

*Town of Pepperell*  
**BOARD OF APPEALS**  
One Main Street  
Pepperell, Massachusetts 01463  
(978) 433-0333  
Fax: (978) 433-0335


## ***MEMORANDUM***

**To:** Mark Walsh  
Annette McLean  
Sean McCaffery  
Alan Leao, Jr.  
Town Counsel (David Doneski, Esq.)

RECEIVED

NOV 26 2018

Pepperell Board of Selectmen

**From:** Cheryl Lutzca, ZBA Assistant 

**Date:** November 21, 2018

**Re:** New ZBA Application (ZBA-2018-09) – 161 Nashua Road  
(Deschenes/MCGI)

\*\*\*\*\*

Attached, please find a copy of a new ZBA Application (ZBA-2018-09), submitted by Douglas C. Deschenes (Attorney for Applicant) on behalf of Mass Composting Group Inc. (MCGI), requesting an ADMINISTRATIVE APPEAL.

Subject property is located at:

[161 Nashua Road, Pepperell, MA](#)

**Cc:** Andrew MacLean, Town Administrator  
Debbie Nutter, Treasurer-Collector (copy of memo only)

ZBA-2018-09 November 19, 2018

161 Nashua Rd (Deschenes/MCGI)

ADMINISTRATIVE APPEAL

DESCHENES & FARRELL, P.C.

Attorneys at Law  
515 Groton Road, Suite 204  
Westford, MA 01886  
Telephone: (978) 496-1177  
Facsimile: (978) 577-6462

*Douglas C. Deschenes*  
*Kathryn Lorah Farrell*  
*Melissa E. Robbins\**

*\*Admitted in MA and NH*

November 7, 2018

Pepperell Zoning Board of Appeals  
Town Hall  
One Main Street  
Pepperell, MA 01463

**RE: Appeal of Building Inspector Determination  
161 Nashua Road, Pepperell, MA**

Dear Members of the Board,

This office represents Mass Composting Group, Inc. (the "Appellant"), regarding the above referenced property (hereinafter the "Premises"). We are in receipt of a Zoning Determination Letter from the Pepperell Building Inspector dated October 9, 2018 (attached). This Zoning Determination Letter was in response to a written request of the Board of Selectmen dated September 24, 2018 (attached), whereby the Board, without notice to the owners of the property, asked the Building Inspector to determine whether the project proposed by Mass Composting "qualifies as a "commercial dumping ground"" and "whether a commercial dumping ground is an allowed use" at the Premises. As detailed in his letter, the Building Inspector determined that the soil reclamation project my client is proposing on the Premises "would qualify as a Commercial Dumping Ground..." and that "Mass Composting's proposed use is prohibited at 161 Nashua Road." The Appellant hereby seeks to appeal that determination.

Please allow this letter, along with the attached supporting information, to serve as a formal appeal of the Building Inspector's determination in accordance with M.G.L. Chapter 40A Sections 8 and 15 and the Town of Pepperell Zoning Bylaw. It is the Appellant's position that the proposed project does not qualify as a "commercial dumping ground". Rather, that it is a reclamation of an existing quarry area (gravel pit) proposed under the Department of Environmental Protection's ("DEP") Administrative Consent Orders for reclamation facilities and the DEP's Interim Policy on Soil Reuse.

Pursuant to all existing, current and prior versions of the Town of Pepperell Zoning Bylaws governing gravel removal operations and pursuant to all previously issued gravel removal permits, conditions of which continue in perpetuity, restoration of the Premises is an "existing" requirement. Furthermore, I am not aware of any Pepperell Zoning Bylaw or other

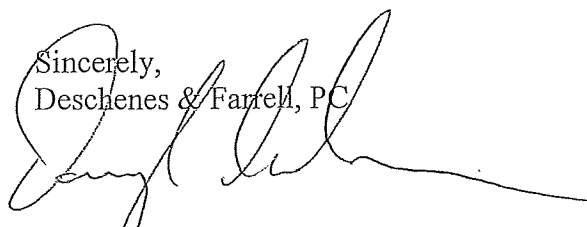
regulation prohibiting a landowner from filling, grading and preparing its property for development.

The Premises is not a "disposal site" as it is not proposed to be used as a dumping ground for "garbage, rubbish, demolition materials or other refuse, which is "unwanted or unusable." Moreover, the Premises is not proposed to be used for the storage of soil that is "unwanted and unusable", but rather, is being filled with soils approved for reclamation use by the Department of Environmental Protection's ("DEP"), and then compacted and graded to satisfy both the restoration requirements and to prepare the site for future development.

Furthermore, the zoning determination is based on a one-sided view of the Appellant's anticipated soil reclamation facility for the Premises solicited by the Board of Selectmen. The zoning official failed to ask for and consider information from the Appellant that would have shown that nothing that the Appellant proposes meets the definition of "commercial dumping ground." The soil to be brought to the Premises is not a waste like garbage, refuse or rubbish which is called "solid waste" under applicable law. Under the Massachusetts Environmental Regulations, the soil would not meet the definition of solid waste. To be solid waste, the soil needs to be useless, unwanted or discarded solid material resulting from industrial, commercial or other operations. *See* 310 CMR 16.02. Under the Department of Environmental Protection's ("DEP") Administrative Consent Orders for reclamation facilities and the DEP's Interim Policy on Soil Reuse, the soil brought to the Premises may only contain incidental, randomly disbursed, *de minimis* quantities of solid waste. If the DEP viewed the soil itself as solid waste, it would not refer to *de minimis* quantities of solid waste being allowed in the soil. In other words, such reference to solid waste would be superfluous. As such, the Appellant's proposed project does not meet the definition of "commercial dumping ground."

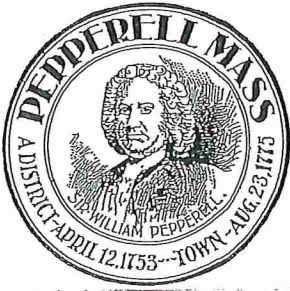
The Appellant hereby requests that the Pepperell Zoning Board of Appeals overturn the determination of the Building Inspector and/or grant any other permit or relief it deems appropriate with respect to the proposed project. The Appellant further reserves its rights to rely on other arguments in this appeal.

Sincerely,  
Deschenes & Farrell, PC



Douglas C. Deschenes

Enclosures.



Zoning Board  
of  
Appeals  
Application

For Town Clerk's Use Only	
Filing Fee Received:	
Administrative Appeal:	\$115.00
Special Permit:	\$115.00
Non-Conforming Use Special Permit:	\$115.00
Variance:	\$115.00
Modification to Existing Permit:	\$115.00
40-B Comprehensive Permit:	\$575.00*
*plus per unit review fees and technical/review deposit, please see attachment for details of fees required.	

Application Type:  Administrative Appeal  Variance  
 Special Permit  Modification to Existing Permit  
 Non-Conforming Use Special Permit  40-B Comprehensive Permit\*

Name of Applicant(s): Douglas C. Deschenes \*Attorney for Applicant  
 Relationship of Applicant to the subject property:

Owner  \*Purchaser under agreement with owner  Appellant  \*Other

Address of Applicant(s): 515 Groton Road, Suite 204, Westford, MA 01886

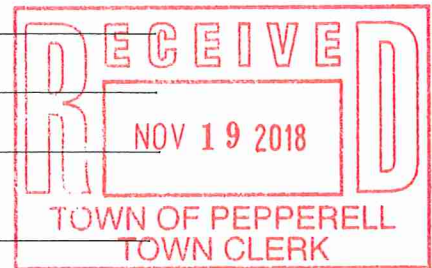
P.O. Box if applicable: \_\_\_\_\_

Subject Property Address: 161 Nashua Road, Pepperell, MA

Zoning District: IND Assessors Map and Parcel No.: 6-20-0

State Nature of the action or relief requested:

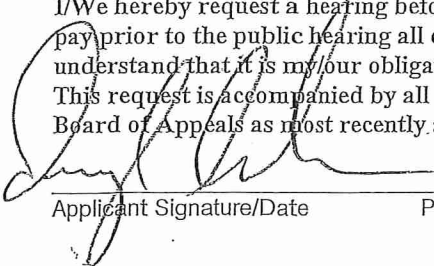
Administrative Appeal: See Attached Cover Letter



Please list all applicable section(s) of the Town of Pepperell Zoning Bylaw: \*\*  
Section 9000, Section 9200 (9223), Section 10000 Appendix A (Table Proposed Uses)

Letter/correspondence from the Inspector of Buildings/Zoning Enforcement Officer regarding this matter must be attached. Please see ZBA Information Packet for required attachments to application.

I/We hereby request a hearing before the Zoning Board of Appeals with reference to the above noted request. I/We agree to pay prior to the public hearing all costs of the certified mailing and the advertising of the notice of public hearing and understand that it is my/our obligation to establish at the public hearing, the factual and legal basis for the relief requested. This request is accompanied by all the required submissions and I/we have reviewed the Rules and Regulations of the Zoning Board of Appeals as most recently amended.

 Douglas C. Deschenes 978-496-1177 11-6-18  
 Applicant Signature/Date Print Name Day phone Eve phone

Applicant Signature/Date Print Name Day phone Eve phone

\*Owner's Acknowledgement

As the owner of subject property, I concur with the application, and if granted, authorize it to be recorded in owner's name and, if land is registered, noted on owner's certificate of title.  
 See Attached Authorization Sheet.

Owner's Signature(s)/Date

\*\* and any other permit relief as may be required under the Town of Pepperell Zoning By-Law to allow the proposed use/project.