

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
PUBLIC HEARING AGENDA**

*Online & 2 Lincoln Street
Essex Junction, VT 05452
Thursday, September 18th, 2025
6:30 PM*

E-mail: mgiguere@essexjunction.org

www.essexjunction.org

Phone: 802-878-6944, ext. 1625

This meeting will be held in-person at 2 Lincoln Street and remotely. Available options to watch or join the meeting:

- **WATCH:** The meeting will be live-streamed on [Town Meeting TV](#).
- **JOIN ZOOM MEETING:** [Click here to join the meeting](#)
or visit essexjunction.org for meeting connection information
- **JOIN CALLING:** Join via conference call (*audio only*): 1(888) 788-0099 (toll free)
Conference ID: 839 2599 0985 Passcode: 940993
- **PROVIDE FULL NAME:** For minutes, please provide your full name whenever prompted.
- **MUTE YOUR MIC:** When not speaking, please mute your microphone on your computer/phone.

I. Additions or Amendments to Agenda

II. Public to be Heard

III. Minutes for Approval

- a. August 21st, 2025

IV. Public Hearing

- a. Variance application requesting relief from the minimum lot frontage requirement of Section 720 of the Land Development Code at the future site of Lot 6A, adjacent to 29 Taft Street in the R1 District by Center for Technology, Essex, owners.
- b. Appeal of Administrative decision regarding the issuance of a Notice of Violation for a cannabis cultivation operation at 8 Taft Street in the R1 District by Jason Struthers, owner.

V. Other Development Review Board Items

VI. Adjournment

Members of the public are encouraged to speak during the Public-To-Be-Heard agenda item, during a Public Hearing, or, when recognized by the Chair, during consideration of a specific agenda item. Public comments are limited to a three-minute rule unless waived by the Development Review Board Chair.

This meeting will be held at 2 Lincoln Street, Essex Junction, VT, 05452, and on Zoom at the link above. Reasonable accommodation will be provided upon request to the City to assure that City meetings are accessible to all individuals regardless of disability.

Plan documents will be available at www.essexjunction.org/DRB five days prior to the meeting. For more information, please contact the Community Development Department from 8 am – 4:30 pm at 802-878-6944.

**CITY OF ESSEX JUNCTION
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
AUGUST 21, 2025
DRAFT**

MEMBERS PRESENT: John Alden, Chair; Maggie Massey, Vice-Chair; Luke Brockmeier; Cristin Gildea, Dylan Zwicky

ADMINISTRATION/STAFF: Michael Giguere, City Planner

OTHERS PRESENT: Chris Blondin, Dan Marta

1. CALL TO ORDER

Mr. Alden called the meeting to order at 6:30 PM.

2. ADDITIONS OR AMENDMENTS TO AGENDA

Mr. Giguere said that he has staff project updates for the end of the meeting.

3. PUBLIC TO BE HEARD

None.

4. MINUTES

a. Regular Meeting – July 17, 2025

CRISTIN GILDEA made a motion, seconded by MAGGIE MASSEY, to approve the minutes of July 17, 2025, as drafted. Motion passed 5-0.

5. PUBLIC HEARING

a. CONTINUED FROM JULY 17, 2025 - Design review for the construction of a new single-family home at 40 Maple Street in the Residential 2 (R2) district by Ron Bushey, owner

Mr. Giguere noted that all interested members of the public must be sworn in, and that all meetings that are continued must have a date specified to be continued too. He said that this is a hybrid meeting, and that staff are present at 6 Lincoln Street to ensure public participation. While efforts will be made to accommodate remote public participants, in-person participation is the only legally mandated form of public participation. If there are technical difficulties the meeting may be paused and resumed on September 18th, 2025. All votes that are not unanimous will be done via roll call.

Mr. Giguere swore in all those speaking on behalf of an application.

Mr. Blondin, of Blondin Builders, presented on behalf of the applicant. He said that the drawing and lot line details have been improved and is now to scale. Colors and siding have been included as well. Mr. Alden said that, due to the location of the property in the design overlay district, the project must meet higher standards than other locations in the City. Staff noted discrepancies in the design. Mr. Alden said that he is interested in seeing what the property would look like once constructed and said that he would like to know if the pressure treated wood would be painted or not. Mr. Giguere said that most measurements in the drawing are in the 1-15% error range and encouraged the DRB to be as specific as possible with what improvements would be necessary if the application is continued. Ms. Gildea said that this property should be professionally designed. Mr. Giguere said that the only detail the applicant did

not provide is drainage and snow removal, however the question is if the DRB finds the materials to be of a high enough quality to interpret. Mr. Alden recommended hiring a draftsman for this project. Mr. Blondin expressed concern about the cost and time involved with hiring a professional. Mr. Alden suggested that the applicant coordinate with the City regarding the location of the maple tree, Mr. Blondin was amenable. Mr. Alden said that the applicant has addressed all the questions that the DRB has had at the previous meeting. Ms. Gildea suggested that the City add something to the checklist to require professional drawings to the design review district in the future. Ms. Massey also suggested that the DRB not accept plans with greater than 10% error in scale in the future. Mr. Brockmeier suggested requiring continued collaboration with the applicant.

CRISTIN GILDEA made a motion, seconded by MAGGIE MASSEY, that the DRB approve the site plan application for a single-family home at 40 Maple Street by Ron Bushey, owner, with conditions as proposed, including a change to Staff Condition #1 to include a 2% dimensional tolerance. Motion passed 5-0.

Conditions:

- 1. The structure shall be built according to submitted plans, within a dimensional tolerance of +/- 2% for all design features apart from building height and footprint.**
- 2. The building height and footprint shall precisely match the approved plans.**
- 3. Any modification deemed by staff to substantially change the building's appearance, character, or compliance with the requirements of the LDC shall be referred to the Development Review Board for reconsideration.**
- 4. All exterior light fixtures shall be down shielded and Dark Sky compliant as required by Section 714 of the LDC.**
- 5. The applicant shall contact the City to pursue an Excavation Permit prior to performing any work in the public right of way.**
- 6. The applicant shall contact the City for authorization prior to performing any new utility connections or changes to existing connections.**
- 7. Tree location with assistance from City staff.**

b. Conditional use review for the addition of an exterior propane gas pump for Tractor Supply Company at 70 Pearl Street in the Transit Oriented Development (TOD) district by Cathy West, Parkway C&A, LP and Brandon Kubik c/o Pulley Studios, Inc. on behalf of Shawn Handy c/o Handy's Hotel & Rentals LLC, owner

Mr. Marta, of Parkway Construction and Architecture, presented on behalf of the applicant. Mr. Giguere said that this project requires DRB approval because they are placing a bulk propane refill station behind the store. There are also exterior changes which include parking lot reconfiguration, the addition of a shade tree and exterior merchandise placement. Mr. Marta said that this location was previously Big Lots, and that Tractor Supply would like to take over the space. No expansion is proposed. A trailer display area and seasonal outdoor items are also proposed. The outdoor items can include seasonal items and will not block pedestrian access. The sidewalk area will be increased and the parking area will be pushed out to be consistent with the rest of the building. The parking will be slightly angled and restriping will occur. Mr. Marta discussed the trailer display area and said that the larger items will be in front of the outdoor area. The propane fill station will be self-serve and have a canopy. RVs and other vehicles can drive-up to this space. Bollards are present to prevent collision. The store must be open to utilize the fill station, and it will have an emergency shut-off. Mr. Marta said that the location will have a portable loading dock.

Mr. Alden discussed the importance of striping, especially around delivery vehicles and to help drivers avoid hitting the propane stations. Mr. Alden said that the circulation path behind the store is difficult to navigate. Ms. Gildea said that an easier to use and attractive area would help the user experience for customers. Mr. Brockmeier said that he has traffic concerns, as there is no stop sign and it is difficult to see if a car is exiting the area near the post office. This is a safety concern for those filling up their propane tanks. Mr. Alden said that it may be outside the purview for this application. The metal canopy in the exterior of the building is the only lighting in the back of the building. Mr. Brockmeier said that he would like to see better lighting in the exterior of the building. He said that the public right of way and traffic pattern in this area is very unclear. Mr. Brockmeier said that he likes the idea of making the back of the building a more public area, but that he would like to see improved vehicle circulation. Mr. Marta said that an American Hornbeam tree is proposed, which is a Vermont native plant. A bench and bike rack will also be installed. The landscaping plan is pro-rated for the type of changes that are being done to the building. Mr. Alden said that the Commercial Energy Standards for Vermont will apply to new equipment only. He said that the doors open in which is a life safety violation. Mr. Marta said that the doors will be installed to open out. The bathrooms will have baby changing stations. The applicant will work with the Tree Advisory Committee to ensure that landscaping meets local standards.

Mr. Giguere said that the intention of this district is to have a maximum of a twenty-foot setback, which would leave the building as an existing noncompliance. There is not an expansion of the building envelope. The lighting plan will be reviewed by the City engineer to ensure that it meets parking lot minimum requirements. Ms. Massey said that large vehicles are being parked in the lot by non-tenants. Mr. Giguere said that the property owner and City have an interest in ensuring that the lot is safe, and that he will gather further information on this issue.

JOHN ALDEN made a motion to close the public hearing. Motion passed 5-0.

MAGGIE MASSEY made a motion, seconded by CRISTIN GILDEA that the DRB approve the conditional use application for the addition of an exterior propane Gas Pump for Tractor Supply Company at 70 Pearl Street in the Transit-Oriented Development (TOD) district by Cathy West, Parkway C&A, LP and Brandon Kubik c/o Pulley Studios, Inc. on behalf of Handy's Hotel & Rentals LLC, owner. Motion passed 5-0.

MAGGIE MASSEY made a motion, seconded by CRISTIN GILDEA, that the DRB approve the site plan application for Tractor Supply Company at 70 Pearl Street in the Transit-Oriented Development (TOD) district by Cathy West, Parkway C&A, LP and Brandon Kubik c/o Pulley Studios, Inc. on behalf of Handy's Hotel & Rentals LLC, owner, with conditions as discussed. Motion passed 5-0.

- 1) All staff comments shall be addressed to the satisfaction of City Staff.**
- 2) Applicant shall provide clarification on how vehicular access in the rear of the building will be managed when a truck is parked at the portable loading ramp, the propane tank area is in use and how other drive and travel ways are to be used by the public.**
- 3) Applicant shall revise submitted lighting plans to meet the requirements of Section 704 of the LDC to the satisfaction of City Staff.**
- 4) Applicant shall provide clarification on infrastructure or planting methods used to support the proposed shade tree's well-being and consult with the Tree Advisory Committee.**

5) Applicant shall submit a Sewer Allocation Request form and pay all applicable sewer allocation fees prior to the issuance of a zoning permit.

c. Site plan and design review for Tractor Supply Company at 70 Pearl Street in the Transit Oriented Development (TOD) district by Cathy West, Parkway C&A, LP and Brandon Kubik c/o Pulley Studios, Inc. on behalf of Shawn Handy c/o Handy's Hotel & Rentals LLC, owner. Included in the application is a waiver request of the TOD district standards (LDC Section 608)

This was discussed with the previous item.

6. OTHER DEVELOPMENT REVIEW BOARD ITEMS

a. Status update on Spark Hotel at 92-101 Pearl

Mr. Giguere reviewed the project history and the negatives and positives throughout the process of this development. He discussed the changes that have been implemented to City policies because of this project. Mr. Alden said that a hotel has been a long-term goal for the location and said that the project had no design approval process during the time the PC authorized it. He said that he is happy that the City is looking back on the process.

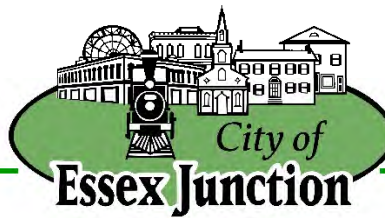
b. Other Business

The comment period on the Connect the Junction project is open. The City is working on a plan for Pearl Street which will be reviewed by the Planning Commission at their September meeting. The City is asking residents to prioritize what site improvements most like to see with the Amtrak station renovations. The City offices are now open to the public. Essex Junction Recreation and Parks will be holding a "Meet Me on Main" series, where a small portion of Main Street will be closed for community events. The City was selected for design funding for the Animating Infrastructure grant. An artist will be selected to design a mural for the fire station wall.

7. ADJOURNMENT

LUKE BROCKMEIER made a motion, seconded by CRISTIN GILDEA, to adjourn the meeting. The motion passed 5-0 at 8:37 PM.

Respectfully submitted,
Darby Mayville



Staff Report

To: Development Review Board
From: Michael Giguere, City Planner
Meeting Date: September 18th, 2025
Subject: Variance application requesting relief from the minimum lot frontage requirement of Section 720 of the Land Development Code at the future site of Lot 6A, adjacent to 29 Taft Street in the R1 District by Center for Technology, Essex, owners.
File: SP# 7.2024.3

PROJECT DESCRIPTION:

The Center for Technology, Essex (CTE) received Development Review Board (DRB) approval in April 2025 to subdivide a 6.11-acre parcel at the end of Taft Street and construct a new public roadway connecting to Meadow Terrace to support its Residential Building Trades program. Since the approval, potentially sensitive wetlands were discovered southeast of the approved roadway alignment, which are expected to prevent the road from being built this school year as planned. CTE intends to construct the road later if feasible but is seeking a variance to allow a temporary paved driveway providing access to build a home on Lot 6A, which currently lacks the sixty (60) feet of street frontage required under Section 720 of the Land Development Code.

EXISTING CONDITIONS AND GENERAL INFORMATION:

Project Location: Lot 6A, southwest of 29 Taft Street, Essex Junction, VT 05452

Project Area Size: 15,419 square feet

Lot Frontage: 0 feet

Existing Land Use: Vacant

Surrounding Land Use: Residential

Zoning District: Residential 1

Minimum Lot Size: 15,000 square feet

Lot Coverage: 0%

Permitted Lot Coverage: 30% (buildings), 40% (total)

SECTION 618: RESIDENTIAL 1 (R1)

H. Special Standards

Section 618.H establishes special design standards for driveway geometry and maximum width in the R1 District. The applicant's proposed driveway does not comply with these standards as seen in Figure 1 below.

However, given that the applicant intends to complete the future roadway connection between Taft Street and Meadow Terrace, staff recommend allowing the proposed driveway geometry on a temporary basis. To ensure compliance in the future if the road is constructed, a recommended condition of approval has been included for this variance request requiring the driveway to be reconfigured to meet the requirements of Section 618.H of the LDC once the roadway connection is constructed.

SECTION 1703: REQUESTS FOR VARIANCES FROM THE REQUIREMENTS OF CHAPTERS 6 AND 7

"The Board may approve or deny an application for a Variance. The Board may grant only the minimum relief necessary to allow the applicant reasonable use of the property in question. A use variance shall not be granted. No Variance may grant rights to a particular piece of property, which is not allowed on other properties within the District except as necessary to allow reasonable use of the property as intended within the District."

C. Standards of Review

In accordance with 24 V.S.A. § 4469, the Board may grant Variances if it finds that all the following standards of review are met, and such findings are included in its written decisions.

1. *“There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.”*

Mapped wetlands were discovered southeast of the proposed roadway connecting Taft Street to Meadow Terrace. This physical condition creates unnecessary hardship preventing normal development of the property and constraining available driveway geometry.

2. *“Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.”*

Given that Lot 6A does not have any frontage on a public or private street, there is no possibility that the property can be developed without requesting a variance granting relief from Section 720 of the LDC.

3. *“Unnecessary hardship has not been created by the appellant.”*

Staff do not find that unnecessary hardship has been created by the applicant.

4. *“The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to public welfare.”*

The surrounding area consists of low-density residential land uses, which will be continued on Lot 6A if granted approval and thus will not alter the essential character of the neighborhood.

This variance, if granted, will not impair appropriate use or development of adjacent properties and will allow for the future development of the rest of CTE’s land when they are able to build their proposed roadway.

Staff do not see any potential reduction in access to renewable resources or threat to public welfare as a part of this variance request.

5. *“The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.”*

This variance, if granted, represents the minimum variance that will afford relief to allow the applicant to apply for a zoning permit as if the parcel had street frontage.

The DRB should determine whether this application meets the criteria of Section 1703 of the Land Development Code, as well as 24 V.S.A. § 4469, as referenced in the LDC.

Recommendation:

Staff recommend that the DRB approve the variance request seeking relief from the minimum lot frontage requirement of Section 720 of the Land Development Code at the future site of Lot 6A, adjacent to 29 Taft Street in the R1 District by Center for Technology, Essex, owners.

Recommended Motion:

I move that the DRB approve the variance request seeking relief from the minimum lot frontage requirement of Section 720 of the Land Development Code at the future site of Lot 6A, adjacent to 29 Taft Street in the R1 District by Center for Technology, Essex, owners, with conditions.

Proposed Conditions:

1. Upon completion of the roadway connecting Taft Street to Meadow Terrace, the applicant shall reconfigure the temporary driveway serving Lot 6A to comply with the special standards of Section 618.H of the Land Development Code.

City of Essex Junction, VT
Development Application

For Office Use:

SP7-2024-3
Permit #

Planned Unit Development: Scale: <input type="checkbox"/> Minor <input type="checkbox"/> Major	Stage: <input type="checkbox"/> Conceptual <input type="checkbox"/> Preliminary (optional) <input type="checkbox"/> Final
Site Plan: Scale: <input type="checkbox"/> Minor <input type="checkbox"/> Major	Stage: <input type="checkbox"/> Conceptual <input type="checkbox"/> Preliminary (optional) <input type="checkbox"/> Final
Subdivision: Type: <input type="checkbox"/> Sketch <input type="checkbox"/> Preliminary	Other: <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Conditional Use

Property description (address) for application

Residential Building Lot 6A

General Information

Applicant CTE Corporation Day Phone# 802-878-7610

Address 3 Educational Dr. Essex Junction, VT

Email Address CWelch@ewsd.org

Owner of Record (attach affidavit if not applicant)

Name Same Day Phone#

Address

Applicant's agents

Name Krebs & Lansing Consulting Engineers Inc. Day Phone# 802-878-0375

Address 164 Main St. Colchester, VT 05446; Scott.Hamsted@krebsslansing.com

Property information

Zoning District B1 Current Use undeveloped Tax Map # 43

Lot # 6A Lot size sf 15,419

Other Information

Street frontage (public or private) _____ ft. Proposed height _____

Proposed number of stories _____ Estimated completion date _____

Proposed Parking Spaces _____ Required spaces _____

Landscape cost _____

Lot coverage (include all structures and impervious surface)

Existing (sq ft.) _____ plus proposed (sq ft.) _____ equals _____ total sq ft.

Divided by _____ lot sq.ft. equals _____ percent of lot coverage.

Submit one (1) full size copies, a PDF copy, GIS and supporting documentation required by the Code and the appropriate completed checklist for initial review by Staff. After Staff determines the application is complete, attach one (1) full size copies and six (6) 18" x 24" copies of your proposal, forty-five (45) days prior to a scheduled meeting. Applications that are not complete cannot be accepted for review.



Briefly describe your proposal (attach separate sheet if necessary)

Extend a driveway from the existing Cul de Sac (Curbcut) to service a buildable Lot 6A that doesn't have road frontage on Tott St.

Describe all waiver requests (if applicable)

I certify that the information on this application is true and correct. I agree to abide by all the rules and regulations as specified in the land development code and any conditions placed upon approval of this application. In accordance with the *Essex Junction City Council Policy for Funding Engineer Plan Review and Inspections*, the applicant, by signing this form agrees to pay for the actual cost of engineering plan review and construction inspections by the City Engineer.

Chris Welch
Chris Welch CTE Corporation
Applicant

8/29/25
Date

Land Owner (if different)

Date

Staff Action **RECEIVED**

Date received: **AUG 29 2025**

Meeting date: 9/18/25

Board Action **City of Essex Junction**
Approved _____ Denied _____

Date: _____

Other approvals/conditions: _____

****Fee based on sq.ft. of improved area per current Fee Schedule**

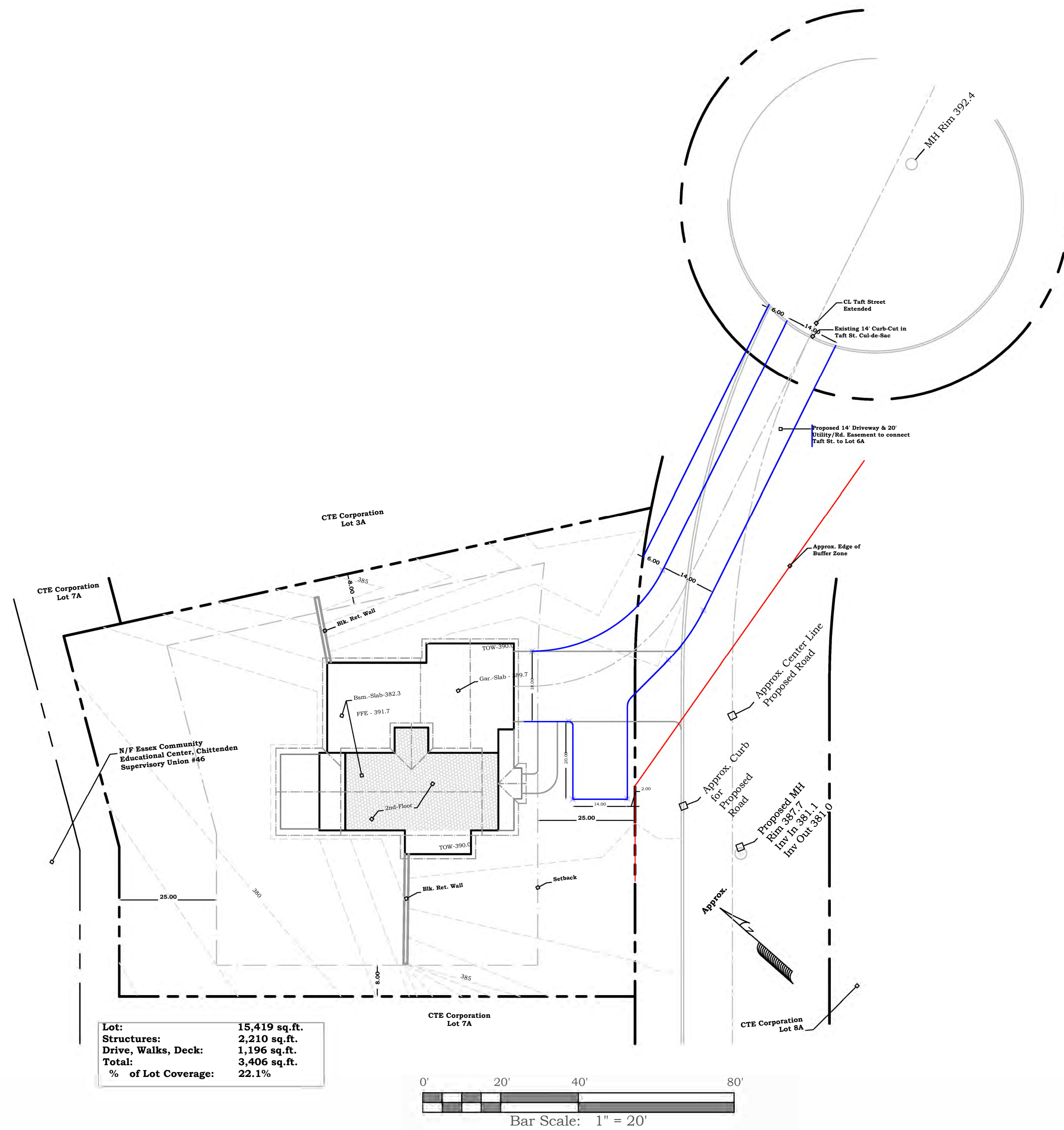
Staff Signature

Date

Fee Amount: **
\$115.00

Fee **PAID**:
AUG 29 2025
City of Essex Junction





Center for Technology Essex
Lot 6A
Essex Junction, VT

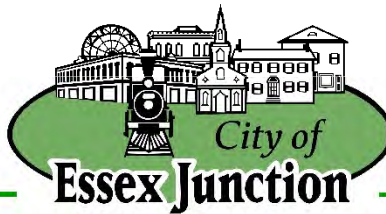
Issue Date: 8-18-2025
Rev: 9-2-2025
Rev: 9-3-2025
Rev:

Lot 6A
Site Plan

Drawn by: CTE

CTE - 1.1

Scale: 1" = 20'



Staff Report

To: Development Review Board
From: Michael Giguere, City Planner
Meeting Date: September 18th, 2025
Subject: Appeal of Administrative decision regarding the issuance of a Notice of Violation for a cannabis cultivation operation at 8 Taft Street in the R1 District by Jason Struthers, owner.
File: SP# 8.2025

EXISTING CONDITIONS AND GENERAL INFORMATION

Property Location: 8 Taft Street

Property Size: 22,651 square feet (0.52 acres)

Existing Land Use: Residential, Agricultural, and Outdoor Cannabis Cultivation

Surrounding Land Use: Residential

Zoning District: Residential 1 (R1)

APPEAL DESCRIPTION

Jason Struthers ("Struthers"), resident at 8 Taft Street, submitted a letter dated July 23, 2025, timely appealing a July 14, 2025 decision by the Administrative Officer (AO) to issue a Notice of Violation (NOV) against Struthers concerning outdoor cannabis cultivation on Struthers' property at 8 Taft St. The City of Essex Junction, Vermont Land Development Code (LDC) prohibits this use within the R1 zoning district.

Struthers claims that the cannabis cultivation use is grandfathered and permitted to continue as a non-conforming use under Section 801 of the LDC. The AO does not believe the cannabis cultivation qualifies as a non-conforming use. The AO's reasoning is outlined in his separate memo to the Development Review Board (DRB).

A notice of hearing was provided to the Appellant and property owner.

BACKGROUND AND HISTORY

Since 2022, Struthers has operated an outdoor cannabis cultivation and raised ducks on his property at 8 Taft Street. At the time, Cannabis Cultivation was not a defined use in the LDC's use chart. Agriculture was defined in the use chart and was not permitted in the R1 district at the time, which the subject property is within. Throughout 2023, the City received several complaints from neighbors about the noise and odor impacts of both the cannabis cultivation and the ducks. The following is a timeline and description of the major events and decisions to date related to this case. Additional background information and a summary of undisputed facts are also available the Vermont Supreme Court's decision *In re 8 Taft Street DRB & NOV Appeals*, 2025 VT 27 (Docket No. 24-AP-273).

1. On July 20, 2023, the City's Administrative Officer (AO), Christopher Yuen, issued a memorandum explaining his decision not to enforce the LDC's prohibitions against Agriculture and Cannabis against Struthers. At the time, he believed that the City could not enforce the LDC's prohibition of agriculture outside of the PA zone if the activity meets the State's definition of a farming operation. At the time, he also believed that City did not have the authority to prohibit outdoor cannabis cultivation from specific zoning districts. This memo is included below as Attachment 1.
2. Neighboring resident Stephen Willie Padnos (Padnos) appealed the AO's non-enforcement to the DRB, which held a hearing on September 21, 2023 and issued a decision to overturn the AO's position on the ducks but to uphold the AO's position on Cannabis Cultivation. This decision was issued on October 6, 2023 and is included below as Attachment 2.
3. In accordance with the DRB decision, on November 20, 2023, the AO issued a NOV for the ducks. This is included below as Attachment 3.
4. Struthers appealed the NOV to the DRB, which held a hearing on December 19, 2023. The DRB issued a decision on January 15, 2024, upholding the NOV. This decision is included below as Attachment 4.
5. Padnos appealed the DRB's decision on the cannabis and Struthers appealed the DRB's decision on the ducks to the Vermont Superior Court Environmental Division (Environmental Court). On August 29, 2024, the Environmental Court issued a Judgment Order regarding both ducks and cannabis in favor of Struthers on both issues. This Judgment Order is included below as Attachment 5.
6. Padnos appealed the case to the Vermont Supreme Court. On May 30, 2025, the Supreme Court issued a Final Opinion, reversing the environmental court's earlier decision and ruling that municipalities do have the authority to regulate both agriculture and cannabis. This decision is included below as Attachment 6.
7. On July 14, 2025, in consideration of the Vermont Supreme Court's decision, the AO issued an NOV for the cannabis cultivation. This is included below as Attachment 7.
8. On July 23, 2025, Struthers appealed this NOV to the DRB. This is the subject of the September 18, 2025 appeal hearing. Struthers' appeal form and narrative are included below as Attachment 8.
9. On September 4, 2025, the Environmental Court issued a Judgment Order on remand, concluding that both the duck farming activities and cannabis cultivation operations are prohibited by the LDC. This is included below as Attachment 9.

SECTION 201: DEFINITIONS

The LDC defines Agriculture as follows:

12. "Agriculture" or "Agriculture Sales-Related Activity" shall mean the use of property or structures for common farming-related activities necessary for crop and animal production. A

plant or tree nursery shall be deemed an agricultural related activity. The sale of agricultural products or byproducts on agricultural property is deemed an "agriculture sales-related activity".

This definition was in the LDC prior to 2022.

The LDC defines Cannabis Cultivation Establishments as follows:

38. "Cannabis Cultivator Establishment" shall mean an establishment licensed by the Vermont Cannabis Control Board and the Local Control Commission to engage in the cultivation of cannabis in accordance with 7 V.S.A Chapter 33 [or current state definition at time of application].

This definition was added to the LDC in September 2022 and became effective by October 2022.

SECTION 622: USE CHART

"Agriculture" is not a permitted use in the R1 district. This has been the case since prior to 2022.

"Cannabis Cultivation Establishment" was specifically added to the use chart in September 2022 as a use prohibited from the R1 district.

SECTION 801: NON-CONFORMING USES

The LDC regulates non-conforming (grandfathered) uses as follows:

"Any use of land or buildings legally existing on the effective date of this Code, which has become non-conforming as a result of this Code shall be considered as a Non-Conforming Use and may be maintained subject to the provision of this Section.

A. Expansion of Non-Conforming Uses Except as may be provided in this Section, a non-conforming use shall not be expanded or extended to occupy more land or floor area than it occupied on the effective date of this Code and shall not be expanded to displace a conforming use.

B. Change of Use A non-conforming use may be changed to a Permitted Use or Conditional Use for the district in which it is located. A non-conforming use shall not be changed to another nonconforming use.

C. Discontinuation of a Non-Conforming Use If a non-conforming use is discontinued or abandoned for a period of one hundred eighty (180) consecutive days, including any period of discontinuation prior to the effective date of this Code, that use shall not be renewed or re-established, and any subsequent use of the lot or structure shall be in conformance with all provisions of this Code.

1. If a non-conforming use is discontinued because the structure in which it is located is destroyed or damaged by fire, flood, windstorm or similar abnormal event, that use may be re-established in the structure when and if it is rebuilt, provided that the structure complies with all provisions of this Code and that the non-complying use occupies no more floor area than it did prior to the event."

PROCEDURE FOR CLOSED DELIBERATIVE SESSION

Once the hearing is closed, the DRB may enter closed deliberative session by majority vote. The City Attorney will be available in person throughout the hearing and deliberative session.

To enter a deliberative session, a member of the DRB may use the following motion:

“I move that the DRB enter deliberative session to include the Development Review Board, City Attorney, and City Planner”.

To exit deliberative session, a member of the DRB may use the following motion:

“I move that the DRB exit deliberative session”.

RECOMMENDATION

The DRB should consider the facts and determine whether Struthers’ cannabis cultivation is grandfathered as a non-conforming use.

RECOMMENDED MOTION

If the DRB determines that the cannabis cultivation is grandfathered:

“I move that the Development Review Board overturn the Administrative Officer’s Notice of Violation for the cannabis cultivation operation at 8 Taft Street in the R1 Residential District with the following conditions:

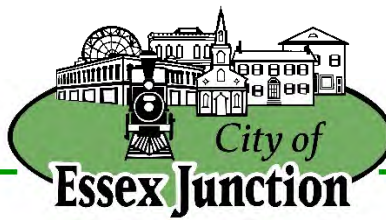
- *The number of plants shall be limited to the number that existed as of Summer 2023; and*
- *No further encroachment into the 50-foot setback shall be permissible beyond what existed as of January 1, 2025.”*

If the DRB determines that the cannabis cultivation is not grandfathered:

“I move that the Development Review Board uphold the Administrative Officer’s Notice of Violation for the cannabis cultivation operation at 8 Taft Street in the R1 Residential District.”

ATTACHMENTS

1. AO Memo on 8 Taft Street July 20, 2023
2. DRB Decision- Appeal of AO Decision October 6, 2023
3. Notice of Violation- Ducks November 20, 2023
4. DRB Decision- Appeal of NOV- Ducks January 16, 2024
5. Environmental Court Judgment Order August 29, 2024
6. Supreme Court Final Opinion May 30, 2025
7. Notice of Violation- Cannabis July 14, 2025
8. Appeal Application- Appeal of NOV on Cannabis July 23, 2025
9. Environmental Court Judgement Order on Remand September 3, 2025



MEMORANDUM

To: 8 Taft Street File

From: Christopher Yuen, Community Development Director

Date: July 20, 2023

Subject: 8 Taft Street Farm Determination and Cannabis Cultivation

The intent of this memo is to clarify jurisdictional questions and enforcement avenues around the uses at 8 Taft St: ducks and outdoor cannabis cultivation. These questions have come from both the property owner, neighbors and City Council; therefore, this memo to file is being provided to all parties.

1. Agriculture at 8 Taft Street

The City is aware that Jason Struthers, resident of 8 Taft Street has been raising ducks on the property. On May 4, 2023, the Vermont Agency of Agriculture issued a determination that the activities at 8 Taft Street, Essex Junction meet the definition of a farming operation subject to the State's [Required Agricultural Practices \(RAPs\)](#).

[Section 4413\(d\) of Title 24 \(Municipal and County Government\) of Vermont Statutes Annotated \(V.S.A.\)](#)

limits the application of municipal land use regulations on farm operations regulated under the RAP rules. 24 V.S.A. § 4413 states that:

(d)(1) A bylaw under this chapter shall not regulate:

(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

...

(2) As used in this section:

(A) "Farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

...

(3) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the Secretary of Agriculture, Food and Markets. No municipal permit for a farm structure shall be required.

While Table 622 of the City's Land Development Code (our zoning bylaws) attempts to limit agriculture as a permitted use to the Planned Agriculture (PA) District, it conflicts with 24 V.S.A. § 4413, which prohibits municipalities from regulating agriculture through zoning bylaws. When municipal bylaws conflict with state statute, state statute prevails. As such, it is the understanding of Staff that the City cannot enforce the Land Development Code's prohibition of agriculture outside of the PA zone, if the subject activity meets the State's definition of a farming operation. This understanding is consistent with the 2013 "Moore

Accessory Structure Permit and Use” Vermont Supreme Court Case, which upheld the non-applicability of local zoning regulation to farm structures¹.

In the future, the sections of the Land Development Code that regulate agriculture should be revisited and amended to be consistent with State Statute.

The City recognizes that agricultural activities occurring within an urbanized neighborhood can result in nuisance impacts on neighbors. While 24 V.S.A. § 4413 limits municipal authority over farm operations, the State’s Required Agricultural Practices (RAPs) do regulate environmental impacts, and some nuisances. For example, Section 6.02 of the RAPs regulate the storage of agricultural wastes and agricultural inputs. Section 6.08 of the RAPs regulate the management of animal mortalities, requiring that burial or compost sites be located a specified distance from property lines.

More information on the RAP enforcement process, including how to make an anonymous complaint, can be found on the Agency of Agriculture’s webpage:

<https://agriculture.vermont.gov/water-quality/enforcement-compliance>

It is important for all parties involved to clearly understand what a farm determination does and does not do. It is not a free pass to do whatever the operation pleases. An affirmative farm determination means that the operation is regulated by the RAPs, but doesn’t negate other applicable rules and regulations – such as [animal control](#) (crossing property boundaries and the humane treatment of animals) or the prevention of [public health hazards](#). The RAPs also do not regulate non-agriculture activities. Additionally, while enforced by the state instead of the City, the RAPs require that most farm structures meet local setback requirements.

2. Cannabis cultivation at 8 Taft Street

The City is aware that Jason Struthers, a resident at 8 Taft Street, has been cultivating cannabis outdoors over the past several years. In accordance with the state’s cannabis statute (Sec. 6. 7 V.S.A. § 869 (d)), cannabis cultivators are required to comply with Sections 6, 8, and 12 of the Required Agricultural Practices. These sections regulate issues such as material discharges, the storage of agricultural wastes and inputs, the management of manure, and buffer zones. Cannabis cultivation is also required to comply with the State of Vermont Cannabis Control Board’s rules, which regulate aspects of outdoor cannabis cultivation such as fencing requirements, site security, and lighting. The operation, d.b.a. TrichomeVT received a State License for Tier 1 (0-1,000 sq ft canopy size) outdoor cannabis cultivation from the Vermont Cannabis Control Board in July 2022. The license needs to be renewed annually.

In September 2022, the City incorporated cannabis establishments into its Land Development Code (LDC) and established a Local Cannabis Control Board. Therefore, cannabis establishments in Essex Junction will need to comply with the LDC and get a Local Cannabis Control Board license. In this circumstance, the Use Table in Chapter 6 of the City’s LDC currently limits Cannabis Cultivation to the Planned Agriculture (PA) zoning district. 8 Taft Street is not located within the PA zoning district. At first glance, it may appear that the outdoor Cannabis Cultivation is in contravention of local regulations and should not be allowed;

¹ In Moore Accessory Structure Permit And Use, 194 Vt. 159, No. 12–305 (2013), the court cited the following: “Certain buildings on farm used to process timber into lumber qualified as “farm structures” exempt from local zoning regulation, where statute placing limitations on municipal bylaws exempted from local zoning regulation buildings used for **carrying out “practices associated with” farming**, and processing lumber from timber harvested on site and using it for farm related purposes were practices long and intimately associated with farming in Vermont. 24 V.S.A. § 4413(d)(1).”

however, state statute limits municipal authority to enforce these rules. During the 2023 legislative session, the State House and Senate passed H.270, which amends cannabis regulation statewide.

Under H.270, 7 V.S.A. § 869(f) has been amended such that all licensed outdoor cannabis cultivators shall be regulated in the same manner as “farming” and not as “development” for the purposes of permitting, and shall *“not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A)”*.

This means that the City cannot regulate outdoor cannabis cultivators any more than it can regulate agriculture. Issues, such as the height of structures, and lighting, when applied to outdoor cannabis cultivation, are beyond the municipal authority of the City, and fall under the jurisdiction of the State’s Cannabis Control Board.

Furthermore, H.270 amends 7 V.S.A. § 863 Regulation by Local Government, to state that:

“The [Local cannabis control commission] may condition the issuance of a local control license upon compliance with any bylaw adopted pursuant to 24 V.S.A. § 4414 [zoning statute] or upon regulating signs or public nuisances adopted pursuant to 24 V.S.A. § 2291, except that ordinances may not regulate public nuisances as applied to outdoor cultivators that are regulated in the same manner as the Required Agricultural Practices under subdivision 869(f)(2) of this title.”

As a result, municipalities now have limited authority to create and enforce ordinances that attempt to regulate the public nuisances, such as odor, or light, resulting from outdoor cannabis cultivation.

Furthermore, the purview of the Local Cannabis Control Board is limited and can be overturned by the VT Cannabis Control Board if they feel a municipality has overreached.

Notwithstanding the City’s limited authority to regulate both the farming operation, and cannabis cultivation directly, these uses are subject to the applicable rules and regulations of the Agency of Agriculture and Cannabis Control Board. Therefore, enforcement of issues associated with this property should be directed to:

1. For issues related to the ducks, if there appears to be a potential violation of the [Required Agricultural Practices \(RAPs\)](#)², reports to the Agency of Agriculture can be made through [this website](#)³. Issues such as the storage of agricultural waste and inputs, the use of manure, and the handling of animal mortalities, are regulated by the RAPs.
2. For issues related to the outdoor cannabis cultivation, if there appears to be a potential violation of the applicable [Required Agricultural Practices \(RAPs\)](#), or other [Cannabis Control Board Rules](#)⁴, reports to the State of Vermont Cannabis Control Board can be made through the [Adult-use Program](#) Complaint process.
3. For issues related to the ducks and their humane treatment, sanitary conditions, or their crossing of property boundaries, reports can be made to the City’s [Animal Control](#) officer, at epd.aco@essex.org or at 802-878-8331.
4. For issues related to public health hazards, reports can be made to the City’s Health Officer, at ffoley@essexjunction.org or 802-878-6944 x 1609.

² <https://agriculture.vermont.gov/rap>

³ <https://agriculture.vermont.gov/water-quality/enforcement-compliance>

⁴ <https://ccb.vermont.gov/laws-rules-and-regulations>

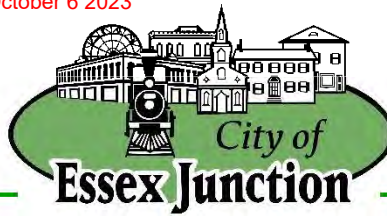
Attachments:

Appendix A: Excerpts from the Required Agricultural Practices

Appendix B: Excerpts from the State of Vermont Cannabis Control Board Rule 2: Regulation of Cannabis Establishments

Some sections in the attachments are highlighted for emphasis.

2 Lincoln Street
Essex Junction, VT 05452-3154
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E: admin@essexjunction.org

Development Review Board

Appeal of Administrative Officer's enforcement decision at 8 Taft Street in the R-1 District, by Stephen and Sharon Padnos, adjoining residents.

Findings of Fact and Decision

The City of Essex Junction Development Review Board ("DRB") held a Public Hearing on September 21, 2023 to review the Appeal of Administrative Officer's ("AO's") enforcement decision regarding property located at 8 Taft Street, in the R-1 Residential District ("Property"). The Property is being used for outdoor cannabis cultivation and for raising ducks. The City of Essex Junction, Vermont Land Development Code prohibits both uses within the R-1 zoning district.

A notice of hearing was provided to the Appellant and the Property owner.

Property Location: 8 Taft Street

Property Size: 22651 sq ft. (0.52 acres)

Existing Land Use: Residential, Agricultural, and Outdoor Cannabis Cultivation

Surrounding Land Use: Residential

Zoning District: Residential 1 (R1)

Appeal Description:

Stephen Padnos, resident at 6 Taft Street, by and through William B. Towle, Esq., submitted a letter dated August 4, 2023, timely appealing a July 20, 2023 decision by the AO to not enforce against Jason Struthers ("Struthers") the Land Development Code's ("LDC's") prohibition of Agriculture and Cannabis Cultivation in the R-1 District related to Struthers property at 8 Taft St.

Background Facts:

It is undisputed that Mr. Struthers raises ducks and cultivates cannabis on the Property. On or about May 4, 2023, the Vermont Agency of Agriculture, Food & Markets ("AAFM") issued a determination that activities occurring on .6 acres at 8 Taft Street, Essex Junction, Vermont meet the definition of farming per the State of Vermont's Required Agricultural Practices ("RAP") Regulations.

It was requested that the City take action to enforce its LDC. Specifically, Appellant has argued that Mr. Struthers is illegally engaged in agriculture on his property in violation of the LDC. Section 201(C)(11) of the LDC defines agriculture as "the use of property or structures for common farming-related activities

necessary for crop and animal production. A plant or tree nursery shall be deemed an agricultural related activity. The sale of agricultural products or by products on agricultural property is deemed an 'agriculture sales-related activity.'" Appellant argued that the Use Chart (Chapter 6, §622) in the LDC does not permit either cannabis cultivator establishments or agriculture in the R-1 zoning district. LDC p. 132-33.

The AO issued a memorandum dated July 20, 2023 opining on the issue, declining enforcement. The memoranda analyzed the question of whether the municipality was permitted by statute to enforce its LDC against the Property owner. The memoranda was distributed to residents who filed complaints concerning the activities on 8 Taft Street, including Mr. Padnos. The AO reasoned that 24 V.S.A. § 4413 prohibited the City from enforcing its regulations with respect to agricultural activities occurring on the Property. The AO cited, §4413(d), which provides in pertinent part:

(d)(1) A bylaw under this chapter shall not regulate:

(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

...

Mr. Struthers cannabis growing operation, d.b.a. TrichomeVT, received a State License as a Tier 1 outdoor cannabis cultivator (0-1000 sq ft canopy size) from the Vermont Cannabis Control Board in July 2022. The AO noted that the City of Essex Junction maintains a Local Cannabis Control Board and cannabis establishments must obtain a local CCB license.

The AO noted that, although the LDC limits cultivation to the PA, Planned Agriculture District and the Property is in the R1 District, municipal authority to enforce the LDC is limited by H270. Specifically, H270 (Act 65) amended 7 V.S.A. §869(f) to provide:

(a) A cannabis establishment shall not be regulated as "farming" under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. §9741, or other relevant State law.

...

(f) Notwithstanding subsection (a) of this section, a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall:

(1) be regulated in the same manner as "farming" and not as "development" on that tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. §4413(d)(1)(A);

(3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis;

. . . .

Accordingly, the AO determined that 7 V.S.A. §869(f) limits the City's authority to enforce the provision of its LDC with regard to the location of outdoor cannabis cultivation in a particular zoning district in the same way as it does with farming. See AO July 20, 2023 memorandum.

Mr. Padnos's counsel filed a notice of appeal on or about August 4, 2023.

The following persons testified at the hearing:

Stephen Padnos; Rebecca Dwyer ; Greg Dwyer; Sharon Wille Padnos; Jason Hemenway; Pat Bouchard; Kelly Turman.

The following documents were submitted into evidence at the hearing:

Padnos Exhibits:

- Padnos 1-4 – Vermont Agency of Agriculture Farm Operation Determination for Jason Struthers;
- Padnos 5-23 – Jason Struthers Farm Determination application supporting documents and communications with Agency of Agriculture;
- Padnos 24-26 – Excerpt from Required Agricultural Practices Rule - Section 3. Required Agricultural Practices Activities and Applicability;
- Padnos 27 – Excerpt from Required Agricultural Practices Rule – Section 4. Small Farm Certification and Training Requirements;
- Padnos 28 – Excerpt from 24 V.S.A. § 4414 (d)(1);
- Padnos 29-30 – Aerial Imagery of 8 Taft Street property and neighborhood from Google Maps;
- Padnos 31 – Screenshot of Aerial View of 8 Taft Street property from Vermont Center for Geographic Information Parcel Viewer;
- Padnos 32 – Photograph of the front of 6 Taft Street taken from Taft Street;
- Padnos 33 – Photograph of the front of 8 Taft Street taken from Taft Street;
- Padnos 34-47 – Photographs of the 8 Taft Street side and back yard taken from the 6 Taft Street property.

No party raised objections to the admission of the above exhibits.

In accordance with Section 1702.C, the DRB held and closed the public hearing on September 21, 2023. The DRB then entered deliberative session. After concluding the deliberative session, the DRB re-entered open session and rendered a unanimous decision.

Based on the testimony and evidence submitted into the record, the Development Review Board memorializes its September 21, 2023 determination through the issuance of the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1. Jason Struthers is the owner of residential property located at 8 Taft Street, Essex Junction.
2. Mr. Struthers raises ducks and grows cannabis on the Property.
3. Mr. Struthers obtained a farm designation from the AAFM on or about May 4, 2023.

4. Mr. Struthers cannabis growing operation, d.b.a. TrichomeVT, received a State License as a Tier 1 outdoor cannabis cultivator (0-1000 sq ft canopy size) from the Vermont Cannabis Control Board in July 2022.
5. 8 Taft Street, Essex Junction is located in the R-1 District.
6. The Use Chart (Chapter 6, §622) in the LDC does not permit either cannabis cultivator establishments or agriculture in the R-1 zoning district. LDC p. 132-33.

Conclusions of Law:

A. Agriculture.

1. 24 V.S.A. §4413(d)(1)(A) provides that “[a] bylaw under this chapter shall not regulate:
(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets ”
2. The City of Essex Junction’s LDC does not regulate required agricultural practices when it establishes the districts in which agriculture may take place. The City is merely setting forth the zoning districts where farming may be conducted. It is not regulating the farming activities themselves.
3. “The RAPs are standards to which all types of farms must be managed.” Vermont Required Agricultural Practices Rule November 23, 2018 at 2.
4. The RAP effectively regulates water quality.
5. By establishing zoning districts in which farming may be conducted, the City is not seeking to regulate the management of farms or water quality. It is merely prescribing where farming may and may not be conducted.
6. Accordingly, this DRB reverses in part the portion of the July 20, 2023 determination of the City of Essex Junction AO which concludes that the City may not enforce its LDC against Mr. Struthers with regards to his farming activities, specifically raising ducks.

B. Cannabis Cultivation.

7. 7 V.S.A. §869(f) addresses the regulation of cannabis cultivation and provides:
 - (a) A cannabis establishment shall not be regulated as “farming” under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. §9741, or other relevant State law.


...

(f) Notwithstanding subsection (a) of this section, a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall:

(1) be regulated in the same manner as “farming” and not as “development” on that tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. §4413(d)(1)(A);

Signature:

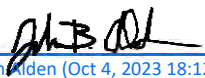

Cristin Gildea (Oct 5, 2023 12:20 EDT)

Email: blikcallahan@gmail.com

(3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis;

....

8. As 7 V.S.A. §869(f) specifically sets out that cannabis cultivation is not considered land development and may not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117.
9. 7 V.S.A. §863(d) provides that “[a] municipality shall not: (1) prohibit the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. §2291 or a bylaw adopted pursuant to 24 V.S.A. §4414, or regulate a cannabis establishment in a manner that has the effect of prohibiting the operation of a cannabis establishment..... ”
10. The language of the statutes set forth in paragraph 6 and 8 above, along with the establishment of the State of Vermont Cannabis Control Board, suggests that the legislature did not intend to grant municipalities the authority to regulate the location of cannabis cultivation through zoning bylaws.
11. Applying the LDC use table to the Property and disallowing this cannabis cultivation establishment in the R-1 District would effectively prohibit a cannabis establishment within the municipality based on a bylaw established pursuant to 24 V.S.A. §4414.
12. Accordingly, the DRB upholds the portion of the AO’s July 20, 2023 determination that concludes that the City of Essex Junction lacks the authority to enforce against the Property owner for the operation of a cannabis cultivation establishment in the R-1 District in violation of the LDC.


John Alden (Oct 4, 2023 18:12 EDT)

John Alden, Chair

Oct 4, 2023


Date

Cristin Gildea

Cristin Gildea, Board Member

October 5, 2023

Date


Maggie Massey (Oct 6, 2023 12:24 EDT)

Maggie Massey, Board Member

Oct 6, 2023

Date


Robert Mount (Oct 6, 2023 13:15 EDT)

Robert Mount, Board Member

Oct 6, 2023

Date

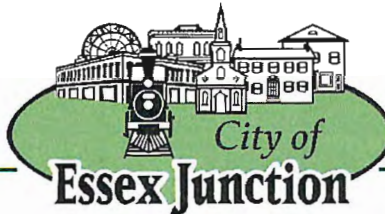

Dylan Zwicky (Oct 6, 2023 14:26 EDT)

Dylan Zwicky, Board Member

Oct 6, 2023

Date

2 Lincoln Street
Essex Junction, VT 05452-3154
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E: cyuen@essexjunction.org

November 20, 2023

Jason Struthers
8 Taft Street
Essex Junction, VT 05452

Re: Unlawful Condition of Property – **NOTICE OF VIOLATION OF LAND DEVELOPMENT CODE**
Via Certified Mail

Dear Mr. Struthers,

Please be advised that the City of Essex Junction finds that you are in violation of Section 724 of the Essex Junction Land Development Code. Specifically, Section 724: Raising, Keeping, or Harboring Livestock provides as follows:

The raising, keeping, or harboring of livestock, wild animal or other domesticated farm animals for personal use or commercial purposes shall be prohibited in all Zoning Districts, except for the Planned Agricultural (PA) and Planned Exposition (PE) Districts. The raising, keeping or harboring of livestock, wild animals or other domesticated farm animal shall require a minimum of ten acres.

On September 26, 2023, the City of Essex Junction's Development Review Board held a public hearing on the appeal of the Administrative Officer's enforcement decision at 8 Taft Street. At this hearing, the DRB concluded that the City may enforce its LDC against Mr. Struthers with regards to his farming activities, specifically raising ducks. This decision is memorialized in the "Findings of Fact and Decision", signed by Development Review Board members on October 6.

You are in violation of Section 724 of the Land Development Code because as of November 5, the ducks continue to be on the property, located at 8 Taft Street, Essex Junction, Vermont. Several complaints have been made about the property and you were asked several times to remove the ducks from the property. You have failed to do so.

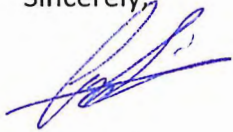
This Notice of Violation is being sent pursuant to 24 V.S.A. §4451. You have an opportunity to cure the violation and in order to do so, you must remove the above-mentioned ducks within seven (7) days from the date of your receipt of this Notice of Violation ("NOV"). If you have not cured the violation within 7 days, the City may initiate enforcement efforts against you and you may be fined up to Two Hundred Dollars (\$200.00) per day. Each day an offense occurs

constitute a separate offence. You are not entitled to an additional notice if the violation continues after those 7 days.

You may appeal this Notice of Violation to the Development Review Board within 15 days of your receipt of the NOV as provided in Section 1702 of the City of Essex Junction Land Development Code. A copy of the notice of appeal shall be filed with the administrative officer. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous. Failure to appeal shall result in this NOV becoming final as to the violations addressed herein.

The City of Essex Community Development Office can be reached at (802) 878-6944 or at 2 Lincoln Street, Essex Junction, Vermont 05452. You may also reach the Community Development Director at (802)878-6944 Ext: 1607 or cyuen@essexjunction.org.

Sincerely,



Christopher Yuen
Community Development Director

Cc: Claudine C. Safar, Esq.
Megan T. Nelson, Esq.

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Essex Junction, VT 05452-3154
www.essexjunction.org



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Development Review Board

Appeal of Administrative Officer's Notice of Violation issued to the Resident at 8 Taft Street on November 20, 2023

Findings of Fact and Decision

The City of Essex Junction Development Review Board ("DRB") held a Public Hearing on December 19, 2023 to review the Appeal of Administrative Officer's ("AO's") Notice of Violation (NOV) regarding the property located at 8 Taft Street, in the R-1 Residential District ("Property"). The Property is being used for raising ducks. The City of Essex Junction, Vermont Land Development Code prohibits this use within the R-1 zoning district.

A notice of hearing was provided to the Appellant and Property owner.

Property Location: 8 Taft Street

Property Size: 22651 sq ft. (0.52 acres)

Existing Land Use: Residential, Agricultural, and Outdoor Cannabis Cultivation

Surrounding Land Use: Residential

Zoning District: Residential 1 (R1)

Appeal Description:

Jason Struthers, resident at 8 Taft Street, by and through Megan Nelson, Esq., submitted a letter dated November 21, 2023, timely appealing a November 20, 2023 decision by the AO to issue a Notice of Violation against Jason Struthers ("Struthers") concerning agricultural activities on the Struthers property at 8 Taft St. This appeal was heard at a public hearing held on December 19, 2023, at 2 Lincoln Street, Essex Junction.

Background Facts:

On September 21, 2023, the Development Review Board (DRB) heard a related appeal on the Administrative Officer's zoning enforcement decision on 8 Taft Street, concluding that the City may enforce its Land Development Code (LDC) against Mr. Struthers with regards to his farming activities, specifically raising ducks. This decision was memorialized in the attached "Findings of Fact and Decision", signed by Development Review Board members on October 6, 2023.

It is undisputed that Mr. Struthers, has continued to raise ducks on the property since the decision, despite receiving a letter from the Assistant Zoning Administrator requesting compliance, dated November 6, 2023.

On November 20, the Administrative Officer issued Mr. Struthers an official Notice of Violation, pursuant to 24 V.S.A. §4451.

Mr. Struthers' counsel filed a notice of appeal on or about November 21, 2023 as provided in Section 1702 of the City of Essex Junction Land Development Code (LDC)

The following persons testified at the hearing:

Liam Murphy, Esq; Ronald R. Frey, Sr. and Stephen Padnos.

The following documents were submitted into evidence at the hearing:

Padnos Exhibits:

- Padnos 1-4 – Vermont Agency of Agriculture Farm Operation Determination for Jason Struthers;
- Padnos 5-23 – Jason Struthers Farm Determination application supporting documents and communications with Agency of Agriculture;
- Padnos 24-26 – Excerpt from Required Agricultural Practices Rule - Section 3. Required Agricultural Practices Activities and Applicability;
- Padnos 27 – Excerpt from Required Agricultural Practices Rule – Section 4. Small Farm Certification and Training Requirements;
- Padnos 28 – Excerpt from 24 V.S.A. § 4414 (d)(1);
- Padnos 29-30 – Aerial Imagery of 8 Taft Street property and neighborhood from Google Maps;
- Padnos 31 – Screenshot of Aerial View of 8 Taft Street property from Vermont Center for Geographic Information Parcel Viewer;
- Padnos 32 – Photograph of the front of 6 Taft Street taken from Taft Street;
- Padnos 33 – Photograph of the front of 8 Taft Street taken from Taft Street;
- Padnos 34-47 – Photographs of the 8 Taft Street side and back yard taken from the 6 Taft Street property.

The Padnos Exhibits were identical to those presented during the September 21 DRB hearing.

No party raised objections to the admission of the above exhibits.

The DRB rendered a unanimous decision in the open session.

Based on the testimony and evidence submitted into the record, the Development Review Board memorializes its December 19, 2023 determination through the issuance of the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1. Jason Struthers is the owner of residential property located at 8 Taft Street, Essex Junction.
2. Mr. Struthers raises ducks on the Property.
3. Mr. Struthers obtained a farm designation from the AAFM on or about May 4, 2023.

4. 8 Taft Street, Essex Junction is located in the R-1 District.
5. The Use Chart (Chapter 6, §622) in the LDC does not permit agriculture in the R-1 zoning district. LDC p. 132-33.

Conclusions of Law:

This DRB finds that there has been no material change in the types of agricultural activities occurring at 8 Taft Street since the September 21, 2023 appeal hearing regarding the same property. As such, this DRB finds that conclusions of law in the attached "Findings of Fact and Decision", signed by DRB members on October 6, 2023, also apply to this appeal of the NOV.

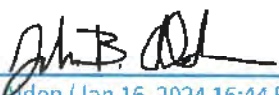
Decision:

This DRB upholds the Administrative Officer's Notice of Violation issued on November 20, 2023 and concludes that the City is obligated to enforce its LDC against Mr. Struthers with regards to his farming activities, specifically raising ducks.

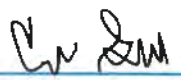
MOTION by CHRISTIN GILDEA, SECOND BY MAGGIE MASSEY, that the Development Review Board uphold the Administrative Officer's Notice of Violation for the Unlawful Condition of Property on 8 Taft Street, issued on November 20, 2023. The motion passed 4-0.

DRB Member	Vote
John Alden	In favor
Cristin Gildea	In favor
Maggie Massey	In favor
Robert Mount	In favor
Dylan Zwicky	absent


Dated at Essex Junction, Vermont, this 11th day of January, 2024.


John Alden (Jan 16, 2024 16:44 EST)

John Alden, DRB Chair


Cristin Gildea (Jan 16, 2024 15:23 EST)

Cristin Gildea, DRB Member


Maggie Massey (Jan 16, 2024 15:46 EST)

Maggie Massey, DRB Member


Rob Mount (Jan 16, 2024 14:55 EST)

Robert Mount, DRB Member


Dylan Zwicky (Jan 16, 2024 14:32 EST)

Dylan Zwicky, DRB Member

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the development review board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 23-ENV-00120
Docket No. 24-ENV-00003

In re 8 Taft Street

Decision on Motions

This matter involves two separate municipal appeals relating to Jason Struther's (Appellant) backyard farming activities, which involve both cannabis cultivation and the raising of ducks on his property located at 8 Taft Street, Essex Junction, Vermont (the Property).

The first appeal involves a determination by the City of Essex Junction (City) Administrative Officer (AO) declining to enforce the City's Land Development Code's (LDC) prohibition of Agriculture and Cannabis Cultivation, as those terms are defined by the LDC, in the R-1 Zoning District in which the Property is located. Neighboring landowners Stephen and Sharon Wille Padnos (Neighbors) appealed this determination to the City's Development Review Board (DRB), which affirmed the AO's decision with respect to cannabis but reversed the AO's determination regarding Appellant's duck farming activities. Appellant appealed the DRB's decision to this Court, which has been assigned Docket No. 23-ENV-00120. Neighbors filed a cross-appeal.

The second appeal involves a Notice of Violation (NOV) issued on November 20, 2023 by the AO regarding Appellant's duck farming activities. Appellant appealed the NOV to the DRB, which affirmed the issuance of the NOV. Appellant appealed the DRB's decision to this Court, which has been assigned Docket No. 24-ENV-00003. Neighbors again filed a cross-appeal.

Presently before the Court are the parties' cross-motions for partial summary judgment filed in both dockets. Appellant moves for summary judgment on Questions 1 and 4 of his Statement of Questions. Appellant's Question 1 asks whether "the City's prohibition of agriculture within the R-1 Zoning District constitutes regulation of Required Agricultural Practices ("RAPs"), in violation of 24 V.S.A. § 4413(d)(1)(A)." Appellant's Statement of Questions, filed November 03, 2023. Appellant's Question 4 asks whether "the City [may] enforce its LDC against Appellant with regard to his farming activities, and required agricultural practices, specifically the raising and cultivating of ducks." *Id.* Neighbors and the City filed cross-motions for summary judgment on these same issues. In Docket No. 23-ENV-00120, Neighbors also move for summary judgment on the issue of whether the City may enforce its prohibition on cannabis cultivation in the R-1 Zoning District.

In this matter, Appellant is represented by A.J. LaRosa, Esq. and Megan T. Nelson, Esq. Neighbors are represented by William B. Towle, Esq. The City is represented by Claudine C. Safar, Esq.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. *City of Burlington v. Fairpoint Commc'ns, Inc.*, 2009 VT 59, ¶ 5, 186 Vt. 332. In determining whether there is any dispute over a material fact, "we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." *White v. Quechee Lakes Landowners' Ass'n, Inc.*, 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A).

Undisputed Material Facts

We recite the following factual background and procedural history, which we understand to be undisputed unless otherwise noted, based on the record now before us and for the purpose of deciding the pending motion. The following are not specific factual

findings relevant outside the scope of this decision on the pending motion. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

1. Jason Struthers (previously defined as Appellant) owns the property at 8 Taft Street in Essex Junction, Vermont (previously defined as the Property).

2. The Property is .52 acres in size.

3. Appellant currently owns 50 ducks which he raised from eggs. Appellant sells live ducks and duck eggs produced by his ducks.

4. Appellant also operates a commercial cannabis growing operation at the Property through his company, Trichome VT, LLC.

5. Stephen and Sharon Wille Padnos (previously defined as Neighbors) live at 6 Taft Street in Essex Junction, Vermont.

6. Both Neighbors' property and the Property are in the R-1 Zoning District, pursuant to the City of Essex Junction's Land Development Code (previously defined as the LDC).

7. The Taft Street neighborhood is a suburban residential neighborhood with single family homes on lots ranging in size from .36 to .72 acres.

8. Farming and/or agriculture is not listed as a permitted or conditional use within the R-1 Zoning District.

9. Cannabis Cultivator Establishments are not listed as a permitted or conditional use within the R-1 Zoning District.

10. Trichome VT LLC has an Outdoor Tier 1 Cultivator's License, as issued by the Vermont Cannabis Control Board.

11. In the winter of 2023, Appellant submitted a request for a farm determination from the Vermont Agency of Agriculture, Food and Markets (the Agency) related to the non-cannabis activities at the Property.

12. On May 4, 2023, the Agency determined that Appellant's activities at the Property met the definition of "farming" under the Agency's Required Agricultural Practices (RAPs) Rule and that those activities fell under the jurisdiction of the RAPs.

13. On July 20, 2023, the City's Administrative Officer (AO) issued a memorandum to clarify jurisdictional questions and enforcement avenues relating to the duck farming and cannabis cultivation at the Property.

14. The memo concluded that the LDCs could not be enforced against Appellant's duck farm because it was subject to the RAPs and therefore exempt from local zoning regulation pursuant to 24 V.S.A. § 4413.

15. The AO also concluded that the City could not regulate outdoor cannabis cultivators pursuant to 7 V.S.A. §§ 863 and 869(f).

16. Neighbors appealed the July 20th memorandum to the Development Review Board (DRB) and a hearing was held on September 21, 2023.

17. The DRB issued a written decision on October 6, 2023 overturning the AO's decision with respect to duck farming on the grounds that the RAPs, and by extension the exemption set forth in 24 V.S.A. § 4413, only related to water quality regulation, not a municipality's ability to proscribe where farming may or may not occur within its zoning districts.

18. The DRB upheld the AO's determination as it related to cannabis.

19. On October 20, 2023, Appellant appealed the DRB's decision to this Court. Neighbors filed a cross-appeal on November 3, 2023.

20. On November 20, 2023, the City issued a Notice of Violation regarding Appellant's duck farming activities and stating that Appellant was in violation of Section 724 of the LDC which prohibits the raising and keeping of livestock outside of the Planned Agricultural and Planned Exposition zoning districts (previously defined as the NOV).

21. Appellant appealed the NOV to the DRB.

22. On appeal, the DRB upheld the NOV and Appellant timely appealed to this Court on January 16, 2024. Neighbors filed a cross-appeal.

Discussion

These two appeals present issues of statutory interpretation. The legal questions at issue in these cross-motions are issues of first impression before this Court. The first issue relates to 24 V.S.A. § 4413(d)(1)(A), which deals with a municipality's ability to regulate required agricultural practices. The second issue implicates provisions of Title 7, Chapter

33, which relates to municipal regulation of cannabis establishments. We address each of these statutory provisions in turn.

When interpreting statutory provisions, we are directed to give effect to the intent of the Vermont Legislature. In re Vermont Permanency Initiative, Inc. Denial, 2023 VT 65, ¶ 12. We do so by first looking at the plain meaning of the statutory language. In re Bennington Sch., Inc., 2004 VT 6, ¶ 12, 176 Vt. 584. “The Court will assume the common and ordinary usage of language in a statute unless doing so would render it ineffective, meaningless, or lead to an irrational result.” Id. at ¶ 13 (citation omitted). If the language itself does not provide clarity, we ascertain legislative intent by considering “the entire statute, including its subject matter, effects and consequences, as well as the reason and spirit of the law.” Harris v. Sherman, 167 Vt. 613, 614 (1998) (citation omitted).

I. RAPs

Title 24, Section 4413(d)(1) states, in relevant part, that “[a] bylaw under this chapter shall not regulate: (A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets.” 24 V.S.A. § 4413(d)(1)(A). Essentially, the parties dispute the meaning of required agricultural practices (RAPs) as that term is used in § 4413 and whether the City may regulate the aspects of Appellant’s operations on the Property that are subject to the RAPs.

The City argues that the RAPs are management practices aimed at reducing impacts to water quality, and therefore, § 4413(d)(1)(A) only prohibits bylaws from regulating those specific management practices. According to the City, a bylaw may designate farming as a permitted or prohibited use in certain zoning districts, thus proscribing where farming may or may not occur. We conclude that this argument misconstrues the language and purpose of § 4413(d)(1)(A) and would upend the longstanding practice of how RAPs are regulated in the State of Vermont.

As explained by § 4413(d)(1)(A), the RAPs are practices which are defined by the Secretary of Agriculture, Food and Markets. Accordingly, we look to the RAPs Rule, promulgated by the Agency, for guidance on the applicable definition of those practices. The phrase “agricultural practices” is used throughout the RAPs Rule to define various farming

activities beyond specific water quality management practices. Section 3.1 of the RAPs Rule explains that “[p]ersons engaged in farming and the agricultural practices as defined in Section 3.2 of this rule and who meet the minimum threshold criteria for applicability of this rule . . . must meet all applicable Required Agricultural Practices conditions, restrictions, and operating standards.” 20-010-008 VT. CODE R. § 3.1. Section 3.2 of the Rule then goes on to list “[t]he agricultural practices on farms . . . that are governed by [the] [R]ule.” *Id.* § 3.2. Those practices include “the confinement, feeding, fencing, and watering of livestock,” as well as the cultivation of crops, production of maple syrup, and various other farming activities. *Id.* Therefore, when the statute uses the term “required agricultural practices” it encompasses the types of farming activities, or “agricultural practices,” regulated by the RAPs Rule and set forth in § 3.2, and therefore prohibits municipal regulation of those farming activities.

This conclusion is bolstered by the deliberate inclusion of farm structures within § 4413(d)(1)(A). The construction of farm structures is not in itself a water quality management practice. Rather, it is an act of land development associated with farming which the Legislature chose to exempt from municipal regulation through § 4413.¹ Furthermore, the definition of “farm structure” in § 4413(d)(1)(2) specifically references the definition of “farming” which is found in 10 V.S.A. § 6001(22) and is substantially similar to the definition of farming provided in the RAPs Rule. The inclusion of farm structures in § 4413 demonstrates that this provision limits municipal regulation of all farming related activities which are subject to the RAPs Rule, and not just those practices related to water quality.²

We are further guided to this conclusion by the Vermont Supreme Court’s analysis of the legislative intent of § 4413 as set forth in *In re Moore*, 2013 VT 54, 194 Vt. 159. Put simply, the legislative intent to prohibit municipal regulation of farming activities, and not just

¹ By contrast, § 4413(d)(2)(A) does not exempt dwellings for human habitation from municipal regulation, even if associated with agriculture or farming.

² Farm structures are still subject to local setback provisions unless otherwise determined by the Secretary. 20-010-008 VT. CODE R. § 9(a)-(b).

practices related to water quality, is consistent with and comparable to other state statutes.

As the Vermont Supreme Court explained in Moore:³

Many states have enacted statutes comparable to the limitation on local zoning set forth in 24 V.S.A. § 4413 to facilitate efforts by farmers—similar to those undertaken by appellees—to diversify and become more self-sufficient. See, e.g., R. Branan, *Zoning Limitations and Opportunities for Farm Enterprise Diversification: Searching for New Meaning in Old Definitions*, Nat'l Agric. L. Ctr. 1, 8–9 (May 2004), <http://nationalaglawcenter.org> (discussing state laws designed to facilitate farm “diversification efforts” and “[m]ore intensive vertical integration” by pre-empting restrictive local regulation and encouraging creative uses of farmland for more profitability); N. Carter, Comment, *Agriculture, Communities and Rural Environment Initiative: Can Small Family Farms and Large Agribusiness Live Peacefully in Pennsylvania?*, 16 Widener L.J. 1023, 1037 n. 77 (2007) (discussing Pennsylvania statute prohibiting local zoning regulations from interfering with “normal agricultural operation” defined, in part, to include use of “machinery designed and used for agricultural operations, including ... saw mills”); T. Daloz, *Farm Preservation: A Vermont Land–Use Perspective*, 12 Vt. J. Envtl. L. 427, 451 (2011) (noting that § 4413(d)'s preemption of local regulation over “farm structures” is focused “on supporting and enhancing agriculture”). This broad movement is also reflected in Vermont's “right-to-farm” law, enacted by the Legislature out of a recognition that, in order to survive, Vermont farms must enjoy the freedom to “diversify” and engage in “reasonable agricultural activities.” 12 V.S.A. § 5751.

Moore, 2013 VT 54, ¶ 10.

This passage from Moore reflects the widely accepted understanding that § 4413(d)(1)(A) is not simply related to water quality, but rather it reflects an overall goal of encouraging a robust and sustainable agricultural economy by allowing farmers the opportunity to diversify their businesses. Section 4413 attempts to achieve that goal by

³ At issue in Moore were several timber processing structures, including a sawmill building, drying kiln, and a planer. The Court concluded that these wood-processing activities were practices associated with farming and therefore exempt from local zoning regulation under 24 V.S.A. § 4413(d)(1). Moore, 2013 VT 45, ¶ 11.

preempting municipal regulation of the RAPs and limiting some of the barriers to farming. As touched upon in Moore, this approach is similar to several other states. See, e.g., Mass. Gen. Laws ch. 40A, § 3 (“nor shall any such [zoning] ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture. . .”); see also Kan. Stat. Ann. § 19-2921 (“[Zoning] regulations adopted pursuant to this act shall not apply to the use of land for agricultural purposes. . .”). While somewhat less artfully drafted than these other state statutes, the purpose behind § 4413(d)(1) is clear. Section 4413 reflects Vermont’s deep history and tradition of supporting farming by setting it apart from other land uses and designating regulatory authority over RAPs to the Secretary of Agriculture. We are further convinced that this is the correct interpretation of § 4413 because it is consistent with the Legislature’s intent to limit the regulation of farming in Act 250.

The Legislature has limited Act 250 jurisdiction over farming. See 10 V.S.A. § 6001(D)(i) (“The word ‘development’ does not include: [t]he construction of improvements for farming . . . purposes below the elevation of 2500 feet”). To qualify for the farming exemption, an operation must meet the definition of farming in 10 V.S.A. § 6001(22). In re Ochs, 2006 VT 122, ¶ 11, 181 Vt. 541. As previously noted, the definition of farming for Act 250 is substantially similar to the definition of farming in the RAPs Rule. Additionally, Act 250 permits are prohibited from interfering with the RAPs. 10 V.S.A. § 6001(3)(E). Taken together, § 4413(d)(1)(A) and § 6001(3)(E) demonstrate an intentional statutory scheme on the part of the Legislature which grants exclusive control of the RAPs to the Secretary of Agriculture and which preempts zoning or Act 250 land use review of farming that is subject to Agency review.⁴

The City argues that the Legislature’s deliberate use of the term “regulate” in § 4413(d)(1) means that a municipality may still “prohibit” agricultural activities in certain

⁴ This conclusion is limited to farming activities as defined by the RAPs Rule and 10 V.S.A. § 6001(22). Activities which do not meet this definition may still be subject to municipal regulation. For example, a municipality may still regulate the keeping of domesticated chickens, but only to the extent that such regulated activities do not rise to a level where they are farming activities subject to the RAPs. Any issues or concerns relating to a farming operation which is regulated by the RAPs can be reported to the Agency of Agriculture’s Enforcement and Compliance Division.

zoning districts because the latter term is not used in § 4413. The City points to § 4411 to demonstrate that the Legislature distinguished between the two terms. See 24 V.S.A. § 4411 (“Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development...”). Therefore, the City asserts that under the doctrine of *expressio unius est exclusion alterius* (also known as the Negative-Implication Canon), the term “regulate” cannot also mean “prohibit.” This semantic argument misconstrues the plain meaning of the word “regulate” which has a broader meaning than the term “prohibit” and may include a long list of potential government actions.

Black’s Law Dictionary defines “regulate” in relevant part as “control[ing] (an activity or process) especially through the implementation of rules.” Black’s Law Dictionary (12th ed. 2024) (“Regulate”). Conversely, Black’s Law Dictionary defines “prohibit” as “1. To forbid by law. 2. To prevent, preclude, or severely hinder.” Black’s Law Dictionary (12th ed. 2024) (“Prohibit”). A bylaw which establishes zoning districts and proscribes the allowed uses for each district is inherently controlling certain activities by dictating where they may or may not occur. This is regulating those uses and activities within the municipality. In other words, prohibition is one of many potential forms of regulation. Accordingly, we disagree with the City’s position that the term “regulate” as used in § 4413(d)(1) excludes a municipality’s authority to “prohibit” agriculture from individual zoning districts.

In the context of § 4413(d)(1), the Legislature instructed that a bylaw “shall not regulate required agricultural practices.” If anything, this provision clearly precludes a municipality from interfering with the RAP-regulated farming and especially from prohibiting such activities altogether in certain zoning districts.⁵ The City does not provide the Court with its own definition of the word “regulate” which would indicate the existence of a reasonable alternative interpretation of § 4413(d)(1). Accordingly, we conclude that §

⁵ This Court has previously construed regulation of location in the context of 24 V.S.A. § 4413(a)(1) to mean that a municipality may designate the general location within a municipality in which a listed use may be allowed or prohibited, unless such regulation interferes with its intended functional use. Town of Charlotte Recreational Trail, No. 98-5-08 Vtec, slip op. at 9 (Vt. Super. Ct. Envtl. Div. Feb. 14, 2011) (Durkin, J.). By extension, the prohibition on regulation in § 4413(d)(1) must necessarily include the regulation of location of RAPs within a municipality.

4413(d)(1) prevents the City from prohibiting required agricultural practices in the R-1 Zoning District.

The Court is concerned that this interpretation of § 4413(d)(1)(A) could lead to land use conflicts in various zoning districts, such as dense residential zones or commercial/industrial districts. Under the current state of the law, a municipality, and by extension this Court, has limited regulatory authority to address conflicts between farming and urban development. Once a farming operation falls under jurisdiction of the RAPs, there is no ability to review whether that operation is compatible with surrounding land uses. The Court is unaware of the Agency's efforts to review or consider this land use concern. If a farming operation creates a nuisance, such a determination would have to be made by a civil court and would be subject to the presumptions and requirements of Vermont's Right to Farm law. 12 V.S.A. §§ 5751–5754. Accordingly, we flag this as a potential regulatory gap that has long existed, but which has been highlighted by the facts of this case and the Court's conclusions herein.

Lastly, Neighbors argue that Appellant is not operating a conventional farm and that he only submitted his farm determination application to the Agency to avoid local zoning review of his commercial operations. Neighbors allege that there were errors in Appellant's application, specifically with respect to the size of the lot and because his operations occur in a suburban backyard. The definition of "farming" does not consider the size or location of an operation. See In re Ochs, 2006 VT 122, ¶ 17 ("a farm is still a farm . . . whether it uses two or twenty trucks or tractors, or whether it has seven or 700,000 chickens.") (citation omitted).

To the extent that Neighbors seek to challenge the Agency of Agriculture's farm determination, we lack jurisdiction over such a challenge⁶ since it was not raised in any parties' Statement of Questions and because it is outside the scope of these municipal appeals. See In re Conlon CU Permit, No. 2-1-12 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Aug. 30, 2012) (explaining that the Statement of Questions provides notice of the issues to be determined in a case and limits the scope of the appeal); In re Torres, 154 Vt. 233, 235

⁶ The Court is unaware of any right to appeal an Agency farm determination. Even if there was an appeals process, such a challenge in the context of this municipal appeal would constitute a collateral attack on the final and binding Agency decision.

(1990) (explaining that this Court’s powers in a zoning appeal are as broad as the municipal panel below). Neighbors point to no legal or factual grounds which would allow this Court to disturb the Agency’s farm determination.⁷ Even so, it is undisputed that Appellant is raising livestock, and that Appellant has received a farm determination from the Agency, and therefore his operations fall under the RAPs Rule’s definition of farming. 20-010-008 Vt. CODE R. § 2.16(b) (“Farming means . . . the raising, feeding, or management of livestock. . .”).

Because it is undisputed that Appellant operates a commercial farming operation which is subject to the RAPs, and because such farming activities are exempt from municipal regulation by 24 V.S.A. § 4413(d)(1)(A), we **GRANT** summary judgment in favor of Appellant on Questions 1 and 4 of Appellant’s Statement of Questions and **DENY** Neighbors’ and the City’s motions.

II. Cannabis

Neighbors move for summary judgment on the sole legal issue of whether the City may enforce the LDC’s prohibition of cannabis cultivation in the R-1 zoning district. In doing so, Neighbors direct the Court to several provisions in Title 7, Chapter 33 of the Vermont Statutes Annotated. Most notably, 7 V.S.A. § 869 states that a licensed outdoor cultivator shall “not be regulated by a municipal bylaw . . . in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A).” 7 V.S.A. § 869(f)(2).

After reviewing this specific provision, the Court is inclined to grant summary judgment to Appellant on the grounds that his licensed outdoor cannabis operation is exempt from municipal regulation. As explained above with respect to the RAPs, we are convinced that this means a municipality may not constrain licensed outdoor cannabis

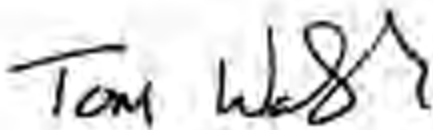
⁷ In responding to Appellant’s Statement of Undisputed Material Facts, Neighbors assert that they dispute whether Appellant’s activities constitute farming. However, Neighbors failed to file a paragraph-by-paragraph response with specific citations to materials in the record which demonstrate a dispute, as required by Vermont Rule of Civil Procedure (V.R.C.P.) 56(c)(2). As such this fact is not disputed for the purposes of this motion. V.R.C.P. 56(e)(2). To the extent that a dispute even exists, it is purely legal and is related to the issue of whether § 4413 prohibits municipal regulation of farming activities which are governed by the RAPs Rule. Accordingly, we do not consider there to be a genuine dispute of fact.

cultivators to certain zoning districts and may not otherwise regulate such cultivators.⁸ It is undisputed that Appellant has obtained an Outdoor Tier 1 Cultivator license. However, Appellant did not move for summary judgment on the issue of cannabis. Pursuant to V.R.C.P. 56(f), the Court may grant summary judgment for a non-moving party only after giving notice and reasonable time to respond. V.R.C.P. 56(f), applicable here through V.R.E.C.P. 5(a)(2). Accordingly, we **ORDER** the parties may submit filings responsive to this discrete legal issue by August 20, 2024. The Court will thereafter take this matter back under advisement. Because the relevant facts are not in dispute, there is no need to file additional Statements of Undisputed Material Facts. Furthermore, this is not an opportunity to relitigate the issue of whether 24 V.S.A. § 4413(d)(1)(A) applies to Appellant's duck farming operations.

Conclusion

For the foregoing reasons, we conclude that the material facts are not in dispute such that Appellant is entitled to judgment as a matter of law on Questions 1 and 4 of Appellant's Statement of Questions. Because Appellant's backyard farming operations qualify as "farming" that is subject to the RAPs, those activities may not be regulated under the City of Essex Junction Land Development Code pursuant to 24 V.S.A. § 4413(d)(1)(A). Accordingly, we **GRANT** Appellant's motion for partial summary judgment and **DENY** both Neighbors' and the City's cross-motions. The Court is similarly inclined to rule as a matter of law that Appellant's licensed outdoor cannabis operation may not be regulated by the LDC pursuant to 7 V.S.A. § 869(f)(2). We **ORDER** the parties may submit legal briefs on the applicability of this provision by August 20, 2024.

Electronically signed August 7, 2024 pursuant to V.R.E.F. 9(D).



Thomas G. Walsh, Judge
Superior Court, Environmental Division

⁸ This provision is limited to outdoor cannabis cultivators and does not extend to other types of cannabis establishments such as indoor cultivators, product manufacturers, wholesalers, and retailers.

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

MAY 30 2025

2025 VT 27

SUPREME COURT CASE NO. 24-AP-273

MARCH TERM, 2025

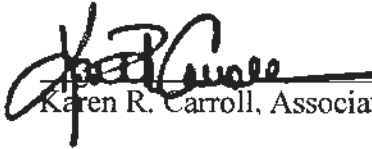
In re 8 Taft Street DRB & NOV Appeals
(Stephen Wille Padnos & Sharon Wille Padnos, Appellants)

} APPEALED FROM:
}
} Superior Court,
} Environmental Division
}
} CASE NOS. 23-ENV-00120 &
} 24-ENV-00003

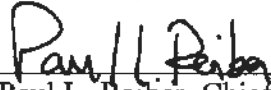
In the above-entitled cause, the Clerk will enter:

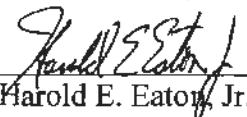
The Environmental Division's decisions granting summary judgment to landowner are reversed and the matters are remanded for further proceedings consistent with this opinion.


FOR THE COURT:

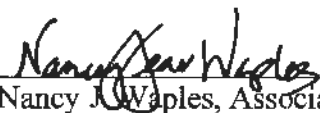

Karen R. Carroll, Associate Justice

Concurring:


Paul L. Reiber, Chief Justice


Harold E. Eaton, Jr., Associate Justice


William D. Cohen, Associate Justice


Nancy J. Waples, Associate Justice

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions by email at: Reporter@vtcourts.gov or by mail at: Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801, of any errors in order that corrections may be made before this opinion goes to press.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

2025 VT 27

MAY 30 2025

No. 24-AP-273

In re 8 Taft Street DRB & NOV Appeals
(Stephen Wille Padnos & Sharon Wille Padnos, Appellants)

Supreme Court
On Appeal from
Superior Court,
Environmental Division

March Term, 2025

Thomas G. Walsh, J.

William B. Towle of Ward & Towle Law, South Burlington, for Appellants.

Megan Nelson and Alexander J. LaRosa of MSK Attorneys, Burlington, for Appellee
Jason Struthers.

PRESENT: Reiber, C.J., Eaton, Carroll, Cohen and Waples, JJ.

¶ 1. **CARROLL, J.** Neighbors Stephen and Sharon Wille Padnos appeal two Environmental Division decisions granting summary judgment to landowner Jason Struthers on the grounds that the City of Essex Junction cannot regulate landowner's duck-raising and cannabis-cultivation operations. The court concluded that landowner's duck-raising operation is exempt from municipal regulation under 24 V.S.A. § 4413(d)(1)(A) because it constitutes a commercial farming operation subject to the Required Agricultural Practices (RAPs) Rule. The court also concluded the City could not enforce its zoning regulations on landowner's cannabis-cultivation operations under 7 V.S.A. § 869(f)(2), which provides that certain outdoor cannabis cultivation shall "not be regulated by a municipal bylaw . . . in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A)." We hold that

neither statute exempts landowner's operations from all municipal regulation and thus reverse the Environmental Division's decisions and remand for proceedings consistent with this opinion.

I. Background

¶ 2. The following facts are undisputed for summary-judgment purposes unless otherwise noted. Landowner owns property at 8 Taft Street in Essex Junction, Vermont, in the City's Residential-1 Zoning District. There, landowner raises and sells ducks and duck eggs. In May 2023, the Agency of Agriculture, Food and Markets issued landowner a farm determination, confirming these activities met the definition of "farming" under the Agency's RAPs Rule, subjecting him to compliance with the Rule. See Required Agricultural Practices Rule for the Agricultural Nonpoint Source Pollution Control Program § 3.1, Code of Vt. Rules 20 010 008 [hereinafter RAPs Rule], <http://www.lexisnexis.com/hottopics/codeofvtrules> ("Persons engaged in farming and the agricultural practices as defined in . . . this rule and who meet the minimum threshold criteria for applicability of this rule . . . must meet all applicable Required Agricultural Practices conditions, restrictions, and operating standards.")¹ Landowner also operates a commercial cannabis-growing operation through his company, Trichome VT, LLC, which has an outdoor tier 1 cultivator's license issued by the Vermont Cannabis Control Board.

¹ It is undisputed that the Agency issued landowner a farm determination for his non-cannabis related activities. To the extent neighbors dispute the facts within the farm determination, we do not address these facts because they are immaterial to the outcome of this appeal, given our conclusion that 24 V.S.A. § 4413(d)(1)(A) does not exempt farming subject to the RAPs Rule from all municipal regulation. See In re Estate of Fitzsimmons, 2013 VT 95, ¶ 13, 195 Vt. 94, 86 A.3d 1026 ("An issue of fact is material only if it might affect the outcome." (quotation omitted)); see also Sutton v. Purzycki, 2022 VT 56, ¶ 83 n. 8, 217 Vt. 326, 295 A.3d 377 (declining to address arguments that do not affect outcome of appeal).

To the extent neighbors are challenging the validity of landowner's farm determination, or whether landowner's activities constitute "farming," we do not address this argument. The Environmental Division declined to address this issue below, concluding it lacked jurisdiction to do so. Neighbors fail to assign error to the court's decision and thus we decline to consider the issue on appeal. See Nesti v. Vt. Agency of Transp., 2023 VT 1, ¶ 22, 217 Vt. 423, 296 A.3d 729 ("[N]ot assigning error to the [lower court's] failure to address . . . arguments results in waiver in this Court.").

¶ 3. The City’s zoning regulations do not allow agricultural, farming, or cannabis-cultivation establishments as permitted or conditional uses in areas zoned Residential-1. Landowner, neighbors, and the City sought clarification from the City’s zoning officer as to whether the City could enforce its zoning regulations against landowner. In July 2023, the City’s zoning officer issued a memorandum declining to enforce the City’s Residential-1 zoning regulations against landowner’s duck-raising and cannabis-cultivation operations, concluding the City’s zoning regulations conflicted with, as relevant here, 24 V.S.A. § 4413(d)(1)(A) and 7 V.S.A. § 869(f)(2).

¶ 4. Neighbors appealed the zoning officer’s decision to the City’s Development Review Board (DRB). The DRB reversed the zoning officer’s decision as to the duck-raising operation, concluding 24 V.S.A. § 4413(d)(1)(A) precludes only municipal regulation of agricultural water quality. It upheld the zoning officer’s decision regarding landowner’s cannabis-cultivation operation. Neighbors appealed the DRB decision to the Environmental Division. Landowner cross-appealed.

¶ 5. Following the DRB decision, the City issued landowner a notice of violation for his duck-raising operation, stating his activities were “in violation of [s]ection 724 of the [City’s Land Development Code] which prohibits the raising and keeping of livestock outside of the Planned Agricultural and Planned Exposition zoning districts.” Landowner appealed to the DRB, which upheld the notice of violation. Landowner then appealed to the Environmental Division and neighbors cross-appealed.

¶ 6. At issue before the Environmental Division in the first appeal were neighbors’ and landowner’s cross-motions for partial summary judgment on the question of whether the City can regulate landowner’s duck-raising operation. In the second appeal, neighbors moved for partial summary judgment on the issue of whether the City can regulate landowner’s cannabis-cultivation operation. Neighbors also moved to combine the two proceedings.

¶ 7. The Environmental Division granted summary judgment in favor of landowner in both cases. The court concluded the term “required agricultural practices” in 24 V.S.A. § 4413(d)(1)(A) means the farming activities, or “agricultural practices,” regulated by the RAPs Rule. The court determined the City could not regulate landowner’s duck-raising activities because the Agency determined landowner’s duck-raising operation was a farming activity subject to the RAPs Rule. In another decision, the court concluded “a municipality may not constrain licensed outdoor cultivators to certain zoning districts” because 7 V.S.A. § 869(f)(2) cites § 4413(d)(1)(A). The court also denied neighbors’ motion to consolidate the proceedings because it concluded it lacked authority to do so. Neighbors appealed both Environmental Division decisions to this Court. The dockets were joined for the purposes of this appeal. V.R.A.P. 3(c)(2).

II. Analysis

¶ 8. At issue on appeal is (1) to what extent landowner’s duck-raising operation is exempt from municipal regulation under 24 V.S.A. § 4413(d)(1)(A); and (2) to what extent landowner’s licensed outdoor cannabis-cultivation operation is exempt from municipal regulation under 7 V.S.A. § 869(f)(2).² Neighbors maintain that these provisions limit municipal regulation of the agricultural water-quality rules established by the RAPs as opposed to exempting agriculture or farming subject to the RAPs and licensed outdoor cannabis cultivators from all municipal

² Neighbors also contend the Environmental Division has the power to combine proceedings under Vermont Rule of Environmental Court Procedure 2(b). Specifically, neighbors ask the Court to “clarify” if the Environmental Division may combine “proceedings with common issues of law and fact into one proceeding” under the rule. However, neighbors fail to explain how they were prejudiced by the court’s decision or otherwise explain why the court’s decision constitutes reversible error and thus we decline to address this issue as inadequately briefed. See V.R.A.P. 28(a) (providing requirements for appellant’s briefing); Kneebinding, Inc. v. Howell, 2020 VT 99, ¶ 61, 213 Vt. 598, 251 A.3d 13 (“Mere naked statements, unsupported by argument . . . constitutes inadequate briefing and merit no consideration.” (quotation omitted)); see also In re S.S., 2024 VT 87, __ Vt. __, 331 A.3d 1075 (“[T]his Court’s jurisdiction is limited and does not allow this Court to render an advisory opinion.”).

regulation related to those activities, as the Environmental Division held. We address each statutory provision in turn.

¶ 9. “This Court reviews summary-judgment decisions from the Environmental Division de novo.” In re Mountain Top Inn & Resort, 2020 VT 57, ¶ 18, 212 Vt. 554, 238 A.3d 637 (noting we apply “same standard as the environmental court” (quotation omitted)). Summary judgment is proper “if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” Id. “We review questions of statutory interpretation de novo.” State v. Colehamer, 2023 VT 39, ¶ 41, 218 Vt. 230, 308 A.3d 440.

A. Duck-Raising Operations

¶ 10. We first address whether farming activities subject to the RAPs Rule are exempt from all municipal regulation under 24 V.S.A. § 4413(d)(1)(A). We begin with a brief overview of the relevant statutory and regulatory scheme. The Legislature has directed the Secretary of Agriculture, Food and Markets, as well as the Secretary of Natural Resources, to “implement[] and enforce[] programs, plans, and practices developed for reducing and eliminating agricultural nonpoint source pollutants and discharges from concentrated animal feeding operations.” 6 V.S.A. § 4810(d). The Legislature has also charged the Agency of Agriculture, Food and Markets with ensuring that these programs, plans, and practices “concerning agricultural nonpoint source pollution [are] consistent with the water quality standards and water pollution control requirements of 10 V.S.A. chapter 47 and the federal Clean Water Act.” Id. (footnote omitted). Specifically, the Legislature directed the Agency to adopt rules to “implement and enforce agricultural land use practices” in two categories: required agricultural practices and best management practices. Id. § 4810(a)-(c).

¶ 11. Our review here focuses on the required agricultural practices. The enabling statute anticipates that the “Required Agricultural Practices (RAPs) shall be management standards to be followed by all persons engaged in farming” in Vermont. Id. § 4810(b). Specifically, “[t]hese

standards shall address activities that have a potential for causing agricultural pollutants to enter the groundwater and waters of the State, including dairy and other livestock operations” and shall “include . . . practices for farmers in preventing agricultural pollutants from entering the groundwater and waters of the State when engaged in animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control.” *Id.* The standards “shall be designed to protect water quality and shall be practical and cost-effective to implement, as determined by the Secretary.” *Id.* In turn, the Agency adopted what is now titled “Required Agricultural Practices Rule for the Agricultural Nonpoint Source Pollution Control Program.”³ Under this Rule, “[p]ersons engaged in farming and the agricultural practices as defined in . . . th[e] rule and who meet the minimum threshold criteria for applicability of th[e] rule . . . must meet all applicable Required Agricultural Practices, conditions, restrictions, and operating standards.” RAPs Rule § 3.1.

¶ 12. With this background in mind, we turn to the disputed statutory provision at issue, 24 V.S.A. § 4413(d)(1)(A), which states: “[a] bylaw under [chapter 117 of title 24] shall not regulate . . . required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets.”

¶ 13. The goal of statutory interpretation is to carry out the Legislature’s intent. *Baldauf v. Vt. State Treasurer*, 2021 VT 29, ¶ 11, 215 Vt. 18, 255 A.3d 731. When interpreting a statute, we start with the plain meaning. *Id.* If the statute’s text is unambiguous, we enforce the “statute

³ Initially, the Agency promulgated these management standards in the Accepted Agricultural Practices Rule according to the original statutory mandate. See 1991, No. 261 (Adj. Sess.), § 4 (listing the two categories of agricultural land use practices as “accepted agricultural practices” and “best management practices”); RAPs Rule § 1.1. Both 6 V.S.A. § 4810(b) and 24 V.S.A. § 4413(d)(1)(a) were amended by Act 64, “[a]n act relating to improving the quality of State waters” in 2015. See 2015, No. 64, §§ 4, 12, 52. The Act changed “accepted agricultural practices” to “required agricultural practices,” and required the Agency to update certain standards. *Id.* Subsequently, the Agency promulgated what is now the RAPs Rule and updated the standards in accordance with the Act. See *id.* §§ 4, 12; RAPs Rule § 1.1.

according to its terms and express meaning.” Brennan v. Town of Colchester, 169 Vt. 175, 178, 730 A.2d 601, 604 (1999). The Court turns to additional tools of statutory construction, such as legislative history, only when faced with ambiguous statutory language. In re 204 N. Ave. NOV, 2019 VT 52, ¶ 5, 210 Vt. 572, 218 A.3d 24.

¶ 14. The plain language of § 4413(d)(1)(A) requires us to look to the RAPs Rule for how the Secretary has defined “required agricultural practices.” The Court approaches “regulatory construction in the same manner as we do statutory interpretation.” In re Williston Inn Grp., 2008 VT 47, ¶ 14, 183 Vt. 621, 949 A.2d 1073 (mem.) (noting “our overall goal is to discern the intent of the drafters”). The text of the RAPs Rule states that, in accordance with the enabling legislation in 6 V.S.A. § 4810, required agricultural practices are the “farm and land management practices that will control and reduce agricultural nonpoint source pollution and subsequent nutrient losses from farm fields and production areas to surface and ground waters of the State or across property boundaries.” RAPs Rule § 1.3 (emphasis added). Persons engaged in certain “farming and agricultural practices” must comply with the Rule. Id. § 3.1. The Rule’s requirements include “conditions, restrictions, and operating standards” relating to discharges, storage of waste and inputs, nutrient and soil management, manure application, buffer zones, animal mortality management, composting, and bank stabilization. Id. § 6. The Rule also provides for limitations on livestock’s access to waters, groundwater quality-control measures, and standards relating to the construction of farm structures. Id. §§ 7-9. Accordingly, § 4413(d)(1)(A) prohibits municipal regulation of such standards and limitations set by the Secretary of Agriculture, Food and Markets in the RAPs Rule.

¶ 15. As landowner emphasizes, not all farming and agricultural practices are subject to the RAPs Rule. As noted above, these mandatory practices apply only to persons engaged in farming and agricultural practices that satisfy certain operational criteria. RAPs Rule § 3.1. Under the Rule, as relevant here, “farming” is defined as “the raising, feeding, or management of

livestock, poultry, fish, or bees.” *Id.* § 2.16(b). Compliance with the RAPs Rule is mandatory if a person is engaged in farming and meets certain minimum criteria, such as when the person “has produced an annual gross income from the sale of agricultural products of” at least \$2000 “in an average year.” *Id.* § 3.1(b). The “raising, feeding, or manag[ement]” of a minimum number of livestock on at least four contiguous acres may also subject a person engaged in farming to the RAPs Rule. *Id.* § 3.1(d).

¶ 16. While not all farming is subject to the RAPs Rule, the plain text of § 4413(d)(1)(A) does not support the interpretation that all “agricultural practices,” or farming, that are subject to the RAPs Rule are exempt from all municipal regulation. Landowner asserts that his duck-raising operation is exempt from all municipal regulation related to his farming activity because the Agency determined his farming activities must comply with the RAPs Rule. However, landowner’s interpretation ignores the plain language of § 4413(d)(1)(A) and otherwise renders the term “required” superfluous. 204 N. Ave. NOV, 2019 VT 52, ¶ 7 (“When interpreting a statute, we presume that language is inserted advisedly and that the Legislature did not intend to create surplusage.” (alteration omitted) (quotation omitted)). There is a difference between “agricultural practices” subject to the RAPs Rule and “agricultural practices” required by the Rule. Had the Legislature intended to prohibit all municipal regulation of farming subject to the RAPs it could have done so; “[h]owever, it did not do so, and we presume it chose its words advisedly.” Epsom v. Crandall, 2019 VT 74, ¶ 30, 211 Vt. 94, 220 A.3d 1247.

¶ 17. Likewise, the use of the term “regulate” in § 4413(d)(1) does not mean that the Legislature intended this provision to prevent municipalities from regulating RAPs-regulated farming. The word “regulate” is not otherwise defined in the statute here so we may look to dictionary definitions “to determine the plain and ordinary meaning” of the term. In re Dep’t of Fin. Regul., 2025 VT 10, ¶ 15, __ Vt. __, __ A.3d __ (quotation omitted). Black’s Law Dictionary defines “regulate” as “to control (an activity or process) esp[ecially] through the implementation

of rules.” Regulate, Black’s Law Dictionary (12th ed. 2024). The Merriam-Webster dictionary defines “regulate” as “to govern or direct according to rule.” Regulate, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/regulate> [https://perma.cc/HRS9-V7RE]. Thus, § 4413(d)(1)(A) states that municipalities may not “govern or direct according to rule” “required agricultural practices” as defined by the Secretary. Id. The Legislature’s use of the term “regulate,” or the fact that the definition of “regulate” uses the word “rule” does not imply that the Legislature intended to prevent municipal regulation of farming regulated by the RAPs Rule.

¶ 18. Additionally, the similar definitions of “farming” found in the RAPs Rule and 10 V.S.A. § 6001(22) do not imply the Legislature intended farming to be protected by § 4413(d)(1)(A) in a similar manner as other statutes that protect agriculture by providing for farming exemptions. See In re Ochs, 2006 VT 122, ¶ 11, 181 Vt. 541, 915 A.2d 780 (mem.) (noting that “ ‘construction of improvements for farming . . . purposes below the elevation of 2,500 feet’ ” are exempt from Act 250 review” (alteration in original) (quoting 10 V.S.A. § 6001(3)(D)(i))). The fact that “the construction of improvements for farming” is exempt from Act 250 has no bearing on the limitation of municipal regulation of “required agricultural practices” in § 4413(d)(1)(A). We are unpersuaded by the fact that the RAPs Rule defines “farming,” or landowner’s assertion that the Secretary’s definition of “farming” in the RAPs Rule is “substantially similar” to that of the Legislature’s definition in Act 250. See 10 V.S.A. § 6001(22) (defining farming to include “raising, feeding, or management of livestock, poultry, fish or bees”). Section § 4413(d)(1)(A) does not prohibit municipal regulation of “farming” as defined by the Secretary. See State v. O’Neil, 165 Vt. 270, 275, 682 A.2d 943, 946 (1996) (“It is inappropriate to read into a statute something which is not there unless it is necessary in order to make the statute effective.”).

¶ 19. The Environmental Division noted that its conclusion “is limited to farming activities defined by the RAPs Rule and 10 V.S.A. § 6001(22)” and that “[a]ctivities which do not meet this definition may still be subject to municipal regulation.” In other words, the court concluded that a municipality may regulate the keeping of chickens, “but only to the extent that such regulated activities do not rise to a level where they are farming activities subject to the RAPs.” We reach the opposite conclusion, however. For example, a person is subject to the RAPs Rule if they are engaged in the “raising, feeding or managing” of at least fifteen goats on at least four “contiguous acres.” RAPs Rule § 3.1(d)(4). According to the Environmental Division’s interpretation of § 4413(d)(1)(A), a municipality could prohibit the keeping of fourteen or less goats on lots of at least four contiguous acres in residentially zoned areas because those farming activities would not be subject to the RAPs Rule. But if that person has fifteen goats, subjecting them to the jurisdiction of the RAPs Rule, they would be exempt from such regulation. Surely the Legislature did not intend such an anomalous result. See State v. Tierney, 138 Vt. 163, 165, 412 A.2d 298, 299 (1980) (“It is [our policy] to avoid a construction of a statute that leads to absurd or irrational results.”).

¶ 20. Landowner’s argument that In re Moore Accessory Structure Permit & Use, 2013 VT 54, 194 Vt. 159, 75 A.3d 625, governs our interpretation of § 4413(d)(1)(A) is similarly unpersuasive. Landowner relies on Moore for the proposition that the Legislature enacted § 4413 as part of a larger statutory scheme intended to support farming in Vermont by broadly exempting farming from municipal regulation. In Moore, we examined whether buildings used for timber processing were “farm structures” used to conduct practices related to farming and were therefore exempt from municipal regulation. 2013 VT 54, ¶¶ 1, 11 (noting § 4413(d)(2)(A) defines farm structures as “a building, enclosure, or fence for . . . carrying out other practices associated with accepted agricultural or farming practices” (quotation omitted)). We rejected the neighbors’ argument that cutting and planing wood was a manufacturing—not farming—activity while

recognizing that lumber processing and harvesting “are practices long and intimately associated with farming in Vermont.” *Id.* ¶ 12. We further acknowledged that this conclusion was bolstered by the fact that § 4413 reflects recognition by the Legislature “that, in order to survive, Vermont farms must enjoy the freedom to ‘diversify’ and engage in ‘reasonable agricultural activities’ ” *Id.* ¶ 10 (quoting Vermont’s “Right-to-Farm” law, 12 V.S.A. § 5751)). We did not, however, address the meaning of “required agricultural practices,” and our interpretation of the term “farm structure”—a term specifically defined by the Legislature in 24 V.S.A. § 4413(d)(2)(A)—has no bearing on how the Secretary has defined “required agricultural practices.”

¶ 21. Our interpretation of “required agricultural practices” in § 4413(d)(1)(A) is entirely consistent with the Legislature’s directive for the Agency to implement agricultural land-use practices to control water pollution in accordance with 10 V.S.A. chapter 47 and the federal Clean Water Act. See *supra*, ¶¶ 10-11. The statutory language here simply prevents municipalities from adopting contradictory or duplicative regulations as to those standards and practices imposed by the Secretary on certain farming activities subject to the RAPs Rule. Cf. 10 V.S.A. § 6001(3)(E) (prohibiting Act 250 permit issued for development on land “devoted to farming activity” as defined in 10 V.S.A. § 6001(22) from “impos[ing] conditions . . . that restrict or conflict with required agricultural practices adopted by the Secretary of Agriculture, Food and Markets”); RAPs Rule § 3.1(e) (providing that person “engaging in other agricultural practices on less than 4.0 contiguous acres in size” who causes “adverse water quality impacts” may be subject to Rule if they are in “municipality where no ordinances are in place to manage the activities causing the water-quality impacts”).

¶ 22. This conclusion is strengthened by changes to the statutory language in both 6 V.S.A. § 4810 and 24 V.S.A. § 4413(d)(1)(A). As noted above, *supra*, ¶ 11 n.3, 6 V.S.A. § 4810—the enabling legislation for the RAPs Rule—originally required the Agency to implement rules “to reduce the amount of agricultural pollutants” in two categories: “accepted agricultural practices”

and “best management practices.” See 1991, No. 261 (Adj. Sess.), § 4. Section 4413(d) of chapter 24, enacted in 2004, prohibited municipal bylaws from “regulat[ing] accepted agricultural . . . practices . . . as those practices are defined by the secretary.” 2003, No. 115 (Adj. Sess.), § 95. In 2015, § 4810 was amended, changing “accepted agricultural practices” to “required agricultural practices.” See 2015, No. 64, § 12. Concurrently, § 4413(d)(1) was amended changing “accepted agricultural practices” to “required agricultural practices.” See 2015, No. 64, § 52. These changes together reflect our conclusion that “required agricultural practices” refers to the policies established by 6 V.S.A. § 4810 and means the standards intended to reduce agricultural water pollution that the Secretary has imposed on certain “farming and agricultural practices.” See Robes v. Town of Hartford, 161 Vt. 187, 194, 636 A.2d 342, 347 (1993) (“When the same word is used in statutes in pari materia, it will bear the same meaning throughout, unless it is obvious that another meaning was intended.”).

¶ 23. Accordingly, § 4413(d)(1)(A) does not prohibit all municipal regulation of farming if that farming is subject to the RAPs Rule, and landowner’s duck-raising operation is not exempt from municipal zoning solely because his activities are subject to the RAPs Rule. Rather, § 4413(d)(1)(A) prohibits municipal regulation of “required agricultural practices,” or the agricultural land-management standards intended to protect Vermont’s waters established by the RAPs Rule and imposed on certain “agricultural practices.” We therefore reverse the Environmental Division’s decision granting summary judgment to landowner.

B. Licensed Outdoor Cannabis Cultivation

¶ 24. Next, we address whether licensed outdoor cannabis cultivation is exempt from all municipal regulation under 7 V.S.A. § 869(f)(2). Chapter 33 of Title 7 consists of statutes regulating cannabis establishments. See 7 V.S.A. § 861(8) (defining “cannabis establishment” as “a cannabis cultivator, propagation cultivator, wholesaler, product manufacturer, retailer, testing laboratory, or integrated licensee licensed by the Board to engage in commercial cannabis

activity”). At issue here is § 869, which permits municipal regulation of cannabis establishments “unless otherwise provided under this chapter.” *Id.* § 869(c). The relevant parts of the section provide:

(a) A cannabis establishment shall not be regulated as “farming” under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. § 9741, or other relevant State law.

...

(d)(1) The cultivation, processing, and manufacturing of cannabis by all cultivators regulated under this chapter shall comply with the following sections of the Required Agricultural Practices as administered and enforced by the Board:

(A) section 6, regarding conditions, restriction, and operating standards;

(B) section 8, regarding groundwater quality and groundwater quality investigations; and

(C) section 12, regarding subsurface tile drainage.

...

(f) Notwithstanding subsection (a) of this section, a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall:

...

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A), except that there shall be . . . minimum setback distance[s] between the cannabis plant canopy and a property boundary or edge of a highway.

7 V.S.A. § 869 (emphasis added).⁴ On appeal, neighbors argue the Environmental Division erred in concluding landowner’s cannabis-cultivation operations are exempt from municipal regulation under § 869(f)(2). We agree.

¶ 25. Because § 869 directly references 24 V.S.A. § 4413(d)(1)(A), our interpretation of “required agricultural practices” above necessarily controls the interpretation of “Required Agricultural Practices” in § 869(f)(2). See Athens Sch. Dist. v. Vt. State Bd. of Educ., 2020 VT 52, ¶ 30, 212 Vt. 455, 237 A.3d 671 (“In construing statutes to give effect to legislative intent, we seek to harmonize statutes and not find conflict if possible.” (quotation omitted)). The plain language of § 869(f)(2) similarly dictates municipalities cannot regulate licensed outdoor cannabis cultivators as to the farm and land-management practices established by the Secretary to control nonpoint source pollution in Vermont waters in the same manner as § 4413(d)(1)(A). Although § 869(a) clarifies that cannabis establishments shall not be regulated as “farming” under the RAPs Rule, this does not affect our interpretation because § 869(d)(1) identifies the specific sections of the RAPs that do apply to cannabis establishments, including licensed outdoor cannabis cultivators. Considered together, these subdivisions establish a scheme whereby licensed outdoor cannabis-cultivation operations are subject to certain provisions of the RAPs Rule, and

⁴ For the sake of convenience, we quote the current version of the statute here. Neighbors alternatively argue landowner does not fall into the category of licensed outdoor cannabis cultivators governed by the now repealed version of § 869(f). See 2023, No. 65, § 16. However, we do not address this argument because the repealed language neither affects our interpretation of “Required Agricultural Practices” nor impacts the outcome of this appeal given our conclusion that 7 V.S.A. § 869(f)(2) does not exempt landowner from all municipal regulation.

The current version of § 869(f)(2) also includes added language that cites to a newly enacted statute, 24 V.S.A. § 4414a. The Environmental Division declined to address the impact of § 4414a in its interpretation of 7 V.S.A. § 869(f)(2) because the amendments to § 869(f)(2) and § 4414a were not in effect when the court rendered its decision. Neighbors argue these newly enacted provisions, now effective, illustrate legislative intent that licensed outdoor cannabis cultivators are subject to municipal zoning but they fail to assign error to the Environmental Division’s decision not to consider these provisions. Accordingly, we decline to address § 4414a here. See Nesti, 2023 VT 1, ¶ 22.

municipalities cannot regulate licensed outdoor cannabis cultivators as to the standards and practices established by the RAPs Rule. As discussed above, the plain language demonstrates the Legislature’s intent to prevent duplicative or contradictory regulations of these standards and practices.

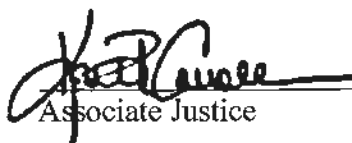
¶ 26. Landowner maintains that, like farming and agriculture, the Legislature intended to exempt all licensed outdoor cannabis cultivation from municipal regulation. In other words, landowner asserts that under § 869(f)(2) if an individual is licensed under chapter 33 and engaged in outdoor cannabis cultivation, they are exempt from municipal regulation just as those subject to the RAPs Rule are exempt from municipal regulation. Again, landowner’s interpretation ignores the distinction between the “required agricultural practices”—agricultural management standards intended to reduce water pollution—and the “agricultural practices,” or farming, subject to the RAPs Rule. Further, landowner’s interpretation renders the language “in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A)” mere surplusage. See In re Beliveau NOV, 2013 VT 41, ¶ 13, 194 Vt. 1, 72 A.3d 918 (“Generally, we do not construe a statute in a way that renders a significant part of it pure surplusage.” (quotation omitted)). Had the Legislature intended to wholly exempt licensed outdoor cannabis cultivators from municipal regulation it would be unnecessary to include a direct citation to § 4413(d)(1)(A). See Northfield Sch. Bd. v. Washington S. Educ. Ass’n, 2019 VT 26, ¶ 15, 210 Vt. 15, 210 A.3d 460 (“We presume that the Legislature chose its words advisedly.” (quotation omitted)).⁵

⁵ Both parties urge us to look to versions of the Cannabis Control Board (CCB) Guidance for Municipalities as evidence of the Legislature’s intent. See Vt. Cannabis Control Bd., Guidance for Municipalities (2025), https://ccb.vermont.gov/sites/ccb/files/2025-03/Municipal_Guidance_March_2025.pdf [<https://perma.cc/24NS-59FA>]. While not binding on this Court, the CCB Guidance is consistent with our interpretation that § 869(f) does not prohibit all municipal regulation of licensed outdoor cannabis-cultivation activity. See id. at 5, 7.

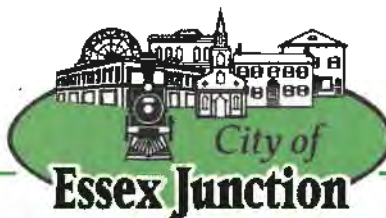
¶ 27. Accordingly, § 869(f)(2) prohibits municipal regulation of licensed outdoor cannabis cultivators as to the water-quality standards and requirements established by the RAPs Rule, or more specifically, the sections of the RAPs Rule that directly apply to cannabis establishments. See 7 V.S.A. § 869(d)(1). Landowner's cannabis-cultivation operation is not exempt from all municipal regulation simply because he is a licensed outdoor cannabis cultivator. Thus, we reverse the Environmental Division's decision granting summary judgment to landowner.

The Environmental Division's decisions granting summary judgment to landowner are reversed and the matters are remanded for further proceedings consistent with this opinion.

FOR THE COURT:


Associate Justice

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July 14, 2025

Jason Struthers
8 Taft Street
Essex Junction, VT 05452

Re: Unlawful Condition of Property – **NOTICE OF VIOLATION OF LAND DEVELOPMENT CODE**
Via Certified Mail

Dear Mr. Struthers,

Please be advised that the City of Essex Junction finds that you are in violation of Section 622 and Section 726 of the Essex Junction Land Development Code.

The Use Chart in Section 622 lists “Cannabis Cultivator Establishment” as a prohibited use in the R1 zoning district, which includes 8 Taft Street.

Additionally, Section 726: Outdoor Cannabis Cultivation provides as follows:

Effective January 1, 2025, and in accordance with 7 V.S.A. § 869, Outdoor Cannabis Cultivator Establishments shall maintain a 50-foot minimum setback distance between the cannabis plant canopy and a property boundary or edge of a highway.

You are in violation of Section 622 of the Land Development Code because there is currently an Outdoor Cannabis Cultivation operation at 8 Taft Street, a prohibited use in the R1 zoning district. You are also in violation of Section 726 because some of the cannabis plants are within 50 feet of your property line.

The City's finding is consistent with the Vermont Supreme Court's decision in case 24-AP-273, which affirms the ability of municipalities to enforce local land use regulations with respect to cannabis cultivation.

This Notice of Violation is being sent pursuant to 24 V.S.A. §4451. You have an opportunity to cure the violation and in order to do so, you must remove the above-mentioned Cannabis Cultivation within seven (7) days from the date of your receipt of this Notice of Violation (“NOV”). If you have not cured the violation within 7 days, the City may initiate enforcement efforts against you and you may be fined up to Two Hundred Dollars (\$200.00) per day. Each

day an offense occurs constitute a separate offence. You are not entitled to an additional notice if the violation continues after those 7 days.

You may appeal this Notice of Violation to the Development Review Board within 15 days of your receipt of the NOV as pursuant to 24 V.S.A. §4465(a). A copy of the notice of appeal shall be filed with the administrative officer. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous. Failure to appeal shall result in this NOV becoming final as to the violations addressed herein.

This Notice of Violation regarding Cannabis Cultivation is separate from, and does not supersede, the prior Notice of Violation regarding the ducks dated November 20, 2023. That November 20, 2023 Notice remains in effect and enforceable.

The City of Essex Community Development Office can be reached at (802) 878-6944 or at 2 Lincoln Street, Essex Junction, Vermont 05452. You may also reach the Community Development Director at (802)878-6944 Ext: 1607 or cyuen@essexjunction.org.

Sincerely,



Christopher Yuen
Community Development Director

Cc: Claudine C. Safar, Esq.
Megan T. Nelson, Esq.

City of Essex Junction, VT Appeal Application

For Office Use:

Permit #

Property description (address) for application

8 Taft Street

Applicant information

Applicant Jason Struthers

Day Phone

Address 8 Taft StreetEmail Address Jay Struthers @ Gmail. Com

Owner of Record (attach affidavit if not applicant)

Applicant

Day Phone

Address

Email Address

Applicant's agent (if applicable)

Applicant

Day Phone

Address

Property information

Zoning District R1Current Use ResidentialTax Map Page # 43Lot # 1-9Lot size sf 22,651

Briefly describe your purpose of Appeal (attach statement which describes how your appeal conforms to provisions of the Code):

See Attached

Specify decision which you are appealing:

See Attached

Attach an electronic copy and six (6) physical copies of your proposal, supporting documentation required by the Code and the appropriate completed checklist thirty (30) days prior to a scheduled meeting. Applications that are not complete cannot be accepted for review. I certify that the information on this application is true and correct. I agree to abide by all the rules and regulations as specified in the Land Development Code and any conditions placed upon approval of this application.

Applicant

Date

23 July 2025

Land Owner (if different)

Date



RECEIVED

Staff Action

JUL 23 2025

Date received City of Essex Junction Meeting date: _____

Commission / Board Action: Approved _____ Denied _____ Date: _____

Other approvals/conditions _____

**** Fee based on current Fee Schedule**

Staff Signature _____

Date _____

Fee Amount:**

\$
115.00

Fee Verified:

PAID

JUL 23 2025

City of Essex Junction



Purpose of Appeal to the Essex Junction Development Review Board

RE: Notice of Violation for Cannabis Cultivation at 8 Taft Street

To the Essex Junction Development Review Board:

I am appealing the Notice of Violation (NOV) issued by the City of Essex Junction concerning my cannabis cultivation operation at 8 Taft Street, located in the Residential-1 (R1) zoning district. The purpose of this appeal is to contest the NOV and demonstrate that my Tier 1 adult-use cannabis cultivation operation, licensed by the Vermont Cannabis Control Board (CCB) in July 2022, qualifies as a pre-existing, non-conforming use under the Essex Junction Land Development Code (LDC). I respectfully request that the DRB overturn the NOV and recognize my operation's lawful status.

****Basis for Appeal**:**

The NOV alleges that my cannabis cultivation violates current LDC regulations, specifically Sections 622 and 726, which restricts cannabis cultivation in the R1 district. I assert that my operation is exempt from these restrictions as a pre-existing, non-conforming use, as it was legally established prior to the LDC amendments that imposed such restrictions.

****Qualification for Pre-Existing, Non-Conforming Use**:**

1. **Lawful Establishment in July 2022:**

My cannabis cultivation operation was licensed by the Vermont Cannabis Control Board on July 20, 2022, as a Tier 1 outdoor cultivation facility (License No.SCLT0055). At that time, cannabis cultivation was classified as "agriculture" under the LDC and Vermont state law (24 V.S.A. § 4413(d)(1)), which exempted agricultural activities from local zoning restrictions. My operation fully complied with all applicable state and local regulations when established, including CCB licensing requirements and the Required Agricultural Practices (RAPs) for water-quality management.

The Vermont state law passed in June 2024 regarding cannabis cultivation districts is **Act 166** (Bill H.612), titled "An Act Relating to Miscellaneous Cannabis Amendments." This law was enacted on **June 10, 2024**, and it includes provisions allowing municipalities to adopt bylaws identifying preferred districts for outdoor cannabis cultivation. Specifically, Section 16 of Act 166 establishes that municipalities may create these cannabis cultivation districts, with regulations such as:

- A maximum setback of 25 feet for cultivators operating within a designated cultivation district.
- A maximum setback of 50 feet for cultivators operating in a town with a designated cultivation district but outside of it, or in a town without a cultivation district.
- A maximum setback of 10 feet in towns with no zoning.

These provisions became effective on **January 1, 2025**, as specified in the law for the implementation of cannabis cultivation district bylaws.

2. ****Subsequent LDC Amendment****:

The City of Essex Junction amended the LDC, effective 19 October 2022, to prohibit cannabis cultivation in the R1 district, as reflected in Section 622 and related zoning provisions. This amendment occurred after my operation was licensed and operational. As my cultivation predates this regulatory change, it qualifies as a pre-existing use that was lawful under the zoning regulations in effect in July 2022.

3. ****Compliance with Non-Conforming Use Requirements****:

Under the LDC and Vermont law (24 V.S.A. § 4303(15)), pre-existing, non-conforming uses are permitted to continue provided they meet specific conditions, such as continuous operation and no expansion beyond the original scope. My operation has been continuously active since July 2022, with no interruptions exceeding any LDC-specified discontinuance period (typically 6–12 months). Additionally, I have not expanded the scale or scope of the cultivation beyond what was authorized by my CCB license and initial setup. The operation remains in compliance with state RAPs and CCB regulations, further supporting its lawful status.

4. ****Support from Legal Precedent****:

The Vermont Supreme Court's decision in *In re 8 Taft Street DRB & NOV Appeals* (May 30, 2025) clarified that municipalities may regulate cannabis cultivation in residential zones like R1, but this authority does not retroactively invalidate pre-existing uses established before zoning changes. My operation, licensed in July 2022, predates the October 2022 LDC amendment and is thus protected as a non-conforming use.

In the same regard, my Cannabis cultivation operations predate the 01 January, 2025 provisions respecting Cannabis cultivation districts.

****Request for Relief****:

I respectfully request that the DRB overturn the Notice of Violation and affirm that my cannabis cultivation operation at 8 Taft Street, is a lawful pre-existing, non-conforming use under the LDC. I am prepared to provide documentation, including my CCB license, proof of continuous operation, and compliance records, to substantiate my appeal. Additionally, I request a hearing to present my case and address any concerns regarding compliance with local and state regulations.

Thank you for your consideration. I look forward to resolving this matter and continuing my operation in compliance with all applicable laws.

Sincerely,
Jason Struthers

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket Nos. 23-ENV-00120
24-ENV-00003

In re Taft Street Appeals

JUDGMENT ORDER

This matter involves two separate municipal appeals relating to Jason Struther's (Appellant) backyard farming activities, which involve both cannabis cultivation and the raising of ducks on his property located at 8 Taft Street, Essex Junction, Vermont (the Property). Neighboring landowners Stephen and Sharon Padnos (Neighbors) are cross-appellants in these appeals.

For the reasons set forth in the accompanying Decision on Motions, we conclude that Appellant's duck farming and cannabis cultivation operations are prohibited by the City of Essex Junction Land Development Code. In reaching this conclusion we **GRANT** the City's motion for summary judgment with respect to Appellant's duck farming operations, and **GRANT** Neighbors' motion for summary judgment with respect to Appellant's cannabis cultivation operations. Appellant's motions for summary judgment are **DENIED**. This resolves all issues and concludes the matters before the Court.

Electronically signed September 3, 2025 pursuant to V.R.E.F. 9(D).

Thomas G. Walsh, Judge
Superior Court, Environmental Division

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
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802-951-1740
www.vermontjudiciary.org



Docket Nos. 23-ENV-00120
24-ENV-00003

In re Taft Street Appeals

DECISION ON MOTIONS

This matter involves two separate municipal appeals relating to Jason Struther's (Appellant) backyard farming activities, which involve both cannabis cultivation and the raising of ducks on his property located at 8 Taft Street, Essex Junction, Vermont (the Property).

The first appeal involves a determination by the City of Essex Junction (City) Administrative Officer (AO) declining to enforce the City's Land Development Code's (LDC) prohibition of Agriculture and Cannabis Cultivation, as those terms are defined by the LDC, in the R-1 Zoning District in which the Property is located. Neighboring landowners Stephen and Sharon Wille Padnos (Neighbors) appealed this determination to the City's Development Review Board (DRB), which affirmed the AO's decision that the City could not prohibit a cannabis cultivation establishment. The DRB reversed the AO's determination regarding Appellant's duck farming activities and instead concluded that agriculture is prohibited in the R-1 Zoning District. Appellant appealed the DRB's decision to this Court, which has been assigned Docket No. 23-ENV-00120. Neighbors filed a cross-appeal.

The second appeal involves a Notice of Violation (NOV) issued on November 20, 2023 by the AO regarding Appellant's duck farming activities. Appellant appealed the NOV to the DRB, which affirmed the issuance of the NOV concluding that Appellant's duck farming activities were in violation of the LDC. Appellant appealed the DRB's decision to this Court, which has been assigned Docket No. 24-ENV-00003. Neighbors again filed a cross-appeal.

In a decision dated August 7, 2024, this Court concluded that Appellant's duck farming operations were exempt from municipal regulation under 24 V.S.A. § 4413(d)(1)(A). In re 8 Taft Street,

Nos. 23-ENV-00120, 24-ENV-00003 slip op. at 12 (Vt. Super. Ct. Env'tl. Div. Aug. 7, 2024) (Walsh, J.). Later, in a decision dated August 29, 2024, this Court concluded that Appellant's licensed outdoor cannabis operations were similarly exempt from municipal regulation. In re 8 Taft Street Appeals, Nos. 23-ENV-00120, 24-ENV-00003 slip op. at 4 (Vt. Super. Ct. Env'tl. Div. Aug. 29, 2024) (Walsh, J.). Both decisions were appealed to the Vermont Supreme Court. In a May 30, 2025 decision, the Supreme Court reversed and remanded the matters back to the Environmental Division. In re 8 Taft Street DRB & NOV Appeals, 2025 VT 27, ¶ 1.

The Vermont Supreme Court concluded that 24 V.S.A. § 4413(d)(1)(A) only prohibits municipal regulation of agricultural land-management standards intended to protect Vermont's waters. Id. ¶ 23. Similarly, the Supreme Court concluded that 7 V.S.A. § 869(f)(2) only prohibits municipalities from regulating water quality practices established by the Secretary of Agriculture. Id. ¶ 25. In doing so, the Supreme Court reversed our conclusions and remanded for further proceedings.

The Court and parties held a status conference in which all parties agreed that this case could be decided based on the previously filed motions for summary judgment. Accordingly, we have reviewed those motions and agree that no further proceedings are necessary.

Undisputed Material Facts

We hereby incorporate the undisputed material facts from the August 7 and August 29 Decisions. Those factual findings were not challenged on appeal and are still applicable to the legal dispute between the parties. For purposes of deciding the pending motions, only the following facts are relevant to our determinations.

1. Jason Struthers (previously defined as Appellant) owns the property at 8 Taft Street in Essex Junction, Vermont (previously defined as the Property).
2. The Property is .52 acres in size.
3. Appellant currently owns 50 ducks which he raised from eggs. Appellant sells live ducks and duck eggs produced by his ducks.
4. Appellant also operates a commercial cannabis growing operation at the Property through his company, Trichome VT, LLC.
5. The Property is located in the R-1 Zoning District, pursuant to the City of Essex Junction's Land Development Code (previously defined as the LDC).

Discussion

The City of Essex Junction's Land Development Code provides that:

The raising, keeping, or harboring of livestock, wild animal or other domesticated farm animals for personal use or commercial purposes shall be prohibited in all Zoning Districts, except for the Planned Agricultural (PA) and Planned Exposition (PE) Districts.

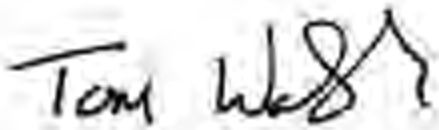
City of Essex Junction LDC § 724.

Appellant's duck-farming operations clearly fall under this prohibition against the raising, keeping, and harboring of livestock, wild animals, or other domesticated farm animals. This prohibition is not related to water quality practices. Under the Vermont Supreme Court's reasoning, this is a permissible form of municipal regulation. Appellant's Property is located in the R-1 Zoning District and not the Planned Agricultural or Planned Exposition Districts. Because there are no material facts in dispute, we **GRANT** the City's motion for summary judgment and conclude that Appellant's duck farming activities are prohibited by the LDC.

With respect to cannabis, the LDC's table of uses lists cannabis cultivator establishments as a use which is only permitted in the Planned Agriculture District. Thus, by implication, Appellant's licensed outdoor cannabis operations are prohibited in the R-1 Zoning District in which the Property is located.¹ As the Vermont Supreme Court has explained, this prohibition is permissible because it does not regulate water quality practices. Thus, because there are no material facts in dispute, we **GRANT** Neighbors' motion for summary judgment on cannabis and **DENY** Appellant and the City's motions and conclude that Appellant's cannabis operations are prohibited by the LDC.

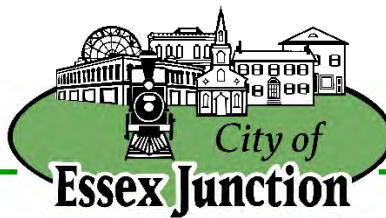
This concludes the matter before the Court. A Judgment Order accompanies this Decision.

Electronically signed September 3, 2025 pursuant to V.R.E.F. 9(D).



Thomas G. Walsh, Judge
Superior Court, Environmental Division

¹ The City has recently amended the LDC to include language providing that any use not listed as a permitted or conditional use is prohibited. See LDC § 622(E) (as revised February 26, 2025). While this language provides helpful clarity, the 2023 LDC similarly prohibits cannabis cultivation establishments by virtue of it being a listed use category that is not allowed in the R-1 Zoning District as either a permitted or conditional use.



MEMORANDUM

To: Development Review Board

From: Christopher Yuen, Zoning Administrator (aka Administrative Officer); Community Development Director

Date: September 12, 2025

Subject: 8 Taft Street Appeal of Notice of Violation for Cannabis Cultivation

Background

On July 14, 2025, I issued a Notice of Violation (NOV) to Jason Struthers, property owner at 8 Taft Street, for violations of Section 622 and Section 726 of the Essex Junction Land Development Code (LDC).

- Section 622 prohibits outdoor cannabis cultivation in the R1 zoning district. The property at 8 Taft Street currently contains an outdoor cannabis cultivation operation.
- Section 726 requires cannabis plants to be located at least 50 feet from property lines. Some of the plants on the property are within this setback.

My decision was made in light of the Vermont Supreme Court's 2025 opinion, which confirmed that "[a] landowner's cannabis-cultivation operation is not exempt from all municipal regulation simply because he is a licensed outdoor cannabis cultivator." *In re 8 Taft Street DRB & NOV Appeals*, 2025 VT 27, No. 24-AP-273¹.

On July 23, 2025, Mr. Struthers appealed the NOV, arguing that his cannabis cultivation qualifies as a pre-existing nonconforming use, established in July 2022 prior to the September 2022 LDC amendments that expressly prohibited cannabis cultivation in the R1 district.

This memo explains my reasoning behind issuing the NOV and why I do not believe the cannabis cultivation qualifies as a legal nonconforming use. For further background and undisputed facts, see the Vermont Supreme Court's decision *In re 8 Taft Street DRB & NOV Appeals*, 2025 VT 27 (Docket No. 24-AP-273).

1. Plain Language of the Regulations Prohibits Cannabis Cultivation in the zoning district.

a. Cannabis cultivation constitutes agriculture or farming.

- The LDC defines agriculture as "the use of property or structures for common farming-related activities necessary for crop and animal production". Section 201.C.12 also states that "A plant or tree nursery shall be deemed an agricultural related activity. The sale of agricultural products or byproducts on agricultural property is deemed an 'agricultural sales-related activity.'"
- Cannabis cultivation clearly falls within this definition.

b. Agriculture is prohibited in the R1 district.

- Struthers's property is in the R1 zone.
- Because agriculture has always been prohibited in the R1 zone and because the Vermont

¹ The Environmental Court subsequently issued a Judgement Order consistent with the Supreme Court opinion that concludes both Struthers' duck farming operations and cannabis cultivation are prohibited by the LDC. This decision was filed on September 3, 2025.

Supreme Court concluded that municipalities have the right to regulate agriculture, cannabis cultivation was by extension not permitted even prior to Cannabis Cultivation being specifically prohibited in October 2023. It therefore cannot be grandfathered.

c. State law does not exempt cannabis from zoning regulation.

- 7 V.S.A. § 869 specifies that cannabis establishments are not considered “farming” under state agricultural practice rules and are not treated as agricultural products for taxation or current use, but this does not exempt zoning regulation of cannabis.
 - Moreover, § 869(b) provides that “A cannabis establishment regulated under this chapter (Chapter 33 of Title 7) shall be subject to regulation under 24 V.S.A. chapter 117 as authorized by this chapter, unless otherwise provided under this chapter.”
 - Chapter 117 is the municipal and regional planning and development chapter.
 - Furthermore, §869(f) provides that “[n]otwithstanding subsection (a) of this section, a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall: (1) be regulated in the same manner as ‘farming’ and not as ‘development’ on the tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151”

d. The Superior Court has confirmed this prohibition.

- In its September 3, 2025 decision on remand, the Superior Court stated: “Appellant’s licensed outdoor cannabis operations are prohibited in the R-1 Zoning District in which the Property is located. As the Vermont Supreme Court has explained, this prohibition is permissible because it does not regulate water quality practices.” [footnote omitted].

e. Conclusion.

- Because agriculture was already prohibited when Mr. Struthers began cultivating cannabis, the use was never lawful and cannot qualify as a pre-existing nonconforming use.

2. **Claim Preclusion Bars the Grandfathering Argument**

Struthers is barred from arguing grandfathering, because there is a final judgment on the merits, the parties are the same and the NOV concerns the same factual scenario as the prior Environmental Court appeals, and Struthers had the opportunity to raise the defense of grandfathering previously.

a. Legal Standard.

- The doctrine of Res Judicata “seeks to prevent the relitigation of a cause of action finally adjudicated between the parties in an earlier suit; collateral estoppel, on the other hand, seeks to prevent the relitigation of issues that were actually litigated and necessary to the resolution of the original litigation. Both principles are aimed at eliminating repetitive or piecemeal litigation.” *Alpsetten Ass’n, Inc. v. Kelly*, 137 Vt. 508, 408 A.2d 644, 647 (1979).
- Res Judicata or claim preclusion applies when: (1) a previous final judgment on the merits exists, (2) the case involves the same parties, and (3) the claim has been or could have been fully litigated in the prior proceeding. In re St. Mary’s Church Cell Tower, 2006 VT 103, ¶ 3.
- This principle applies equally to zoning cases. See In re Burns 12 Weston St. NOV, 2022 VT 37, ¶ 13.

b. Application.

- The Superior Court’s September 3, 2025 decision constitutes a final judgment.
- The parties and factual circumstances are identical to the earlier litigation.
- Mr. Struthers could have raised the grandfathering defense previously; nothing prevented him from doing so. The only difference in this appeal versus the prior case is that this matter involves a violation notice for the same activity.

c. Conclusion.

- Because claim preclusion applies, Mr. Struthers is barred from raising a grandfathering defense in this appeal.

3. Annual Cannabis Licensing Requirements Reinforce Ongoing Compliance Obligations

- The Vermont Cannabis Control Board (VCCB) requires annual licensing for cultivators. Upon the VCCB's conditional approval of a new cannabis license or renewal license, the application is forwarded to the Local Cannabis Control Commission (LCCC) for final approval.
- The local commission's role is to review the application for compliance with municipal ordinances and bylaws at the time of annual license renewal, specifically those concerning zoning, signage, and public nuisances.
- Because Mr. Struthers is in violation of the LDC, his operation does not meet the ongoing compliance requirements necessary for licensure.

4. Nonconforming Use Limitations (If Applicable)

If the DRB determines that cannabis cultivation at 8 Taft Street qualifies as a legal nonconforming use, any expansion of the use remains prohibited.

- Section 801.A of the LDC states: "A nonconforming use shall not be expanded or extended to occupy more land or floor area than it occupied on the effective date of this Code and shall not be expanded to displace a conforming use."
- A neighboring resident, Sharon Willie Padnos, has alleged that the number of plants on the property has increased in recent years and that new plants were placed closer to the property line. Padnos' photos, taken on June 7, 2025, are attached.
- In my opinion, if the DRB finds the cannabis cultivation use to be grandfathered:
 - The number of plants must be limited to the number that existed as of Summer 2023; and
 - No further encroachment into the 50-foot setback would be permissible beyond what existed as of January 1, 2025, the effective date of Section 726.

Conclusion

For the reasons outlined above, I believe the Notice of Violation issued to Jason Struthers on July 14, 2025 is valid and should be upheld.

Attachments

- Photos of the cannabis cultivation at 8 Taft Street submitted by neighboring resident Sharon Willie Padnos, taken on June 7, 2025

June 7 2025 Photo submitted by Sharon Willie Padnos







