

Edwin A. May
Inspector of Buildings

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TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE INSPECTOR OF BUILDINGS

June 23, 2011

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7009 0820 0000 0734 6565
And FIRST CLASS MAIL

Mr. Gary O'Brien

GJO, LLC

P.O. BOX 874

Great Barrington, MA 01230

Re: SECOND Notice of Zoning Bylaw Enforcement: 11 Roger Rd, Great Barrington
Assessors' map reference: Map 37, lot 9

Dear Sir;

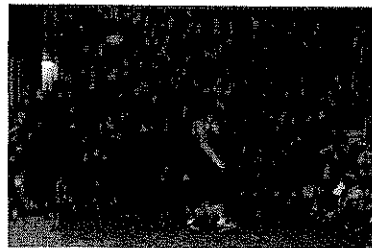
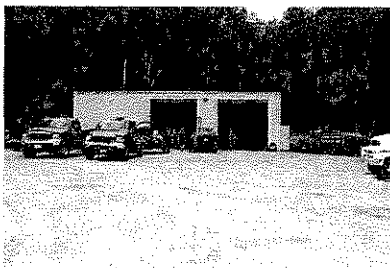
This is a **SECOND** notice to CEASE AND DESIST the use of your property located at 11 Roger Road, Great Barrington, Assessors' Map 37, lot 9, (the "Property"), as a landscaper's yard. The reasons for this are as follows:

Violation: The Property is located in the residential district (R-2) according to the Great Barrington Zoning Bylaw. The permitted uses in the R-2 district as set forth in the Table of Use Regulations of the Bylaw, 171-3.1.4, do not include a landscaper's yard. In addition section 171-3.1 of the Zoning Bylaw states that any use not listed in the Table of Use Regulations "No land shall be used and no structure shall be erected or used except as set forth in the following Table of Use Regulations or as otherwise set forth herein or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited." The use of the Property for a landscaper's yard is a violation of the Zoning Bylaw. See definition of Landscaper's Yard, section **171-11**, *see CONTRACTOR'S YARD (premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment).*

This office is aware of the 1996 agreement for judgment in the case of Town of Great Barrington v. Leamon Roger (Berkshire Superior Court civil action no. 95-0324), and acknowledges the discussions that have taken place between you and your counsel and Town officials regarding the effect of that agreement for judgment on the use of the Property. I have considered the information provided to me as part of those discussions and the statements made in the meetings/conference calls of May 13 and May 20, 2011 involving you, your counsel, the Town Manager and myself and Town Counsel. I also visited the Property on May 25, 2011 to observe the operations of your company that take place on the Property. I have determined that the agreement for judgment does not permit the type of landscaper's yard use that your company is engaged in at the Property.

The activities allowed by the agreement for judgment were the parking of trucks and storing of equipment related to the waste hauling business of Roger Trucking, and operation of that business and its office. As you know, Roger Trucking continues to operate its business from the Property and parks three trucks on the Property and one personal vehicle during the daytime. The use of the Property by your company is a *different* use and a substantial extension of the use allowed by the agreement for judgment. Your company's use also involves an increase in intensity, with the addition of 16 or more trucks, in addition to the storage of 4 unregistered vehicles. There is also a substantial increase in "equipment" stored on the property, i.e. trailers, snow plows, drive way sanders, street sweeper, excavation machinery and associated tools. Your company's use adds 20 more employees, parking their own vehicles on the Property and leaving and returning daily in commercial vehicles used in your business and increasing the number of traffic trips per day. It is not the same nonconforming use that was allowed by the agreement for judgment, and is an additional use that is substantially more detrimental to the neighborhood.

Operation of a landscaper's yard is evidenced by the attached photos of autos, trucks, trailers, heavy equipment parked and idling and employees lined up at a time clock punching in at 7:00 AM.



In an August 27, 2010 letter from your attorney to Town Counsel it was stated that future use of the Property by your company would be primarily for commercial agriculture/horticulture, with accessory use of storage of vehicles and equipment related to the "primary horticultural nursery use." As you know, your attorney submitted to Town Counsel in September of 2010 a timeline for establishing the GJO Horticultural Nursery by June of this year. However, the primary use of the Property is not for agriculture or horticulture; it is for a landscaper's yard. As noted above, the use of the Property as a landscaper's yard is not permitted.

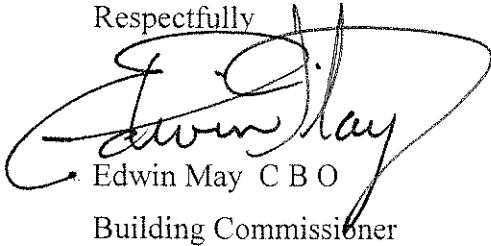
Use of the Property as a landscaper's yard would require a special permit from the Zoning Board of Appeals for alteration of a nonconforming use.

Order: In accordance with the foregoing, you are hereby directed to cease and desist the use of the Property for a landscaper's yard within 15 days of the date of this letter.

Remedy: The prohibited use must cease immediately.

Appeal: MGL c.40A §8 Basis for Appeals; An appeal to the Zoning Board of Appeals...may be taken by any person aggrieved by an order or decision of the Inspector of Buildings..., in violation of any provision of this chapter or any ordinance or by-law...

Respectfully


Edwin May C B O
Building Commissioner

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JUN 23 2011
BOSTON MA 01230

Sent To: Mr. Gary O'Brien GJO, LLC
Street, Apt. No.: P.O. Box 874
or PO Box No.:
City, State, Zip+4: Great Barrington MA 01230

See Reverse for Instructions

PS Form 3800, August 2006