

110 Old Sud. Rd.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") dated as of December 19, 2006, is entered into by and between the Town of Wayland, a Massachusetts municipal corporation, acting by and through Daniel F. Bennett, its Building Commissioner and Zoning Enforcement ("ZEO") and Lynch Landscape & Tree Service, Inc., a Massachusetts corporation having its principal office at 12 Prospect Street, Upton, Massachusetts 01568 ("Lynch").

WHEREAS, Lynch owns the land with the improvements thereon known and numbered as 110 Old Sudbury Road, Wayland, Massachusetts, in a Single-Residence zoning district and described in a deed dated August 6, 1989 and recorded with the Middlesex South Registry of Deeds in Book 20058, Page 479 ("the Locus");

WHEREAS, the ZEO sent a letter to Lynch on May 15, 2006, in which the ZEO ordered Lynch to cease and desist operating a landscaping and tree service business on the Locus on the grounds that such activities were not permitted in a Single-Residence zoning district under the Town of Wayland's Zoning By-Laws (the "Enforcement Letter");

WHEREAS, Lynch contested the Enforcement Letter by appealing it to the Town's Board of Appeals ("ZBA") pursuant to M.G.L. c. 40A, §§8 and 15;

WHEREAS, the ZBA issued and filed with the Town Clerk a decision affirming the ZEO's order on November 30, 2006 (the "Decision");

WHEREAS, while Lynch disputes the Decision, both Lynch and the ZEO understand and acknowledge the uncertainty and time-consuming nature of litigating the Decision; and

WHEREAS, Lynch and the ZEO desire to settle all matters relating to the Decision by establishing a schedule for the cessation of certain operations and the removal of certain vehicles, equipment and materials from the Locus.

NOW, THEREFORE, for and in consideration of the promises and mutual agreements set forth below, Lynch and the ZEO stipulate and agree as follows:

1. Lynch shall permanently remove the following vehicles, equipment and materials from the Locus before April 1, 2007:

Backhoe (1)
Mulch blower (1)
Chipper (3)
Stump grinder (2)
Lawn trailers (4)
Blowers (10)
Weedwackers (10)
Lawn mowers (13)
Cement mixer (1)
2003 Ford F350 pickup
2004 Ford F350 pickup
2005 F350 pickup
2005 F350 pickup
1998 Chevy topkick dump
Wood (all except 10 cords)
Stone dust (all)
Perk pack (all)
Bark mulch (all except 150 yards)
Bobcats (1)
Caterpillar loader (1)
Dingo (1)
Bobcat trailers (2)
Enclosed trailers (3)
Sanders (2)
1996 1500 pickup
2001 Ford F350 pickup
2002 Ford F350 pickup
1995 2500 pickup
1996 F350 dump
1994 F350 pickup
2002 F350 pickup
2003 Ford F600 dump
2005 F350 dump
1997 F350 dump
1996 Ford F350 pickup
1996 Ford F350 pickup
2006 GMC pickup
2006 GMC pickup
1998 Chevy pickup
1998 Chevy pickup
1997 Chevy 1500 pickup
1990 Chevy pickup
Plows (25)

Boat
Truck body

2. Lynch shall be entitled to keep the following structures, equipment and materials on the Locus indefinitely in connection with its operation of its nursery:

Trees
Shrubs
Plants
Flowers
Loam (20 yards)
Stone (20 yards)
Sand (20 yards)
Bark mulch (150 yards)
Firewood (10 cords to heat green houses)

Collectively, the above materials are hereinafter referred to as the "Nursery Materials."

Pick-up truck (2)
2006 Cabover dump (1)
1998 Freightliner dump (1)
Bobcat (1)
Dingo (1)
Bobcat trailer (1)
Storage trailers (2)
Greenhouses
Tools in green house
Vehicle parts
Equipment parts
Camper

Collectively, the above pieces of equipment are hereinafter referred to as the "Nursery Equipment."

3. Lynch shall permanently cease conducting the following activities including the landscaping and tree service business on the Locus which are unrelated to its operation of its nursery by January 31, 2007:

- a.) Deliveries of materials to the Locus except as provided in paragraph 4;
- b.) Loading/unloading of trucks at the Locus except as provided in paragraph 4;

- c.) Use of the Locus as a staging ground for crew pick up of materials for use at landscaping and tree jobs except as provided in paragraph 4;
- d.) Parking trucks except for the Nursery Equipment in paragraph 2 and the trucks described in paragraph 4; and
- e.) Assembling and dispatching snow plowing equipment.

4. Lynch shall be entitled to continue to conduct the following operations on the Locus in connection with its operation of its nursery:

- a.) No more than two deliveries of Nursery Materials to the Locus by tractor trailers during March and April and unloading incident thereto;
- b.) Other deliveries of Nursery Materials to the Locus by the Nursery Equipment and unloading incident thereto;
- c.) Customer visits to the Locus by appointment only to select Nursery Materials at the Locus and parking incident thereto limited to no more than five (5) cars at any one time;
- d.) Delivery of Nursery Materials from the Locus by the Nursery Equipment and the loading incident thereto;
- e.) Operations described in subparagraphs "a" through "d" above shall be limited to the following hours: 8:00 a.m. to 5:00 p.m. Monday through Saturday;
- f.) Cut and split wood to heat green houses;
- g.) Snowplowing, landscaping and clean-up of the Locus;

- h.) Spotlight use, provided that there is no glare onto adjacent properties; and
- i.) Growing plants, etc. and storing related materials in the Greenhouse.


5. The ZEO may enter upon the Locus at all reasonable times to monitor Lynch's compliance with the terms of this Agreement.

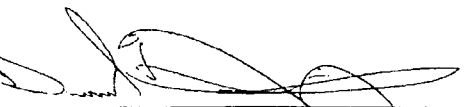
6. The terms of this Agreement shall be enforceable in a civil contempt of court proceeding pursuant to Mass. R. Civ. P. 65.3; provided, however, that the ZEO shall not file any such Complaint for civil contempt unless, 20 days prior to such filing, the ZEO has given Lynch written notice identifying with particularity the alleged violation(s) of this Agreement. Notice shall be by hand, certified mail or facsimile to Lynch with a copy to Lynch's Counsel, Brian C. Levey, Esq., Beveridge & Diamond, P.C., 45 William Street, Wellesley, MA 02481.

7. The terms of this Agreement shall run with the land comprising the Locus and shall be binding on the parties' heirs, successors and assigns.

Executed as a sealed instrument this 19th day of December, 2006.

Lynch Landscape &
Tree Service, Inc.,

By: 
Michael Lynch, President


Daniel F. Bennett,
Building Commissioner and
Zoning Enforcement Officer
for the Town of Wayland