIBIT K

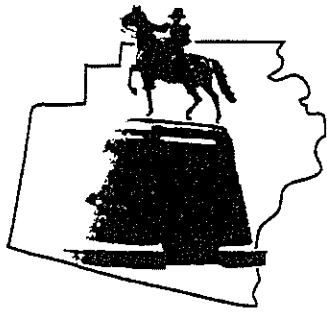
Analysis of Materials Supplied by the Mr. and Ms. Lyon

- Mr. and Ms. Lyon first sent a letter on 6/25/14 detailing the use of the property since 1971.
* Included in appeal application.
- Subsequently, Mr. and Ms. Lyon retained the services of a Land Use Attorney. Mr. Sweeney sent an initial letter to outlining alleged grandfathering on 9/9/2014. * Included in appeal application.
- I subsequently requested clarification of several items on 9/24/2014. * EXHIBIT L
- Mr. Sweeney sent a response on 10/8/2014 including details concerning the operation of a "full service landscape maintenance company" and a long list of commercially registered vehicles owned by Mr. Lyon. * Included in appeal application.

Upon careful review of these materials and the property history, I made the following findings regarding the alleged grandfathering:

- 1) Between 1970-1976, Mr. Beardmore operated a wood products business including firewood, lumber, pallets, and chips. His son operated a small lawn care business. Mr. Beauregard stated that he serviced Mr. Beardmore's son's mower.
- 2) Between 1976-1983, Mr. Philip Lyon and his sons cut and sell firewood. His sons continue the lawn care business. In 1976, James Malbaurn was 14 and Dale Lyon was 9 years old.
- 3) After 1983, Dale Lyon takes over sole control of the landscaping business. He is 16 years old.
- 4) Based on recent site inspections and the descriptions of commercial/industrial business activity on the property including an extensive list of commercially registered vehicles and heavy-duty equipment that Mr. Lyon uses in his landscaping maintenance business (see letter dated 10/8/14), the business has expanded tremendously since 1972. This is supported by information provided by the neighbors documenting business activity on the site (see subsequent exhibits).
- 5) Around 2006, Mr. Lyon started importing commercially processed and dyed mulches for re-sale. The claim of mulch sales as a grandfathered use was extinguished when on-site wood processing ceased.
- 6) There is no documented history of soil sales as a grandfathered use. This activity did not exist on May 24, 1972, the date Zoning Regulations were enacted in Brooklyn.
- 7) Based on a careful analysis of the facts regarding the use of the property, I issued a Cease and Desist Order on 12/30/2014 with the finding that Mr. Lyon is operating an unpermitted landscape maintenance business in the RA Residential-Agricultural Zone, including the on-site retail sales of soil and mulch which is a violation of Brooklyn Zoning Regulations Sec. 3.4.4 – Use Regulations for the RA Residential-Agricultural Zone. * Included in appeal application.

CC: File, First Selectman, PZC, IWWC, Land Use Atty.



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Analysis of Materials Supplied by Neighbors at 141 Wauregan Road

- List of complaints submitted by Gary and Diane Lockard dated: 5/28/14, 6/18/14, 8/20/14, 8/21/14, 8/27/14. * EXHIBIT M
- List of personally-witnessed business activities from 4/26/14 through 6/22/14 submitted by Gary and Diane Lockard. * EXHIBIT N
- List of personally-witnessed business activities from 8/20/14 through 11/8/14 submitted by Gary and Diane Lockard. * EXHIBIT O
- Select photos of business activity submitted by Gary and Diane Lockard taken between 4/25/14 and 8/20/14. * EXHIBIT P
- Photos of off-site activity at Tracy Rd. in Putnam on 7/28/14 submitted by G. Lockard. * EXHIBIT P2
- Lyon & Co., LLC letterhead * EXHIBIT P3

Failure to comply with Cease and Desist Order

- Mr. Lyon has been blatantly violating the enforcement order since 4/15/2015. The appeal of the Cease and Desist Order does not stay the order. Mr. Lyon is currently operating his business in violation of the Zoning Regulations. * EXHIBIT Q
- List of personally-witnessed business activities from 4/5/15 through 4/27/15 submitted by Gary and Diane Lockard. * EXHIBIT R

Conclusion

- The alleged grandfathered activity regarding landscape maintenance services was actually a residential lawn-mowing business operated by teenagers; activity that is clearly out of scale with the admittedly commercial/industrial business that exists today. While this individual business development is admirable, it has also led to the creation of a large-scale commercial enterprise within a residential-agricultural neighborhood that has serious repercussions on neighborhood property values and quality of life.
- 133 Wauregan Rd. is only 3.75 acres. There are 12 houses within 500 feet of the property, some on small lots in close proximity to an unpermitted commercial/industrial business in the RA Residential Agricultural Zone.
- This is not just a dispute between neighbors; it is a finding of facts concerning the fair and lawful application of the Town of Brooklyn Zoning Regulations.

Respectfully,


Jana Butts Roberson, AICP
Land Use Administrator