



OFFICE OF THE
STATE'S ATTORNEY
LAKE COUNTY, ILLINOIS
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Lake County Zoning Board of Appeals
500 W. Winchester Rd.
Libertyville, IL 60048

RE: Deep Creek Ranch, LLC
Administrative Appeal – 000882-2023

ZBA Members:

This matter comes before the Zoning Board of Appeals on Deep Creek Ranch's administrative appeal of a Zoning Interpretation it received. This memo is submitted in support of the zoning interpretation and the Lake County requests that the interpretation be upheld.

Standard of Review

Pursuant to section Sec. 151.058(G) of the Unified Development Ordinance (UDO) "The Zoning Board of Appeals shall grant the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant."

Background

For this administrative appeal, a review of the background is necessary.

The property involved in this matter is located at 22665 W. Illinois Route 60, Lake County, Illinois (the Site). It consists of 47+ acres and is currently zoned Agricultural.

In September 2022, Mark Rooney, one of the managers of the Deep Creek Ranch, LLC, submitted an application to Lake County Planning, Building and Development (PB&D) for a site development permit. The site development application and documents are provided as County's Group Exhibit 1. The site development permit application depicted fill material to be placed over 27 acres of the Site in depths ranging from 13 to 20 feet across the majority of the fill area. PB&D responded to Mr. Rooney that it was unable to approve the application as the site disturbance of fill across a majority of the property is not an agricultural activity but is more consistent with the Warehousing and Freight Movement zoning category.

Subsequently, Deep Creek Ranch submitted a zoning application determination requesting that an interpretation be provided that the filling and grading as proposed is necessary for the equestrian facility. The zoning application determination is provided as County's Group Exhibit 2.

On April 10, 2023, Eric Waggoner, Director, Planning Building and Development issued a zoning interpretation that the future proposed equestrian use (consisting of two barn/stable buildings, paddock, arena, and office) is an agricultural use; however the proposed filling ranging between 13 and 20 feet across a majority of the fill area, an activity that is estimated to take minimally 5 years to complete, most likely over 6 ½ years, is more consistent with the Warehouse and Freight Movement category of the UDO. County's Group Exhibit 3.

This appeal followed.

Analysis

1. The extent of fill and grading takes the proposed work outside the scope of what is considered permitted site development.

Site development permits are only valid for 2 years. UDO 151.145(9)(a). The Site is 47 acres with the proposed filling and grading to take place over 27 acres. Fill material is being brought in at a depth between 13 and 20 feet across the majority of the fill area – which calculates to **16,633,808 cubic feet of fill** (616,043 cubic yards). A dump truck typically handles about 12 cubic yards of material. That would equate to **51,337** dump trucks bringing material to the property. It is estimated that it will take **over 6 ½ years** to bring this amount of fill material to the site (at a vigorously-paced schedule of 30 dump trucks per day, every day of the year excluding weekends). The amount of fill material proposed – even at this vigorous schedule – is far beyond what is permissible under the UDO for site development under the site development permitting timeline. As such, the zoning interpretation that the fill aspect of the proposed project is a separate use is supported by the UDO.

2. The need for 616,043 cubic yards of fill for an equestrian facility is not supported by the facts.

In light of the above analysis, the next step is to determine whether there would be a need for 27 acres of fill to support an equestrian facility. In making a zoning interpretation, the Director can consult others and review all relevant information and is to look at similar use standards of the UDO, Secs. 151.057, 151.270(B). From the proposed plans, it appears that approximately 23 acres of the site will be used for horse pasture. Information reviewed by the Director supports the conclusion that the extent of fill material brought in will not support horse pastures, is not considered a horse pasture best practice and in fact would be more detrimental than converting current use of crop land to pasture. In addition, fill material is more likely to result in erosion.

Although it is contemplated that some fill may be needed for the barns, paddock, office space, and road access point, this does not support the need for 27 acres of

fill as the proposed structures where these elements of the facility are to be located would occupy a very small area of the overall site. (See County’s Group Exhibit 2 at page 8).

Also of note is the fact that one of the co-owners of Deep Creek Ranch, LLC is Kyle Kanzler. Mr. Kanzler owns Kanzler Construction which is in the business of hauling, excavation and mass grading. The proposed filling and grading activity at the Site is more consistent with this hauling, excavation and mass grading business than for an equestrian facility.

3. Deep Creek Ranch’s statement that there is no filling and grading in the regulatory floodplain is not supported by the record.

In support of its appeal, Deep Creek Ranch states that there will not be filling in the regulatory floodplain and, consequently, no site development permit is required for the filling/grading activity (notwithstanding the fact that Deep Creek Ranch initially submitted a site development permit application to the Department for review). However, Deep Creek Ranch’s statement is most likely not accurate as there are most probably regulatory floodplains on the property that will be filled or graded. The UDO definition of a regulatory floodplain “include: ... (2) any non-riverine area with a surface area of one-fourth acre or more, or with storage volume of three-fourths acre-foot or more when inundated by the base flood.” UDO Sec. 151.271.

Exhibit 2 attached to the Deep Creek Ranch’s appeal application is a plat of survey and topography of the Site. The Site contains several depressional areas. The depressional areas are of such a size that there is a strong probability that they are regulatory floodplain as defined by the UDO. The proposed fill and grading as shown on County’s Group Exhibit 1 at pages 8 - 9 show that Deep Creek Ranch is planning to have fill material placed in these depressional areas.

As the Site probably contains regulatory floodplains it is not exempt from site development permitting even if there is an agricultural use on the property. Deep Creek Ranch has submitted no engineering studies demonstrating otherwise.

4. Deep Creek Ranch’s reading of the site development permit exemption in (C)(3)(c) makes the UDO read inconsistently and statutory interpretation analysis does not support it.

Deep Creek Ranch also asserts that the proposed filling or grading outside of a regulatory floodplain is exempt from site development permitting. The relevant sections state:

- (3) A site development permit shall not be required for any of the following:

* * *

- (b) Gardening, plowing, and similar agricultural practices that do not

involve filling, grading, or construction of levees;
(c) Agricultural practices outside of the regulatory floodplain that involve filling or grading, including but not limited to the construction of levees, terraces, and surface water diversions that are part of a Natural Resource Conservation Service design and approved conservation project;

However, a reading of the whole subsection supports a determination that filling and grading of agricultural property requires such activity to be as permitted by a Natural Resources Conservation Service designed and approved project. Deep Creek Ranch has not provided any information that the filling and grading is part of any such approved project.

To interpret that the Natural Resources Conservation Service project requirement only applies to the latter part of the exemption (i.e., installation of levees, terraces and surface water diversions) would be non-sensical. Reading the section as a whole, (3)(b) provides that agricultural activities that do not involve filing or grading are exempt. If under section (3)(c) *any* activity, including filling and grading without limitation, is exempt, there would be no logical need to separate this provision from section (b). When a regulation is unclear, it is necessary to go back to the originating authority. Here the Watershed Development Ordinance (WDO), by statute 55 ILCS 5/5-1062, sets forth the minimum standards the County is to apply for stormwater management regulation. Under the WDO the relevant language is included in the definition of “development” which is subject to permitting. The WDO states:

“development:

* * *

Development does not include maintenance of existing buildings and facilities such as resurfacing or roadways when the road elevation is not increased, or gardening, plowing, and similar agricultural practices that do not involve filling, grading, or construction of levees. Nor does development include agricultural practices outside of the Regulatory Floodplain involving filling or grading as part of a Natural Resources Conservation Service designed and approved conservation project (i.e. terraces, grass waterways). Additionally, development does not include fence installation, pole placement, drilling, or other minor auxiliary construction activity which does not affect stormwater runoff rates or volumes as long as the development activity is not located in a Regulatory Floodplain, wetland or channel.”

Watershed Development Ordinance, App. A, Definitions.

The interpretation of the site development exemption in the UDO Deep Creek Ranch asserts is broader than the minimum standard allowed by the WDO. As such, it is not enforceable and for any filling or grading for an agricultural use to be exempt from site development it must be part of a Natural Resources Conservation Services approved project.

5. The zoning use interpretation is supported by the information reviewed and should be upheld.

The use interpretation process is to classify uses that are not clearly indicated in the UDO. When making a similar use determination, the Director looks at several factors as set forth in the UDO

at Section 151.270. Some of the relevant factors to this interpretation are the hours of operation, vehicles used in the activity, relative number of vehicle trips generated by the use, whether the activity is likely to be found independent of other uses on the site. UDO 151.270(B)(1).

As determined by the Director, there are estimated to be 51,337 vehicle trips to the Site, which equate to 30 vehicle trips per day daily for a period of 6 years, 7 months (exclusive of weekends). The vehicles involved are heavy dump trucks with the capacity to hold 12 cubic yards of material. Once the fill is brought to the Site, heavy equipment will be needed to move it around the Site on an ongoing basis. As noted above, the amount of time needed to bring the fill material to the Site supports the determination that the fill activity is a separate use than the proposed future equestrian use. As such, the determination that the fill activity at the Site is most like a warehousing/freight movement activity (which also anticipates a large number of heavy or large vehicles exiting and entering a site, operations lasting all day long) is supported by the record and should be upheld.

For the reasons stated above and based upon the evidence to be presented at the hearing, the County respectfully requests that this Zoning Board of Appeals find that the Director did not err in his zoning use interpretation for #ZON-000858-2023, Deep Creek Ranch, LLC, 22665 W IL Route 60, Grayslake, IL; PIN: 10-09-300-034 and to affirm the interpretation.

Respectfully submitted,

County of Lake

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