

Quick Facts First:

For the purposes of Mass General Law,
Chapter 40A, Section 3:

- Wind is not a crop.
- Energy (electricity or otherwise) must be intended primarily for on farm use – not sale.
- But . . .

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor **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, aquaculture, silviculture, horticulture, floriculture or viticulture, . . .** For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. **For the purposes of this section, the term “agriculture” shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.**

“unreasonably regulate”

What is an unreasonable Regulation?

- Does it effectively prohibit the activity?
- What are the reasons for the regulation?
- How important is the activity to the operation?

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or construction

This is new. Prior to February 22nd, this only included “**use, expansion, or reconstruction**”. Now new construction in open areas is allowed under this exemption.

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“primary purpose”

- The law requires that the majority of the specific, actual or intended use of the property and structure be for agriculture.
- Physical: What impact does the project have on the land, and town in comparison with the portions that are directly producing agricultural products?
- Fiscal: How does the income from the non agricultural product sales portion of the project compare with the sales of agricultural products?
Can I net meter?

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“commercial agriculture”

- Commercial – Don’t be fooled, you just have to be selling.
- Agriculture – If it has a plant or animal involved, it is probably agriculture under MGL Chapter 128, Section 1A. See your handout -

M.G.L. Chapter 128 Section 1A

“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 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.

So How About an Example?

TOWN OF TISBURY & others

vrs.

**MARTHA'S VINEYARD COMMISSION;
BENCION MOSKOW & others**

Argued May 15, 1989 and October 6, 1989

- The Moskows applied for a permit from the town of Tisbury to erect a greenhouse with a 4,000 gallon fuel tank for the year-round growing of hydroponic fruits and vegetables.
- The building inspector of the town referred the application to the Martha's Vineyard Commission because he believed that the proposed development was one of regional impact.

- After two public hearings, the Commission issued a decision approving the application subject to various conditions, to which the Moskows agreed.
- The building inspector refused to issue the permit. He and the Planning Board felt that the Commission's action was in excess of its statutory authority because it was in violation of the town's zoning by-law limiting fuel tanks to 500 gallons.

- The Moskows filed suite arguing that, because their farm and the proposed greenhouse with its fuel tanks were agricultural uses under G. L. c. 40A, § 3, the by-law restricting the size of fuel storage tanks was not applicable.
- It was undisputed that the 4,000 gallon fuel tank was an essential component of the Moskows' planned agricultural use of their property. They planned to grow fruits and vegetables on a year-round basis. Without heat from the tank in the winter months, the produce being grown within the greenhouse would perish.

- Further, the record established the dangers and difficulties attending the frequent refilling of a 500 gallon tank during severe winter weather, and, therefore, a larger tank would be safer. Any other concerns of the town about safety as a result of the size of the tank had been met by the judge's order that the permit should be issued subject to the conditions imposed by the Commission. Six of those conditions concerned the size, design and maintenance of the fuel tank.
- In his decision the judge ruled that the construction of the greenhouse and the appurtenant fuel storage facility constituted an agricultural use; that the proposed fuel tank was reasonable for its intended farm use; and that the by-law limiting the size of the fuel storage tanks would constitute an unreasonable regulation of agriculture.

Anything Further?

- What about that 25% bit in the Farm Stand section?
 - “including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such 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”