

Soil Importation/Gravel Quarry: Massachusetts Appellate Court Addresses Zoning Issue



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05/25/2022

The Appeals Court of Massachusetts (“Court”) addressed in a May 13th Opinion the interpretation of certain zoning laws to the importation of soil (which included some man-made materials). See *Immanuel Corp. v. Zoning Board of Appeals of Uxbridge*, 2022, WL 1509728.

The question addressed was whether soil importation for deposit in a gravel quarry (“Quarry”):

- Was allowed by certain zoning bylaws
- Was allowed under the terms of prior permits for gravel excavation

Immanuel Corp. (“Immanuel”) allowed RHR, LLC (“RHR”) to deposit more than 330,000 cubic yards of materials on a property (“Property”) in the town of Uxbridge, Massachusetts (“Town”) that was formerly used as a Quarry.

The Town issued a cease and desist order to Immanuel stating that the soil importation violated the zoning bylaws. The Town’s Board of Appeals (“Board”) upheld the order and a subsequent hearing by a trial judge concluded that the Board acted within its discretion.

The Court’s Appellate Opinion describes the Quarry as encompassing 133 acres. It had operated pursuant to a series of annual earth removal permits issued by the Town. Approximately three million tons of sand and gravel had been removed.

Immanuel was required to restore any areas no longer in use for excavation by covering them with loam and vegetation. Immanuel had authorized RHR to deposit soil and other non-soil materials on a five-acre area of the property.

The Town’s earth removal permits required restoration by grading and leveling (and then covering) with: . . . “suitable topsoil” and planting it with “suitable ground cover.”

Neither of the earth removal permits are stated to have authorized commercial importation of soil and other materials to the Property.

Zoning bylaws cited by the Court included a prohibition of the use of land as a commercial landfilling operation and/or dumping ground. Further, the bylaws prohibited the removal, importation, or filling of any material to or from any parcel of land in the Town unless a written permit was obtained. If the amount of fill was in excess of 100,000 cubic yards over the life of the project, an Administrative Consent Order was required as part of the permitting process.

Immanuel was paid more than \$600,000 for allowing RHR to deposit the soil in the Quarry. The lower court judge determined that the importation:

. . . was done, not to restore the site, but to profit from providing a location to dump unwanted material from excavation in other places,” . . . the soil importation has been far more pervasive than any gravel removal activities on the [p]roperty.”

Immanuel argued on appeal that the Town’s zoning bylaws did not expressly prohibit commercial landfilling in 2014 when it initiated importation of fill. It cited a 2016 amendment that expressly prohibited commercial landfilling and included language stating:

. . . “[e]xcept where lawfully in existence at the time of these [b]ylaws,” . . .

Immanuel argued that its use of the Property as a commercial landfill operation was protected as a prior use.

The Court rejects this argument stating that the language of both the 2014 and 2016 version of the zoning bylaws prohibit commercial landfilling. It determined that the Town’s 2016 amendment simply more clearly identified commercial landfilling as prohibited.

The Court also rejected Immanuel’s argument that the earth removal permits authorized its importation of soil to the Property. These permits did require revegetation and grading and leveling the excavated area. This included covering with no less than four inches of suitable topsoil and planting with suitable ground cover.

Nevertheless, the Court agreed with the lower court’s determination that:

. . . neither of those earth removal permits authorized Immanuel to import soil and other materials to the Property, in any event what Immanuel imported was “not soils,” but rather, “man-made or construction debris.”

The Court upheld the lower court’s determination that the soil importation was prohibited.

A copy of the Opinion can be downloaded [here](#).