

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

LAND COURT  
CIVIL ACTION NO. 19MISC000081

THE BOARD OF SELECTMEN FOR THE  
TOWN OF PEPPERELL,  
Plaintiff

v.

ZONING BOARD OF APPEALS FOR THE  
TOWN OF PEPPERELL, and MARK G.  
WALSH, ANNETTE R. MCLEAN, SEAN E.  
MCCAFFERY, ALAN LEO, JR. in their  
capacity as members of the ZONING BOARD  
OF APPEALS and MASS COMPOSTING  
GROUP, INC.  
Defendants

PLAINTIFF'S FIRST REQUEST FOR  
THE PRODUCTION OF  
DOCUMENTS TO DEFENDANT  
MASS COMPOSTING GROUP, INC.

Pursuant to Rule 34 of the Massachusetts Rules of Civil Procedure, the Plaintiff, the Board of Selectmen for the Town of Pepperell, requests the Defendant, Mass Composting Group, Inc., produce the following items for inspection and copying at the offices of Mirick, O'Connell, DeMallie & Lougee, LLP, 1800 West Park Drive, Suite 400, Westborough, MA 01581 within thirty (30) days hereof.

Definitions

1. The term "Board of Selectmen" refers to the Plaintiff, the Board of Selectmen for the Town of Pepperell, and includes all of its agents, employees and members.
2. The term "Building Inspector" refers to the Town of Pepperell's Building Inspector / Zoning Officer.
3. The term "communication" means the transmittal of information (in the form of facts, opinions, ideas, inquiries or otherwise).

4. The terms “concern” and “concerning” mean connected with, constituting, describing, evidencing, involving, pertaining to, referring to, relating to or regarding.

5. The term “document” is synonymous in meaning and equal in scope to the usage of this term in Mass. R. Civ. P. 34(a). An earlier draft is a separate document within the meaning of this term.

6. The term “Proposal” refers to the MCGI’s Proposal for a Soil Reclamation Facility at 161 Nashua Road, Pepperell, Massachusetts submitted to the Board of Selectmen for the Town of Pepperell on or about June 28, 2018, and includes any proposed revisions to the Proposal.

7. The term “Site” refers to 161 Nashua Road, Pepperell, Massachusetts, the property at issue in MCGI’s Proposal.

8. The term “TERRA” refers to TERRA Environmental LLC, and includes all of its agents, employees, officers, managers, successors and assigns.

9. The terms “you,” “your” and “MCGI” refer to the Defendant, Mass Composting Group, Inc., and includes all of its agents, employees, officers, managers, successors and assigns.

10. The term “Zoning Bylaw” refers to the Town of Pepperell Zoning Bylaw.

#### Requests for Production

Request No. 1. All documents and communications concerning the Proposal.

Request No. 2. All documents and communications concerning any potential use of the Site during your ownership.

Request No. 3. All documents and communications concerning the proposed Soil Management Plan included in the Proposal, and including any proposed revisions to the Soil Management Plan.

Request No. 4. All documents and communications concerning any and all potential future developments, uses and plans for the Site.

Request No. 5. All documents and communications between you and agents, employees or officials of the Town of Pepperell, including but not limited to the Board of Selectmen, the Building Inspector and the Zoning Board of Appeals, concerning the Site and/or the Proposal.

Request No. 6. All documents and communications between you and any abutters or area residents concerning the Site and/or the Proposal.

Request No. 7. All documents and communications concerning the preparation, publication and submission of the Proposal, including but not limited to memoranda, talking points, instructions, plans, public relations strategies or outlines, and any other related documents or communications.

Request No. 8. All documents and communications concerning any investigation, research or studies performed by TERRA or any other consultant or third party concerning the Proposal or any use or potential use of the Site, including but not limited to investigation, research or studies related to zoning, septic, wastewater, wetlands, stormwater, drainage, drinking water, groundwater, wells, endangered species, Site access, ingress and egress, noise, traffic, vibration, dust and any other potential impacts, health, safety, environmental or otherwise.

Request No. 9. All documents and communications concerning any testing performed at or around the Site, including but not limited to water and soil testing.

Request No. 10. All documents and communications concerning the effects or potential effects of the proposed Soil Reclamation Facility at the Site on soil, wastewater, wetlands, rivers

and streams, stormwater, drainage, drinking water, groundwater, wells, and/or endangered species.

Request No. 11. All documents and communications concerning any Information Request with MassWildlife's Natural Heritage & Endangered Species Program concerning the Site or the Proposal.

Request No. 12. All documents and communications concerning your contention, if you so contend, that the soils brought to the Site would not constitute "refuse" under the Zoning Bylaws.

Request No. 13. All documents and communications concerning your contention, if you so contend, that the proposed Soil Reclamation Facility is an allowed use or is somehow not otherwise prohibited under the Zoning Bylaws.

Request No. 14. All documents and communications concerning the source of any soils brought to any proposed Soil Reclamation Facility at the Site.

Request No. 15. All documents and communications concerning the historical grade, elevation and topography of the Site.

Request No. 16. All documents and communications concerning the final grade, elevation and topography of the Site upon completion of the proposed Soil Reclamation Facility.

Request No. 17. All documents and communications concerning your calculation of the number of cubic yards of soil that would be received at the Site under the Proposal.

Request No. 18. All documents and communications concerning your calculation that it will take 7 to 9 years to complete the soil reclamation activities contemplated under the Proposal.

Request No. 19. All documents and communications concerning any traffic or noise studies related to the proposed Soil Reclamation Facility at the Site.

Request No. 20. All documents you referred to or relied upon in answering the Plaintiff's First Set of Interrogatories.


Request No. 21. All documents and communications concerning your affirmative defenses.

Request No. 22. All documents you intend to introduce at the trial of this action.

Request No. 23. All documents provided to any expert upon whom you intend to rely at trial.

Request No. 24. With respect to any documents the production of which is withheld on the basis of the attorney-client privilege, the work product doctrine or any other privilege or immunity, please provide a privilege log in accordance with Mass. R. Civ. P. 26(b)(5).

By its attorneys,

  
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David K. McCay Esq., BBO #646921  
Angela J. Benoit, Esq., BBO #703213  
Mirick, O'Connell, DeMallie & Lougee, LLP  
1800 West Park Drive, Suite 400  
Westborough, MA 01581-3926  
Phone: (508) 791-8500  
Fax: (508) 983-6273

Dated: July 17, 2019

CERTIFICATE OF SERVICE

I, David K. McCay, hereby certify that I have this day served a copy of the foregoing document, by mailing a copy, first class mail, postage prepaid, to Robin L. Main, Esq., and Rhiannon A. Campbell, Esq., Hinckley, Allen & Snyder, LLP, 28 State Street, Boston, MA 02109-1775 and David J. Doneski, Esq. and A. Alexander Weisheit, Esq., KP Law, P.C., 101 Arch Street, 12<sup>th</sup> Floor, Boston, MA 02110-1109.

  
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David K. McCay, Esq.

Dated: July 17, 2019