

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

MIDDLESEX, ss.

CASE NO. 19 MISC 000081 (DRR)

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. McCAFFEREY,
ALAN LEAO, JR. in their capacity as members of
the ZONING BOARD OF APPEALS, and MASS.
COMPOSTING GROUP, INC.,

Defendants.

Consolidated with

CASE NO. 19 MISC 000086 (DRR)

PHILLIP DZUBINKSI, ROSEANNE DZUBINSKI,
HOLLY RIST, DEAN RIST, WILLIAM
HAMMOND, PATRICIA HAMMOND, ROBERT
LIVINGSTON, BRIAN J. HUTCHINSON,
ROBERT P. CORDEIRO, KATHLEEN
CORDEIRO, MARK K. SPENGLER, LINA
SPENGLER, MARGARET SCARSDALE, and
CAROLINE AHDAB,

Plaintiffs,

v.

THE PEPPERELL ZONING BOARD OF
APPEALS, MARK WALSH, ANNETTE McLEAN,
SEAN McCAFFERY, as they are Members of the
PEPPERELL ZONING BOARD OF APPEALS,
MASS. COMPOSTING GROUP, INC., and its
President DAVID A. BURTON,

Defendants.

JUDGMENT

Case No. 19 MISC 000081 was commenced with the filing of the complaint on February 14, 2019, by the Board of Selectmen for the Town of Pepperell (the “Board”) against the Zoning Board of Appeals for the Town of Pepperell (the “ZBA”) and Mass. Composting Group, Inc. (“MCGI”), followed by the Second Amended Complaint on July 13, 2020. Case No. 19 MISC 000086 was then commenced with the filing of the complaint on February 15, 2019, by Phillip Dzubinski, Roseanne Dzubinski, Holly Rist, Dean Rist, William Hammond, Patricia Hammond, Robert Livingston, Brian J. Hutchinson, Robert P. Cordeiro, Kathleen Cordeiro, Mark K. Spengler, Linda Spengler, and Caroline Ahdab (the “Private Plaintiffs”) against the ZBA and MCGI, followed by the Third Amended Complaint on December 16, 2019.

These consolidated actions came to be heard by the court (Rubin, J.) on all Plaintiffs’ Motions for Summary Judgment on May 24, 2021. In a decision of even date, the court has made rulings of law and ordered the entry of summary judgment. In accordance with the court’s decision, it is hereby,

ORDERED and ADJUDGED that the Board’s motion for summary judgment in 19 MISC 000081 is **ALLOWED**, and Private Plaintiffs’ motion for summary judgment in 19 MISC 000086 is **ALLOWED**, and it is further

ORDERED, ADJUDGED, and DECLARED that, per the stipulation of the parties filed February 2, 2021, the ZBA lacked jurisdiction to hear MCGI’s appeal of the Pepperell Building Inspector’s Advisory Opinion, and therefore the ZBA’s Decision was of no legal force or effect. Accordingly, Count I of the Board’s Second Amended Complaint (appealing the ZBA’s Decision under G.L. c. 40A, § 17) and Counts I and II of the Private Plaintiffs’ Third Amended Complaint (seeking a declaration under G.L. c. 231A, § 1 that the ZBA lacked

jurisdiction, and appealing the ZBA's Decision under G.L. c. 40A, § 17) have not been adjudicated, and it is further

ORDERED, ADJUDGED, and DECLARED that, on Count II of the Board's Second Amended Complaint (seeking declarations under G.L. c. 231A and 240, § 14A); Count III of the Private Plaintiffs' Third Amended Complaint (seeking a declaration under G.L. c. 231A); and Counts I and II of MCGI's Counterclaim (seeking declarations under G.L. c. 231A and 240, § 14A, respectively), MCGI's proposed soil reclamation project at 161 Nashua Road, Pepperell is a prohibited Commercial Dumping Ground under the Town of Pepperell's Bylaw, § 10000, and regulation of the Project as such is not preempted by Section 277 of Chapter 165 of the Acts of 2014, and it is further

ORDERED, ADJUDGED, and DECLARED that upon payment of all required fees, this Judgment, or a certified copy of it, may be recorded with the Middlesex County Registry of Deeds and marginally referenced on all relevant documents, and it is further

ORDERED that today's Decision in both 19 MISC 000081 and 19 MISC 000086, and this Judgment issued pursuant thereto, dispose of the entire cases; the court has adjudicated or dismissed all claims by all parties in these actions and has not reserved decision on any claim or defense, and it is further

ORDERED that no costs, fees, damages or other amounts are awarded to any party in these consolidated cases.

SO ORDERED

By the Court (Rubin, J.)

/s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson

Recorder

Dated: August 1, 2022.