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April 10, 2023

O'Donnell Callaghan, LLC
Attn: Robert T. O'Donnell
28045 N. Ashley Circle, Suite 101
Libertyville, IL 60048

VIA US MAIL & EMAIL

**Subject: #ZON-000858-2023
Deep Creek Ranch, LLC
22665 W IL Route 60, Grayslake, IL
PIN: 10-09-300-034**

Dear Mr. O'Donnell:

This letter concerns your client's request for a Zoning Interpretation that the proposed equestrian facility on the subject property is an agricultural use and that the proposed filling/grading activity on the site is a necessary component of that agricultural use and not a separately classified use.

Property Background:

The subject parcel is located southwest of the intersection of Peterson Road and W IL Route 60, in unincorporated Fremont Township. The property is located within the Agriculture (AG) zoning district and contains approximately 47 acres. The site is bordered by Manitou (formerly Squaw) Creek to the northwest and since 1939, has been farmed agricultural land (row crops) (per Lake County Maps Online). The site contains three onsite depressional areas (per Lake County Maps Online and the existing topographic survey prepared by Rooney Consultants, Inc., dated September 5, 2022). These onsite depressional areas may be considered depressional floodplain and contain wetlands. The existing site currently drains to the north/northwest towards Manitou Creek with an approximate overland longitudinal slope of 0.9%. The site contains approximately 26.6 acres of mapped hydric soil (somewhat coterminous with the site's depressional areas) and approximately 20.4 acres of non-hydric soil.

Project Plan:

The proposed site improvements (per Final Site Plan prepared by Rooney Consultants dated September 5, 2022) involve filling (with imported material) approximately 27 acres of the site, grading out that fill material, and constructing on the top of the resulting fill pad an equestrian facility consisting of barns, stables, an arena, a paddock in the southeastern portion of the property, along with an unspecified location for pasture. Across the majority of the 27-acre fill pad, the plans show an imported fill depth ranging between 13 feet and 20 feet (the greatest depth of fill material coinciding with the site's depressional areas). The fill pad edges taper down to meet existing grade along its perimeter and, at the northern end of the fill area closest to Manitou Creek, the edge of the fill material maintains a distance of approximately 150 feet from the creek. Overall, the proposed fill area, spread over a distance of roughly 1000 feet south to north, encompasses over half of the site and will result in a continual overland longitudinal slope of approximately 1% to the north/northwest towards Manitou Creek. Based on the proposed site plans provided, the amount of fill material to be imported and placed on site consists of approximately 616,043 cubic yards (51,337 dump truck loads, based upon an average volume of 12 cubic yards per dump truck). Per the proposed site plan design submitted, approximately 17.6 acres of fill material will be placed over mapped hydric soil.

Staff Analysis:

This Zoning Determination letter establishes (1) whether an equestrian facility is a permitted agricultural use, and (2) whether the proposed fill/grade operation on the property constitutes a necessary component of the equestrian facility or is in fact a separately classified use. Based on staff's evaluation of the application and information submitted, we offer the following comments:

Equestrian Facility Classification:

The proposed equestrian facility consists of two barn/stable buildings (floor area of 26,000 sq. ft.), a paddock (34,000 sq. ft.), an arena (11,000 sq. ft.), an office (750 sq. ft.) per Exhibit A Final Site Plan Sheet 6 (prepared by Rooney Consultants, Inc., dated September 5, 2022) (all square footage approximated) and 23 acres of pastureland on the site at an unspecified location.

Per Section 151.271 Terms Defined of the Lake County, Illinois Code of Ordinances (Lake County Code), agriculture is defined as the *tilling of soil; the growing of crops; the operation of non-retail greenhouses and nurseries; the raising and/or keeping of livestock, equine, fur-bearing animals, gamebirds, poultry, and farm animals; and incidental structures for carrying out the above.* Further, Section 151.270 (G)(1) states that agriculture includes activities that primarily involve the *'raising and keeping of farm animals'* as well as accessory uses needed to support said activity, such as stables and dwellings for animal caretakers. As such, the buildings and spaces devoted to the raising and/or keeping of equine on the subject property, per the above description, collectively constitute an agricultural use. Per Table 151.111 of the Lake County Code, the property's zoning designation allows for agricultural uses and as such, the proposed equestrian facility is permitted on the subject property.

Fill/Grade Classification:

Prior to the establishment of the equestrian facility structures and spaces, the applicant proposes to place on-site and grade out approximately 616,043 cubic yards of imported fill material, which will elevate the final grade of the site between 13 to 20 feet depending across the majority of the fill pad (see applicant's Project Plan summary, above). The applicant claims this is an activity that must occur prior to, and in preparation, of the equestrian facility, and as such is a necessary component of the proposed equestrian facility (and not a separately classified use), based on four reasons listed on the application. These reasons are restated below, each followed by staff's analysis and response:

1. Surface Drainage

- Large portions of the site are either flat or depressional, so they do not properly drain. In the depressional areas of the site, exploratory excavation in certain areas encountered groundwater at two feet below grade. This is a problem for agricultural uses because it results in ponding, or soft, wet, yielding soils. This soil condition does not support growth of agricultural products; here, pasture grasses.
- The soft, wet yielding soils may also cause injury to grazing animals, particularly horses.

Staff Response:

Alternative measures to address poor drainage and/or hydric soils that are less impactful and better aligned with agricultural industry best practices do exist and could be used in lieu of the proposed solution. One solution would involve better drainage of the hydric soils themselves, allowing for their use in pasturage. This may be accomplished through maintenance of existing drainage tiles and/or replacement in kind. However, hydric soils and depressional areas are of

benefit to the environment overall, and neither the total draining nor filling of those areas would follow current agricultural industry best practices: building construction and pasturage in equestrian facility design customarily avoids such natural resources altogether or allows their use on a limited basis. Conversion of a site previously utilized for row crop farming to a horse pasture is a straightforward process: while it could benefit from a modest amount of topsoil amendment in certain areas, establishment of a functional pasture in a former farm field does not require import of fill on the scale proposed in this application. The establishment of permanent grasses and legumes for a horse pasture is, in many respects, similar to the establishment of a grass lawn, albeit on a much larger scale. The importation of 616,043 cubic yards of material is wholly unnecessary to address any challenges of establishing a pasture on this property: between best-practice-based levels of drain-tile work and/or avoidance of or minimization of grazing in such areas, a majority of the site can be used effectively for pasturage with minimal concerns for vegetative growth and grazing injury.

2. Erosion

- Erosion of the site and subsequent contamination of adjacent water course is an issue that needs to be addressed. Filling and grading the site will diminish the flow velocity of rainfall runoff. As shown on Exhibit A, the final slope of filled areas is approximately 1.00%. This proposed slope has two major beneficial effects:
 - I. The velocity of stormwater runoff is reduced so most of the rainfall is absorbed into the soil uniformly across the site. This will allow growth of pasture grasses.
 - II. The second major effect is that any drainage from the site in a major storm event that the soil cannot absorb, leaves the site at a low velocity, preventing soil erosion and contamination of the adjacent stream.

Staff Response:

It appears that areas of high velocity flow are not significantly present on the site according to staff's analysis of existing site contours as reflected on the Lake County Maps Online topographic data layer. Rather, any erosion currently occurring is likely a result of row crop turnover and intermittent exposure of the soil. The existing depressions serve to hold water and aid in reducing stormwater runoff. Additionally, once established, the presence of pasture grasses across the majority of the site will reduce stormwater runoff velocity and prevent excess erosion from occurring. Further, if desired, a uniform slope may be established using much more limited amounts of fill in particular areas. The addition of 616,043 cubic yards of fill material is not necessary and in fact, may impede grass/legume growth as a result of the compaction and poor soil composition of the imported fill material. Finally, compaction to the degree envisioned by the importation of (on average) between 13 and 20 feet of fill material, especially in light of the clay-dominated composition of typical fill material available in Northeastern Illinois, could impede natural water infiltration across the surface of the finished fill pad below the depth of any top-dressed topsoil, thereby increasing the risk of surface flooding and runoff in a major storm event.

3. Visibility and Attractiveness

- Currently, the site is as much as 12' to 16' below the adjacent highway. Constructing a facility at the existing grade would appear to build it in a "hole", which would diminish the attractiveness of the structures and property.

Staff Response:

Aesthetics of a site are subjective and not a necessary component of agricultural activity.

4. Safety

- Leaving the site with a truck or vehicle and horse trailer constitutes a safety issue at the existing site grades. Visibility of the existing highway from locations that are 6 to 10 feet below grade is severely compromised.

Staff Response:

W II Route 60 is a state highway and classified as an arterial route, which is considered a high-volume traffic corridor. Some limited filling and grading focused at the point of access to the site (i.e., entrance drive) may be needed and appropriate to ensure maximum visibility and safety of vehicles entering and leaving the site as well as for the motoring public. However, the addition of 616,043 cubic yards of fill material across the entire site is a disproportionate solution to address this issue. Although there is no identified entrance or driveway shown on Exhibit A Final Site Plan Sheet 6 (prepared by Rooney Consultants, Inc., dated September 5, 2022) that would serve to connect the facility building area to Route 60, staff presumes a driveway and ingress/egress point could be constructed utilizing minimal amounts of fill in a precise and targeted manner and location.

Additional Staff Considerations:

In addition to analyzing the applicant's justifications for the fill/grade activity as a necessary component of the equestrian facility, staff has considered the nature and characteristics of the fill/grade activity itself in rendering a decision. Per Section 151.270(B)(1) et seq, the Planning, Building & Development Director may render a use interpretation on the basis of a number of considerations including, but not limited to, the actual or projected characteristics of the activity in relationship to the state characteristics of each use type; the building and site arrangement; vehicles used with the activity; the relative number of vehicle trips generated by the use; and whether the activity is likely to be found independent of the other activities on the site.

Per the applicant's proposed site plan, the amount of imported fill material totals approximately 616,043 cubic yards. Based on an average volume of 12 cubic yards per dump truck, the hauling of this material to the site would necessitate 51,337 dump truck visits to the site. Site prep activities for development in Lake County customarily occur within a matter of months, seldom beyond a year. For this volume of fill, an example estimate of hauling activity, at 30 truck visits a day (an average of 3.75 trucks entering the site every hour for 8 hours) every day of the week throughout the year (excluding weekends), would result in an approximately 6 year, 7 month hauling schedule, far beyond the customary duration of site prep activity for development. In this example, the hauling schedule would be accompanied every day by mass-grading of fill material (using heavy grading equipment) equivalent to 360 cubic yards (30 truckloads) of fill across the site. A more expedited hauling schedule of 40 truck visits a day (with an average of 5 truck visits per hour, and the grading out of 480 cubic yards of fill per day) would total nearly 5 years of hauling to the site, again far beyond the customary duration of site prep activity for development.

Hence, the applicant proposes a fill pad that would reasonably require several years to establish, and which would necessitate a multi-year mass movement of fill material to the site, and its deposition on the property. As noted above, site prep activity customarily occurs within a matter of months, seldom beyond a year. In extreme cases, where site development activity takes place over a longer duration, the permit shall be voided absent an extension approval subject to the Director's discretion: Per 151.145(E)(9), "A site development permit shall be issued for a time period of not more than two years and shall expire by limitation. The Planning, Building and Development Director may grant an extension of time, not to exceed one year, if the Planning, Building and Development Director determines, based on information provided by the permit holder, that unusual difficulties have prevented work being started or completed within the

specified time limits." By design, the applicant's fill pad project is reasonably likely to extend far beyond the Ordinance's site development permit duration, in fact likely beyond the time-frame maximum allowed for an extension thereof. Hence, this activity is not considered customary preparatory site development activity. Based on staff's review of its records, it appears that no single equestrian facility has ever been previously approved by the Department in unincorporated Lake County involving this application's amount of fill material, level of dump truck traffic, and anticipated duration of hauling and grading.

To the contrary, within the hauling examples above and other reasonably foreseeable scenarios, the level of hauling activity and grading activity proposed by the applicant is more consistent with an industrial-scale warehouse and freight movement use than it is with ancillary site prep necessary for an equestrian facility. Per Section 151.270(F)(3) of the Lake County Code, *Warehouse and Freight Movement* is characterized as an activity involving the storage or movement of goods, including stockpiling and storage of bulk and/or aggregate materials. The intensity of hauling and grading activity, along with its anticipated duration, is squarely in line with activities carried out within the *Warehouse and Freight Movement* category.

Per public record, Deep Creek Ranch LLC was created in May 2022, one day prior to the new LLC's purchase of the subject property. LLC Manager Kyle Kanzler's address (30846 N. Hwy 12, Volo) is listed on the warranty deed for the subject property. Kyle Kanzler additionally owns and operates Kanzler Construction, also located at 30846 N. Hwy 12, Volo. According to multiple web listings, Kanzler Construction specializes in hauling, excavation and mass grading contractor work. The mass hauling and grading activity proposed for the subject property is more consistent with the volume of materials excavated, hauled and stockpiled by Kanzler Construction in the regular course of its business than with site prep activity customarily accessory to the establishment of an equestrian facility.

Conclusions:

In conclusion, based on the information submitted with Zoning Determination Application #ZON-000858-2023 (narrative description and plan exhibits), it is this Department's position that, while the future equestrian facility itself is classified as a permitted agricultural use, the proposed fill/grade activity does not align with equestrian industry best practices nor is it a necessary component to the establishment of an equestrian facility use. Rather, according to Section 151.270(F)(3) of the Lake County Code, the import and grading of large quantities of fill material is more similar to and more appropriately classified as *Warehouse and freight movement*. Consequently, as *Warehousing and freight movement, not otherwise classified* is not a permitted use in the AG zoning district, per Table 151.111 of the Lake County Code, the proposed hauling and grading activity is not permitted on the subject property.

If you feel that this decision has been made in error, you may appeal this decision. Per Lake County Code Section 151.057(E), applications for Appeals of Administrative Decisions shall be submitted to the Lake County Planning, Building, and Development Department on the form available [here](#). Please note appeals of Administrative Decisions shall be filed within 35 days of the date of the decision being appealed.

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Eric Waggoner, Director
Lake County Department of Planning, Building and Development