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January 19, 2022

EMAIL ONLY

Joseph Prondak
Building Commissioner
Milton Town Office Building
525 Canton Avenue
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RE: 152 Robbins Farm, and the Agricultural Exemption

Dear Mr. Prondak:

We have been asked to provide an opinion discussing the agricultural exemption under M.G.L. c. 40A, § 3 and its applicability to the proposed project at 152 Robbins Farm. Please see the description of the agricultural exemption and our opinion below.

Under M.G.L. c. 40A, § 3, property used primarily for commercial agricultural purposes is exempted from zoning regulations or restrictions. Further, no special permit is required for using land primarily for commercial agricultural purposes. This includes facilities where produce, wine, and dairy products will be sold.

Application of M.G.L. c. 40A, § 3's Agricultural Exemption

The exemption applies in the two scenarios outlined below (Scenario A and Scenario B)

Scenario A: The exemption applies if the property owner or lessee produces at least 25% of the products for sale on site during the months of June, July, August, and September or during the harvest season of the owner or lessee's primary crop. The 25% amount is measured from the gross sales dollars or volume for either the June to September (inclusive) time period or the harvest season of the primary crop;

OR

Scenario B: The exemption applies if at least 25% of the products for sale is produced on site (measured *annually* as opposed to the June-to-September or harvest periods discussed in Scenario A) **AND** at least 50% of the products for sale is produced in an off-

Joseph Prondak, Building Commissioner

January 19, 2022

Page 2 of 2

site facility within Massachusetts used primarily for commercial agriculture, whether by the owner him/herself or another. Both the 25% and 50% amounts are measured by the gross *annual* sales or *annual* volume.

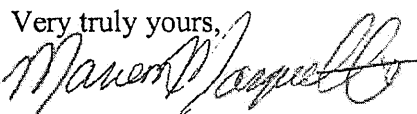
Exception: The activities covered by the exemption can be limited to either:

1. Parcels of 5 or more acres; OR
2. Parcels of 2 or more acres IF the sale of the agricultural products yields at least \$1,000 per acre each year, which is based on *gross sales*, in an area not zoned for agriculture. M.G.L. c. 40A, § 3.

With respect to 152 Robbins Farm, the narrative submitted by the landowner indicates that the proposed farm would be used for the sale of farm products, wine, and dairy products, indicating that the proposed use is primarily for commercial agriculture, and therefore the agricultural exemption from M.G.L. c. 40A, § 3 probably applies. The landowner, however, would have to maintain at least 25% production of sales on site from June to September (inclusive) or the primary crop's harvest season, or otherwise at least 25% production of sales annually on site and at least 50% production of sales located off-site but within Massachusetts.

Because only 1 out of the 9 off site facilities are located in Massachusetts, the Town would have to keep a close eye to ensure that the landowner is meeting the threshold requirements to stay within the agricultural exemption. Specifically, the landowner would have to either meet the 25% threshold in the four-month period or harvest period outlined in Scenario A or the 25% on-site threshold and 50% off-site (Massachusetts) threshold measure outlined in Scenario B.

As the representative from the Farm Bureau suggested, collecting yearly sales reports to ensure continued eligibility under the exemption would be good practice. The Town may also issue a permit with conditions stating that the landowner is allowed to build the farm structures so long as the landowner meets the standards of the Massachusetts Board of Health and produces gross annual sales reports by a certain date each year, or twice each year to ensure eligibility under the exemption.

Very truly yours,

Mariem Marquetti

CC: Kevin Freytag, kfreytag@mhtl.com
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