

# The Law Offices of Jessica Clarke, PC

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200 Main St, Wareham, MA 02571 | PHONE: (978)697-5572 | CHartwell@jessicaclarkelaw.com

March 8th, 2023

via Hand and Email

Wareham Zoning Board of Appeals  
54 Marion Road  
Wareham, MA 02571

Re: Updated MGL Chapter 40A §15 Appeal of Building Inspector Notice of Violation

Dear Wareham Zoning Board of Appeals:

This office represents Lynelle Butterfield, Peace for Ponies, and its successor Peace for All Animals, of 12 Great Neck Road, Warcham, MA 02538 (the "Property"). On November 21<sup>st</sup>, 2022, the Building Commissioner sent a Notice of Violation for the Property and ordered Ms. Butterfield and tenants to "Bring the total number of animals on site to three as per the Special Permit dated December 26, 2012 by January 1, 2023." No other violations were noticed. In accordance with MGL Chapter 40A §15, we appealed that Notice of Violation.

During the course of the previous two public hearings, there was a discussion concerning whether the Property had been used for a Veterinary Hospital following the issuance of the Special Permit in 2012. In the 2012 Special Permit application and supporting documents, there is a previously permitted 10' x 16' barn and attached paddock area. At the time of the application, there was considerable confusion as to what zoning district the Property was in (R30 vs MR30) and the types of agricultural uses that were allowed. The Special Permit was sought to eliminate the confusion, but has instead only added to it. As previously stated, it appears that the Special Permit for a Veterinary Hospital was not exercised and is not a necessary or current use.

On February 23<sup>rd</sup>, the day immediately after the last public hearing, the Building Commissioner came onto and inspected the Property again. Following that visit, the Building Commissioner has rescinded all previous Notices of Violation and issued a new Notice of Violation after he also determined that the Property has no Veterinary Hospital, but is, in fact, a Shelter/Rescue. We agree with the Building Commissioner that the property is used as a Shelter/Rescue and we agree that the Property does not have a Veterinary Hospital.

## USE OF THE PROPERTY AS A FARM AND AS A REGISTERED SHELTER/RESCUE

The front portion of the Property contains a single-family home, while the back of the Property is used as a farm and as a shelter/rescue that is registered in the Commonwealth of Massachusetts and is a federally recognized 501(c)(3) charity. In his most recent Notice of Violation, the Building Commissioner has determined that the Property is used as a Shelter/Rescue, but issued a violation because he did not believe that they were registered with

the state due to it not listing in the online directory. We have attached, as **Exhibit 1**, a recent email from the Massachusetts Department of Agricultural Resources confirming that Peace for Ponies is currently registered to operate as a Shelter/Rescue in Massachusetts. In addition, Peace For All Animals has filed its application for a license to operate as a Rescue Organization. It is our intention that once Peace For All Animals is licensed, we will transfer all animals and operations currently under Peace For Ponies to them moving forward. Attached you will find a copy of the IRS Determination of Charity Status for Peace For All Animals as **Exhibit 2**, the Massachusetts Attorney General Certificate of Solicitation for Peace For All Animals as **Exhibit 3**, and the most recent Massachusetts Department of Agricultural Resources, Division of Animal Health Inspection Certificate for Peace For Ponies as **Exhibit 4**.

## AGRICULTURAL USES DEFINED

Agricultural Uses are defined by the Wareham Zoning Bylaws, § 340.1:

### Agricultural Uses

Includes the use of land for agriculture, horticulture, floriculture, or viticulture; and, the use, expansion, or reconstruction of existing structures thereon for the primary purpose of agriculture, horticulture, floriculture, or viticulture. *Wareham Zoning Bylaws, § 340.1*

Massachusetts General Laws Chapter 61A, which deals with the assessment for real estate taxes of agricultural and horticultural land, defines such land in Section 1:

Section 1. Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market. MGL c 61A, § 1.

Agriculture is also referenced in the Massachusetts Zoning Act (MGL c. 40A, § 3) and defined by Massachusetts General Laws Chapter 128, § 1A:

Section 1A: "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market. *MGL c 128, § 1A*

## DISCUSSION

The current uses of the Property as a Farm and as a registered Shelter/Rescue are Agricultural Uses and are allowed by right in the R30 Zoning District of the Town of Wareham, and are also protected Agricultural Uses under Massachusetts state law. "It should be noted that an ordinance or by-law may be more generous to agriculture than what is stated in Section 3 by creating exemptions for parcels of less than 5 acres of non-revenue-producing land." See Massachusetts Department of Agriculture, Agricultural Law Memo 10-04, **Exhibit 5**.

In this case, the Town of Wareham voted again just last year to approve Zoning Bylaws that allow for Agricultural Uses **by right** in the R30 Zoning District for properties under 5 acres, and the uses of the Property as a Farm and a registered Shelter/Rescue are Agricultural Uses.

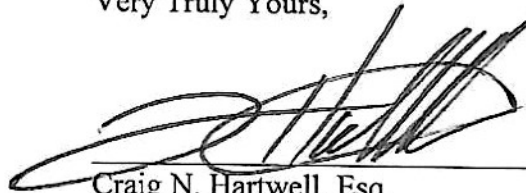
## REQUESTED RELIEF

We request that this Board grant the following relief:

1. To eliminate confusion moving forward, please make a finding that the use of the Property as a farm and/or as a registered shelter/rescue is an Agricultural Use, which is allowed by right specifically at 12 Great Neck Road and, more generally, in the Town of Wareham R30 Zoning District; and
2. Grant our Appeal of the Building Commissioner's 3<sup>rd</sup> Notice of Violation, dated November 21, 2022, including all previous and related Notices;
3. If the Board prefers to not vote on the appeal due to the Building Commissioner rescinding his Notices of Violation, please accept our Request to Withdraw this Appeal, without prejudice; and
4. Any further relief available at the discretion of the Board.

Very Truly Yours,

DATED: March 8<sup>th</sup>, 2023



Craig N. Hartwell, Esq.  
The Law Offices of Jessica Clarke, PC  
PO Box 468  
Wareham, MA 02571  
Phone: 978-697-5572  
Email: [CHartwell@jessicacларkelaw.com](mailto:CHartwell@jessicacларkelaw.com)

# EXHIBIT 1

## Craig Hartwell, Esq.

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**From:** Cabral, Patricia (AGR) <patricia.cabral@state.ma.us>  
**Sent:** Monday, March 6, 2023 6:09 PM  
**To:** Craig Hartwell, Esq.  
**Cc:** Kendra Bond /Director  
**Subject:** Peace for All Animals

Dear Mr. Hartwell,

As per our telephone conversation, Earth Lodge d/b/a Peace for Ponies, 12 Great Neck Road, Wareham, MA, is currently approved to operate as a shelter/rescue in Massachusetts. From 2005 until March 2020 the Massachusetts Shelter and Rescue Program operated under Emergency Order 1-AHO-05. The Order required shelters and rescues to register with the Department. In March 2020 the Shelter and Rescue Regulations 330 CMR 30 replaced the Order. Because of issues created by the pandemic the licensing requirements under 330 CMR 30.03 and 30.04 were postponed. Registered rescues were allowed to continue to operate in accordance with the remainder of the regulations. The Shelter and Rescue Program is currently transitioning from registration to licensing. Kendra Bond has a license application pending for Peace for All Animals, 12 Great Neck Road, Wareham. Peace For All Animals was not approved as a registered rescue under the Emergency Order and is not currently approved to operate. Earth Lodge d/b/a Peace for Ponies has not submitted a shelter/rescue license application to operate under the regulations but will be required to do so if it continues operating as a shelter/rescue.

Please let me know if you have any questions.

Patricia Cabral  
Shelter and Rescue Program Coordinator  
Massachusetts Department of Agricultural Resources  
251 Causeway Street, Suite 500  
Boston, MA 02114  
617-626-1786  
<https://www.mass.gov/animal-shelter-and-rescue-program>

# EXHIBIT 2

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

**MAY 28 2020**

PEACE FOR ALL ANIMALS INC  
C/O KENDRA BOND  
12 GREAT NECK ROAD  
EAST WAREHAM, MA 02538-0000

Employer Identification Number:  
84-2434678  
DLN:  
26053529001160  
Contact Person:  
CUSTOMER SERVICE ID# 31954  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
December 31  
Public Charity Status:  
509(a)(2)  
Form 990/990-EZ/990-N Required:  
Yes  
Effective Date of Exemption:  
October 09, 2019  
Contribution Deductibility:  
Yes  
Addendum Applies:  
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

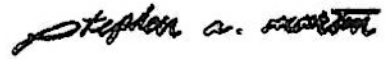
If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to [www.irs.gov/charities](http://www.irs.gov/charities). Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Letter 947

PEACE FOR ALL ANIMALS INC

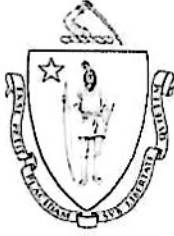
Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Scalet". The signature is written in a cursive, slightly slanted style.

Director, Exempt Organizations  
Rulings and Agreements



# EXHIBIT 3



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

PEACE FOR ALL ANIMALS, INC.  
12 Great Neck Road  
East Wareham, MA 02538

**Certificate for Solicitation**

This certificate has been issued to the organization listed below because it is current in its filings with the Attorney General's Division of Non-Profit Organizations/Public Charities. This registration in no manner constitutes endorsement or approval by the Commonwealth of Massachusetts of the named organization.

Name of organization: PEACE FOR ALL ANIMALS, INC.  
Certificate End Date: 05/15/2023  
Attorney General's Account Number: 067302

Issued By  
The Division of Non-Profit Organizations/Public Charities

# EXHIBIT 4



# The Commonwealth of Massachusetts

## DEPARTMENT OF AGRICULTURAL RESOURCES

### DIVISION OF ANIMAL HEALTH

OWNER'S COPY

Kendra Bard Horse for Ponies  
(Owner's Name) (Farm Name)

12 Great Neck Rd  
(Address where animals are kept - street number and name)

Waltham 02571 508 287 1263  
(Town) (Zip code) (Phone number)

Dealer: Yes  No

	Adult	Young
1. Cattle (Adult = 2 years & over)		
Dairy	_____	_____
Beef	_____	_____
Steers / Oxen	_____	_____
2. Goats (Adult = 1 year & over)	_____	_____
3. Sheep (Adult = 1 year & over)	_____	_____
4. Swine: Breeders	_____	_____
Feeders	<u>1</u>	_____
5. Llamas / Alpacas	_____	_____
6. Equines: Horses / Ponies	_____	_____
Donkeys / Mules	<u>2</u>	<u>2</u>

Stable use: Private  Boarding  Training  Rental  Lessons

7. Poultry: Chickens 6 Turkeys \_\_\_\_\_

Ratites (Ostrich, Emu) \_\_\_\_\_ Waterfowl \_\_\_\_\_ Gamebirds \_\_\_\_\_

8. Rabbits 2

9. Other \_\_\_\_\_

10. Do animals listed appear to be free from contagious disease? yes

11. Are accommodations adequate with reference to situation, cleanliness, light, ventilation and water supply? (explain briefly)

all accommodations exceed expectations

I hereby certify that I have this day inspected these animals and the conditions under which they are kept.

12/26/22  
Date

[Signature]  
Inspector of Animals (signature)

# EXHIBIT 5

**Agricultural Law Memo**

**ALM 10-04**

Revised November 19, 2010

**TOPIC:** Small Plot Farming: Amendments to Chapter 40A, Section 3

**ISSUE:** General Laws Chapter 40A, Section 3 ("Section 3") contains a conditional exemption for agriculture from zoning by-laws or ordinances, at the same time giving cities and towns the conditional power, by express provision in their ordinances and by-laws, to limit this exemption to parcels of stated minimum size. The purpose of this ALM is to explain the parcel size limits that zoning by-laws and ordinances may impose.

Chapter 40A, Section 3, provides a conditional exemption from zoning on parcels of land whose primary purpose is commercial agriculture, whether relating to the use of land or the construction and use of agricultural structures. Section 3 provides that no zoning ordinance or by-law may prohibit, unreasonably regulate, or require a special permit for agricultural uses that satisfy the conditions established or authorized by that section. Those conditions are: (1) whether the primary use of the parcel is "commercial agriculture" within the very broad definition of agriculture laid down in G.L. c. 128, Section 1A; (2) whether the parcel is zoned for agriculture; (3) whether the parcel meets or exceeds the applicable minimum size limit imposed by the ordinance, by-law, or state law; and (4) whether the parcel generates annual revenues at or above \$1,000 per acre.

Prior to a recent amendment of Section 3<sup>1</sup>, the conditional exemption might have been re-stated as follows: *For parcels zoned for agriculture, the exemption shall apply regardless of parcel size. For parcels of any size not zoned for agriculture, the exemption shall still apply, but the city or town by express provision in its ordinance or by-law may limit the availability of the exemption to parcels of five or more acres.*

Blanket prohibitions often found in ordinances and by-laws that prohibit all uses except those expressly allowed do not satisfy the statutory requirement that area limitations on the agricultural exemption be explicit and specific, and thus do not serve to limit the area of parcels in agricultural use. Such blanket provisions, being unlimited as to area, can only be seen as tantamount to an outright prohibition, and thus inconsistent with Section 3. If the town seeks to limit the exemption based upon parcel size, it must expressly adopt such limit. That is, the ordinance or by-law must expressly state that, in areas not zoned for agriculture, agricultural uses shall be subject to the express limits imposed by the ordinance or by-law.

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<sup>1</sup> The amendment to Section 3 creating "small plot farming" was adopted under an outside section of the budget bill and became effective immediately upon the Governor's signing on August 5, 2010. It should also be noted that the amendment to Section 3 does not alter the acreage requirements of other laws, such as use taxation under Chapters 61, 61A and 61B.

Under the "small plot farming" amendment to Section 3, the power of cities and towns to set the minimum area of parcels whose primary use is commercial agriculture has been narrowed with respect to agricultural parcels of two acres or more if the sale of products from the agricultural use generates \$1,000 or more per acre of gross annual sales. For convenience, we shall call a parcel that generates at least \$1,000 or more per acre in gross annual revenue a "revenue-producing" parcel. This amendment requires that we revise our re-statement of the conditional exemption to the following: *For parcels zoned for agriculture, the exemption shall apply to parcels of any size. For parcels of any size not zoned for agriculture, the exemption shall still apply, but the city or town by express provision in its ordinance or by-law may limit the availability of the exemption to parcels of stated minimum size. That minimum may not exceed 5 acres generally; but such minimum shall not apply to parcels of 2 or more acres that are revenue producing.*

While under the small plot farming amendment of Section 3 area limits imposed in the ordinance or by-law may continue to apply to any parcel in agricultural use generally, by operation of state law they shall no longer apply to any parcel that is both revenue-producing and 2 or more acres in area.

It should be noted that an ordinance or by-law may be more generous to agriculture than what is stated in Section 3 by creating exemptions for parcels of less than 5 acres of non-revenue-producing land or parcels of less than 2 acres of revenue-producing land. A by-law might also establish lower revenue thresholds, such as a minimum parcel size of 2 acres or more that generates more than \$500 per acre; but for convenience, our analysis below will make reference to 5 acres and 2 acres and gross annual revenue of \$1,000 or more per acre.

Now let's apply the re-stated general exemption with attention to the four factors identified in the first paragraph:

Let "A" mean "allowed," let "P" mean "prohibited," and let "SP" mean "special permit." The 6 rows are hypothetical parcel sizes. The 4 columns illustrate how parcels of each of the 6 sizes may or may not qualify for the statutory exemption after the small plot farming amendment. It should be remembered that where no express area limitation is imposed in the zoning ordinance or by-law, commercial agriculture benefits from the exemption regardless of parcel size.

Parcel Size (acres)	[A] Zoned for Agriculture	[B] By-Law prohibits all uses other than those expressly permitted	[C] Revenue-Producing	[D] Non-Revenue Producing
5+	A	A	A	A
5	A	A	A	A
4	A	A	A	P / SP
3	A	A	A	P / SP
2	A	A	A	P / SP
1	A	A	P / SP	P / SP

The following are hypothetical illustrations of how the conditional exemption might apply.

Situation 1: The parcel is 1 acre of revenue-producing land but is located in an area in which agriculture is expressly allowed. The exemption applies because the parcel is “zoned for agriculture.” [Column A]

Situation 2: Consider two non-revenue-producing parcels, one 5 acres and the other 3 acres, and both are in areas not zoned for agriculture. Assume that the zoning by-law limits the area of parcels not zoned for agriculture to 5 acres or more. The five-acre parcel enjoys the exemption of Section 3 regardless of the level of revenue it produces. The three-acre parcel does not enjoy the exemption, and a by-law may prohibit or may require a special permit for agricultural uses. [Columns C and D]

Situation 3: Now take the three-acre parcel of land, and assume that it generates \$10,000 in annual revenues and is located in an area not zoned for agriculture. Again, assume the by-law limit the exemption of Section 3 to parcels of 5 acres or more in areas not zoned for agriculture (this may be the case with zoning by-laws adopted prior to the small plot farming amendment). In this case, while the parcel size is less than 5 acres, it is greater than 2 acres and, since its revenue amounts to \$3,333 per acre, it also meets the \$1,000 revenue-production requirement. Since, as explained above, Section 3 allows an exemption for parcels 2 acres or more that are revenue-producing, a five-acre zoning by-law limit would unlawfully restrict a revenue-producing parcel of 2 or more acres. The five-acre limit will not apply to this parcel. [Column C]

Situation 4: Next, consider a three-acre parcel of land that generates \$10,000 in annual revenues and is located in an area not zoned for agriculture. The by-law, however, provides the Section 3 exemptions for parcels of 2 acres or more that generate more than \$1,000 per acre. In this case, since the parcel is 2 acres or more and generates \$3,333 per acre, the parcel would receive the exemption. If only \$2,000 were generated, then the exemption of Section 3 would not apply since the per-acre revenue is \$667 which is less than \$1,000. [Columns C and D]

Situation 5: Now consider a parcel of 1 acre that produces no revenue and is not in an area zoned for agriculture. As in situation 4 above, however, the by-law provides the Section 3 exemptions to parcels for 2 acres or more that generate \$1,000 or more of revenue. The one-acre parcel meets neither the parcel size requirement nor the revenue requirement and would therefore be ineligible for the exemptions. Even if the parcel generated \$10,000 of revenue, it would not meet the parcel size requirement and again would be ineligible for the exemptions. [Column C]

Situation 6: Finally, the parcel size requirements and the revenue requirements could be lower than those identified in the statute. For example, the five-acre minimum parcel size in situation 2 could be set at 3 acres with no revenue requirement. Such a by-law limit would extend the exemption of Section 3 to the three-acre parcel. Similarly, the by-law limits in Situation 4 could establish a one-acre minimum parcel size and \$500 per acre revenue requirement. This would extend the exemptions to the one-acre parcel that generates \$10,000 in revenue.



## Chapter 240 of the Acts of 2010

**SECTION 79.** Section 3 of chapter 40A of the General Laws is hereby amended by inserting after the word "more", in line 25, as so appearing, the following words: or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars.

### **Amended Section 3 of Chapter 40A (inserting text in bold):**

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more **or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars** in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises. (Emphasis added.)