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24-P-982 Appeals Court

LYDIA BLANCHE, trustee,[1] & another[2] vs. ZONING BOARD OF APPEALS OF WESTMINSTER.

No. 24-P-982.

Worcester. November 17, 2025. - November 6, 2026.

Present: Hershfang, Hodgens, & Smyth, JJ.

Agriculture. Real Property, Agricultural or horticultural use. Statute, Construction. Zoning, Enforcement, By-law, Agriculture. Practice, Civil, Zoning appeal, Summary judgment. Words, "Agriculture," "Primary."

Civil action commenced in the Superior Court Department on September 24, 2020.

The case was heard by Sharon E. Donatelle, J., on motions for summary judgment.

John M. Dombrowski for the plaintiffs.
Justin M. Perrotta for the defendant.

SMYTH, J. From 2010 to 2020, plaintiff George Lipowczan operated a business on a parcel of land (property) in the town

[1] Of the Woodland Hills Realty Trust.

[2] George T. Lipowczan.

of Westminster (town) that processed trees into cordwood and woodchips.[3] The majority of the trees used for processing were not grown and harvested on the property but instead imported to the property from other sites in Massachusetts. The issue in this appeal is whether such use of the property meets the definition of "agriculture" or "farming" required to either comply with the town's right to farm bylaw or to qualify for an exemption under G. L. c. 40A, § 3, first par. (§ 3, first par.), from regulation by municipal zoning bylaws.

This appeal arises from a cease and desist order issued to the plaintiffs in 2020 by the town's building commissioner and zoning enforcement officer (building commissioner) who determined that the plaintiffs' use of the property did not conform to the town's zoning bylaw. Following a hearing, the town's zoning board of appeals (board) upheld the building commissioner's order. The plaintiffs then appealed that decision to the Superior Court, and a judge granted summary judgment in favor of the board. The plaintiffs now contend that the judge erred in granting the board summary judgment, arguing that their use of the property (1) meets the definition of "agriculture" in the town's "right to farm" general bylaw

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[3] The Woodland Hills Realty Trust (trust) purchased the property in 2014. Lipowczan and his sister, Lydia Blanche, are the beneficiary and trustee of the trust, respectively. We refer to Lipowczan and Blanche collectively as the plaintiffs.

(general bylaw) and is permitted as a matter of right by the town's zoning bylaw and (2) complies with the agricultural exemption set forth in § 3, first par.

We conclude that the judge did not err in affirming the board's decision and concluding that the plaintiffs' primary use of the property does not meet the definition of "agriculture" or "farming" as required by the bylaws and § 3, first par., principally because most of the trees used for processing are imported to the property and not grown or harvested thereon. Accordingly, we affirm the grant of summary judgment in favor of the board.

Background. 1. Facts. "We summarize the findings set forth in the order on the parties' cross motions for summary judgment, supplemented by other uncontroverted facts in the summary judgment record . . . ." Williams v. Board of Appeals of Norwell, 490 Mass. 684, 685 (2022). We view the evidence in the light most favorable to the plaintiffs, as the party against whom summary judgment was entered. See id.

Since 2010, Lipowczan has operated a business on the property that "harvests trees, cuts the logs into cord-wood, makes wood chips out of the remnants of the trees, and delivers," or hires a third party "large truck" operator to deliver, these products to customers. Approximately one-third of the trees used each year in Lipowczan's operation are grown

on the property, with the remainder acquired from other woodlands in Massachusetts. In May 2020, in response to noise complaints from an abutter, the town's building commissioner conducted a site visit and observed "heavy equipment" and "imported piles of logs and imported wood chips" on the property. The building commissioner determined that the town's zoning bylaw did not allow for "this type of wood processing operation" and ordered the plaintiffs to cease and desist all wood processing at the property.

The plaintiffs appealed to the board pursuant to G. L. c. 40A, § 15, arguing that "bringing logs and wood onto the subject Property from other sites, cutting cord-wood, making wood chips or other lumber products, and delivering same to off-site customers" constitutes a "forestry or lumbering operation" and is allowed as of right under the town's zoning bylaw. In the alternative, the plaintiffs argued that their use of the property is exempt from the zoning bylaw as an agricultural use under § 3, first par. The board disagreed and, following a public hearing, upheld the building commissioner's cease and desist order. Specifically, the board concluded that because the town's zoning bylaw and § 3, first par., are "limited by" the definition of "agriculture" in G. L. c. 128, § 1A, and the business of "bringing in . . . trees harvested off-site and processing them on-site" does not meet the definition of

"agriculture" in G. L. c. 128, § 1A, the plaintiffs' operation neither conformed with the town's zoning bylaw nor qualified for the statutory exemption in § 3, first par.

2. Procedural history. In September 2020, the plaintiffs appealed from the board's decision to the Superior Court. In February 2024, a judge entered judgment in favor of the board on the parties' cross motions for summary judgment, affirming the board's decision after concluding that Lipowczan's commercial wood processing operation did not qualify as an allowed agricultural use under either § 3, first par., or the town's bylaws because it did not satisfy the primary purpose requirement.

Discussion. 1. Standard of review. At issue here is whether the board's decision is an unreasonable interpretation of the town's bylaws and § 3, first par. In reviewing the decision of a zoning board of appeals, a trial judge "makes [her] own findings of facts and need not give weight to those the board has found" (quotation and citation omitted). Sunpin Energy Servs., LLC v. Zoning Bd. of Appeals of Petersham, 497 Mass. 794, 799 (2026) (Sunpin). See G. L. c. 40A, § 17. From there the judge "determines the content and meaning of statutes and by-laws and . . . decides whether the board has chosen from those sources the proper criteria and standards to use" in deciding the issue before it (quotation and citation omitted).

Sunpin, supra at 800. The judge then determines whether the board's application of the appropriate legal standard was "based on a legally untenable ground, or [was] unreasonable, whimsical, capricious or arbitrary." Britton v. Zoning Bd. of Appeals of Gloucester, 59 Mass. App. Ct. 68, 72 (2003), quoting MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 639 (1970). "An interpretation of a bylaw provision is unreasonable if it is inconsistent with that provision's purpose or the bylaw as a whole." Pinecroft Dev., Inc. v. Zoning Bd. of Appeals of West Boylston, 101 Mass. App. Ct. 122, 128 (2022) (Pinecroft). If the board's interpretation of its bylaw is reasonable, the court should not substitute its own judgment. See Tanner v. Board of Appeals of Boxford, 61 Mass. App. Ct. 647, 649 (2004).

We review a grant of summary judgment de novo. Lynch v. Crawford, 483 Mass. 631, 641 (2019). "The allowance of a motion for summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law" (quotation and citation omitted). Williams, 490 Mass. at 689. "[W]here both parties have moved for summary judgment, the evidence is viewed in the light most favorable to the party against whom judgment is to enter." Albahari v. Zoning Bd. of Appeals, 76 Mass. App. Ct. 245, 248 n.4 (2010).

2. Agricultural use exemption under G. L. c. 40A, § 3. Our discussion begins with G. L. c. 40A, § 3, because it is the Commonwealth's statute exempting certain agricultural activities from local zoning regulations; the town's bylaws, as discussed infra, restate and republish G. L. c. 40A, § 3. The purpose of G. L. c. 40A, § 3, is to limit municipalities from regulating certain uses of privately-owned property. See Crossing Over, Inc. v. Fitchburg, 98 Mass. App. Ct. 822, 829 (2020). Specific to this appeal, § 3, first par., bars local zoning ordinances or bylaws from "prohibit[ing], unreasonably regulat[ing], or requir[ing] a special permit for the use of land for the primary purpose of commercial agriculture." See Valley Green Grow, Inc. v. Charlton, 99 Mass. App. Ct. 670, 679 (2021) ("Since at least 1975, c. 40A, § 3, has prohibited municipalities from adopting zoning regulations that bar or unreasonably regulate agricultural and horticultural uses in any zoning district").

We turn first to the definition of "agriculture." In 2006, the Legislature incorporated by reference into § 3, first par., the definition of "agriculture" in G. L. c. 128, § 1A (§ 1A).[4]

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[4] "'Farming' or 'agriculture' shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial

See St. 2006, c. 123, § 36 (effective June 24, 2006). As pertinent here, § 1A defines "farming" or "agriculture" to include "the growing and harvesting of forest products upon forest land" and "any forestry or lumbering operations" performed by a "farmer," defined as "one engaged in agriculture or farming," or on a farm "as an incident to or in conjunction with such farming operations." Thus, contrary to the plaintiffs' contention, "forestry or lumbering operations" do not constitute agriculture merely because they are forestry or lumbering operations; they must be performed by a farmer or on a farm as an incident to or in conjunction with farming operations.

We next consider whether the plaintiffs' use of the property satisfies § 3, first par.'s primary purpose requirement. That requirement ensures that a party invoking the right to farm protection does not engraft a recognized agricultural use onto a nonagricultural use in order to receive

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> enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market." (Emphases added.)

G. L. c. 128, § 1A.

favorable treatment under G. L. c. 40A. See Henry v. Board of Appeals of Dunstable, 418 Mass. 841, 847 (1994). See also Regis College v. Weston, 462 Mass. 280, 290 (2012). A party invoking protection under the statute must demonstrate that its use of the land has as its primary purpose a statutorily enumerated use. G. L. c. 40A, § 3, first par. Because § 3, first par., does not define "'primary' in the context of the use of land . . . we give the word its usual and accepted meaning from 'other legal contexts and dictionary definitions.'" Eastham v. Clancy, 44 Mass. App. Ct. 901, 902 (1997), quoting Building Inspector of Mansfield v. Curvin, 22 Mass. App. Ct. 401, 402 (1986). "Primarily" means "chiefly" or "mainly." American Heritage Dictionary of the English Language 1398 (5th ed. 2018). When considering the primary purpose of land in the context of G. L. c. 40A, § 3, our courts "have traditionally sought to determine the principal use of an establishment viewed in its totality. Once identified, that principal use rather than any subsidiary use generally controls determinations of the property's consistency with zoning ordinances" (quotation and citations omitted). Regis, supra.

We accept the plaintiffs' unrebutted assertion that approximately one-third of the trees that Lipowczan processes and sells as cordwood and woodchips each year are grown on the property, and that the balance of the trees processed come from

other sites in Massachusetts. This was the determinative factor of the board and the Superior Court: the board concluded, and the judge agreed, that the plaintiffs' use of the property did not qualify for the agricultural exemption in § 3, first par., because "the majority of the material processed on-site is grown and harvested off-site." Given the primary purpose requirement of § 3, first par., we discern no error in the judge's conclusion that the plaintiffs' use of the property was insufficiently connected to a permitted agricultural use under G. L. c. 128, § 1A -- here, growing and harvesting trees -- to warrant the protection of § 3, first par., where two-thirds of the trees proceed were imported from other woodlands. See Clancy, 44 Mass App. Ct. at 901-902 (primary use of property was not agricultural where less than one-third of land was cleared for growing produce, with majority "wooded and overgrown with some residential use"); Building Inspector of Peabody v. Northeast Nursery, Inc., 418 Mass. 401, 405 (1994) ("the business of selling trees . . . , planted and nurtured elsewhere and delivered to the business premises ready for marketing" does not fall within "the common understanding" of agriculture and is thus "not immune" under § 3, first par.).

Otherwise stated, it was not erroneous for the judge to conclude that the primary use of the property was to process wood into woodchips and cordwood for resale, and not to grow and

harvest trees upon forest land. Accepting the plaintiffs' interpretation that the processing of two-thirds of imported trees amounts to an agricultural use would allow the exemption in § 3, first par., "to be manipulated and twisted into a protection for virtually any use of the land as long as some agricultural activity was maintained on the property." Henry, 418 Mass. at 847. Such a result would usurp a town's zoning authority and allow for results contrary to the Legislature's intent in drafting § 3, first par. See id.

The plaintiffs further argue that the primary use of the property is agricultural under § 3, first par., because one-third of the trees used to make cordwood and woodchips each year are grown and harvested on the property, exceeding a minimum threshold of twenty-five percent of the "products for sale." But this argument relies on a statutory clause that is inapplicable to them. Section 3, first par., provides, in pertinent part, that a town shall

> "no[t] prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, . . . including those facilities for the sale of produce, wine and dairy products, provided that . . . 25 per cent of . . . products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located . . . ."

The twenty-five percent language that the plaintiffs rely on is not relevant to their claim. It instead applies to "the use, expansion, reconstruction or construction of structures thereon [a parcel of land] for the primary purpose of commercial agriculture" (emphasis added). G. L. c. 40A, § 3, first par. The case before us concerns the operation of Lipowczan's wood processing business, not the sale of agricultural products produced on the property and sold from a farm stand or similar structure thereon.[5] Neither the building commissioner's cease and desist order nor the board's decision referenced any structure on the property as violative of either the bylaws or § 3, first par. Moreover, at no point have the plaintiffs argued that the agricultural use exemption requirements under § 3, first par., apply to the property because Lipowczan sells cordwood or woodchips from a structure on the property.

3. The town's bylaws. The plaintiffs fare no better under the local bylaws for substantially the same reasons they do not qualify for an agricultural use exemption under § 3, first par. The town's bylaws are limited by the definition of "agriculture" in G. L. c. 128, § 1A, and, contrary to the plaintiffs'

[5] In 2006, the Legislature replaced the previously existing requirement that a "majority" of products for sale be produced on the property with the current twenty-five percent requirement for triggering the statutory protection for "structures." See St. 2006, c. 123, § 36 (effective June 24, 2006).

contention, cannot afford their use of the property greater protection than that afforded under § 3, first par.

"[W]here [a bylaw's] language is plain and unambiguous, we enforce the bylaw according to its plain wording," but where "terms are undefined or otherwise ambiguous, we will defer to a local zoning board's reasonable interpretation" (quotation and citation omitted). Pinecroft, 101 Mass. App. Ct. at 128. We interpret a bylaw following the ordinary rules of statutory construction, including giving words their usual and accepted meanings and considering the law's purpose. See Williams, 490 Mass. at 693-694.

The town's "right to farm" bylaw, codified in § 102-1(B) of the town's general bylaw (general bylaw), largely restates the protections provided by § 3, first par., and the definition of "farming" or "agriculture" in G. L. c. 128, § 1A. Specifically, § 102-1(B) implements G. L. c. 40A, § 3, by "encourag[ing] the pursuit of agriculture, promot[ing] agriculture-based economic opportunities, and protect[ing] farmlands."[6] Similar to § 3, first par., the general bylaw includes a primary purpose

[6] Section 102-1(A) of the general bylaw reads in pertinent part: "The purpose and intent of this bylaw is to state with emphasis the right to farm accorded to all citizens of the Commonwealth under Article 97 of the Constitution, and all state statutes and regulations thereunder, including but not limited to [G. L. c.] 40A, § 3, Paragraph 1; [G. L. c.] 90, § 9; [G. L. c.] 111, § 125A; and [G. L. c.] 128, § 1A."

requirement, requiring that the property must be used for the "primary purpose of commercial agriculture" to qualify as a farm.[7] In addition, § 102-2 of the general bylaw draws its definition of "farming" and "agriculture" nearly verbatim from G. L. c. 128, § 1A.[8] Notably, § 102-2(B) of the general bylaw includes both the "[g]rowing and harvesting of forest products upon forest land" and "and any other forestry or lumbering operations" in its definition of "farming" or "agriculture." See G. L. c. 128, § 1A.

The plaintiffs, however, contend that the clause "any [other] forestry or lumbering operations" constitutes a separate category of "farming" or "agriculture," independent of the

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[7] Section 102-2(A) of the general bylaw defines "farm" to include "any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto."

[8] Specifically, § 102-2(B) of the general bylaw defines "farming" or "agriculture" to include

> "(1) Farming in all its branches and the cultivation and tillage of the soil; (2) Dairying; (3) Production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities; (4) Growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations; (5) Raising of livestock, including horses; (6) Keeping of horses as a commercial enterprise; and (7) Keeping and raising poultry, swine, cattle, ratites . . . and camelids . . . , and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals."

"[g]rowing and harvesting of forest products on forest land." It does not. First, the plaintiffs' reading is inconsistent with the plain language of G. L. c. 128, § 1A, which is "restate[d] and republish[ed]" in the town's general bylaw. Under § 1A, a "forestry or lumbering operation" must be performed by someone engaged in agriculture or farming as defined in the statute or as incident to or in conjunction with farming operations. See Dermody v. Executive Office of Health & Human Servs., 491 Mass. 223, 230 (2023) ("When interpreting statutory provisions, we begin, as always, with the plain language, keeping in mind that the fundamental goal is to discern the intent of the law-making body"). Further, in its findings of fact, the board indicated that the town's zoning bylaw "is limited by" the definition of "agriculture" in G. L. c. 128, § 1A. See Styller v. Zoning Bd. of Appeals of Lynnfield, 487 Mass. 588, 597 (2021) ("We accord deference to a local board's reasonable interpretation of its own zoning bylaw, adhering to the traditional canons of statutory construction" [quotation and citation omitted]).

Second, the plaintiffs' interpretation reads out the critical requirement set forth in § 3, first par., and restated in § 102-2 of the general bylaw, that the land on which any "forestry or lumbering operation" takes place must be used for the primary purpose of commercial agriculture. See Dermody, 491

Mass. at 230 ("the words of a statute must be read in their context and with a view to their place in the overall statutory scheme" [citation omitted]); Boston Hous. Auth. v. Labor Relations Comm'n, 398 Mass. 715, 718 (1986) ("Where two statutes deal with the same subject they should be interpreted harmoniously to effectuate a consistent body of law"). Under the plaintiffs' reading, any wood processing operation would qualify as an exempted activity, even if none of the trees used were grown or harvested on the property. Such an interpretation ignores the primary purpose requirement in § 3, first par.

We agree with the judge that the board's decision to uphold the building commissioner's cease and desist order was not based on legally untenable grounds, nor was it unreasonable, arbitrary, or capricious because the plaintiffs' use of the property is not "agriculture" or "farming" under § 3, first par. Accordingly, summary judgment was properly entered in favor of the board.

Judgment affirmed.