

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

BERKSHIRE, ss.

MISCELLANEOUS CASE
No. 18 MISC 000240 (JSDR)

GJO, LLC,
Plaintiff

v.

RONALD MAJDALANY, CAROLYN IVORY,
KATHLEEN KOTLESI, STEPHEN McALISTER,
MICHAEL WISE, DONALD G. HAGBERG, And
JOHN KATZ, as They Are Members of the
GREAT BARRINGTON ZONING BOARD OF
APPEALS; EDWIN MAY, as He Is BUILDING
INSPECTOR for the TOWN OF GREAT
BARRINGTON; and TOWN OF GREAT
BARRINGTON;
Defendants

AGREEMENT FOR JUDGMENT

The parties to the above-captioned action, by and through their respective counsel-of-record, hereby stipulate and agree to the entry of judgment as follows:

1. Plaintiff GJO, LLC (“Plaintiff”), and the defendants Town of Great Barrington (“Town”), Building Inspector for the Town of Great Barrington (“Inspector”), and Town of Great Barrington Zoning Board of Appeals (“Board”) (collectively, the “Parties”) constitute all of the parties in this action (the “Action”).

2. The Action seeks review, pursuant to G. L. c. 40A, § 17, of a decision of the Board (the “Decision”) filed with the Town Clerk on April 30, 2018, regarding the use of Plaintiff’s property at 11 Roger Road, Great Barrington, Massachusetts (the “Property”), and, pursuant to G. L. c. 240, § 14A, a declaration as to the status of a nonconforming use and structure on the Property.

3. The Parties hereby stipulate that the use of the Property for a trucking business is a lawful, preexisting nonconforming use under G. L. c. 40A, § 6 and Sections 5.1-5.2 of the Great Barrington Zoning Bylaw; the Parties further stipulate that the maintenance building on the Locus, constructed pursuant to a building permit issued on or about June 11, 2003 (“Maintenance Building”), is a legally nonconforming structure pursuant to the third paragraph of G. L. c. 40A, § 7.

4. The Parties hereby stipulate that the use of the Property as a landscaper’s yard/trucking contractor’s yard, meaning a place at which a landscaper or trucking contractor stores and maintains the vehicles and equipment used in its business and from which it dispatches those vehicles and equipment to work sites, is within the scope of the nonconforming trucking business use, provided that such use complies with, and does not exceed the limits of, the following terms and conditions, to be adhered to by Plaintiff, its agents, assigns, and successors:

- a. No active snowplow and/or sander operations may be conducted at or from the Property at any time.
- b. No storage, service or repairs of any snowplow or sander truck may take place at the Property from October 15 through April 15; but up to nine (9) snowplow vehicles may be stored at the Property, as dead storage only, and may be serviced during normal hours of operation, from April 1 through no later than December 1 only. Proof shall be provided to the Great Barrington Building Inspector for any such “dead storage” vehicles that they are not insured to be operated on a roadway. When the snowplow vehicles are brought to the Property for the start of the annual dead storage period, the Plaintiff shall provide to the Building Inspector a list of the stored vehicles, including make, model, color and license plate number.
- c. There shall be no use or display of any flashing lights of any kind at the Property.
- d. There shall be no storage, servicing or dispatching of any truck that exceeds 29,000 lbs. unladen weight at or from the Property. Up to nine (9) trucks that do not exceed 29,000 lbs. unladen weight, may be stored, serviced and dispatched at or from the Property. There may also be personal vehicles of employees (automobiles and pickup trucks) parked or kept on the Property, but there shall be no servicing or repair of these personal vehicles. There shall be no storage or servicing or operation of race car vehicles. The snowplow trucks which may be seasonally stored and serviced pursuant to paragraph 4.b are in addition to the

trucks referenced in this paragraph and shall not be included in the nine (9) trucks counted in this paragraph.

- e. Regarding the portion of Roger Road that is gravel and not bituminous pavement, the Plaintiff shall:
 - i. Conduct periodic inspections to monitor status of that portion of the roadway;
 - ii. Fill and grade that portion of the roadway at least twice a year to minimize potholes and ruts (which cause/contribute to noise when vehicles traverse the road); and
 - iii. Treat the gravel surface with calcium chloride during dry months to keep dust down.
- f. There shall be no dispatch from the Property and no servicing, repairing or maintaining of trucks (or equipment) at the Property except during the hours of 6:00 a.m. to 7:00 p.m., Monday through Saturday, except that employees may arrive at the Property in personal vehicles prior to 6:00 a.m., but no earlier than 5:30 a.m., and heavy trucks may be started no earlier than 5:45 a.m. to facilitate required pre-departure inspections but shall not be driven or otherwise moved prior to 6:00 a.m. There shall be no Sunday operations.
- g. There shall be no idling of any vehicle or equipment for more than 15 minutes.
- h. There shall be no jake braking at the Property.
- i. The Great Barrington Building Inspector, or his/her designee, may enter onto the Property at reasonable intervals during the calendar year, during the hours of 5:30 a.m. to 7:00 p.m. Monday through Saturday to inspect the Property and activities thereon for the purpose of determining compliance with these terms and conditions. Twelve (12) such inspections may be conducted per calendar year. In addition to such periodic inspections, the Building Inspector, or his/her designee, may enter onto the Property in response to a complaint received regarding operations at or about the Property, and when doing so shall notify the Plaintiff and/or any persons on the Property at the time of the date and elements of the complaint.

5. The Parties agree that the April 30, 2018 Decision should be amended to conform to this Agreement for Judgment, and the Court should remand this Action to the Board for a new, fully noticed public hearing, not to exceed one (1) session, at which the Board shall consider amending the April 30, 2018 Decision to conform to this Agreement for Judgment. In such event, this

Agreement for Judgment shall prevail over inconsistent provisions in the April 30, 2018 Decision. The Parties shall request by joint motion that the Court approve this Agreement for Judgment under Land Court Rule 10, and issue a separate Remand Order.

6. The terms of the Court's September 27, 2018 Preliminary Injunction shall remain in full force and effect until the earlier of (a) twenty-one days from the date the Board's decision on remand is filed with the Town Clerk and no appeal has been taken by any person whether or not a party to this action, or (b) in the event of an appeal, upon judgment becoming final in such appeal.

7. All Parties hereby waive all rights of appeal in the Action and shall bear their own attorney's fees, costs and expenses, whether associated with the Action, activities preceding the same or the negotiation of this Agreement for Judgment.

Respectfully submitted,

PLAINTIFF
GJO, LLC
By its attorneys,

DEFENDANTS TOWN OF GREAT
BARRINGTON, et al.
By their attorneys,

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Dated: December 23, 2020