

ARTHUR G. SEYMOUR, JR.  
ROBERT L. KAHN  
REGGIE E. KEATON  
DONALD D. HOWELL  
DEBRA L. FULTON  
MICHAEL W. EWELL  
JOHN M. LAWHORN  
JAMES E. WAGNER  
BEVERLY D. NELMS  
MARY ELIZABETH MADDOX  
BENJAMIN C. MULLINS  
RICHARD T. SCRUGHAM, JR.  
MATTHEW A. GROSSMAN  
SHARON POTTER  
KEVIN A. DEAN  
TAYLOR D. FORRESTER

LAW OFFICES  
**FRANTZ, MCCONNELL & SEYMOUR LLP**  
ESTABLISHED 1992

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KNOXVILLE, TENNESSEE 37901  
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FACSIMILE: 865-637-5249  
WEB SITE: [WWW.FMSLLP.COM](http://WWW.FMSLLP.COM)

OF COUNSEL:  
FRANCIS A. CAIN  
IMOGENE A. KING

September 11, 2013

**METROPOLITAN PLANNING COMMISSION**  
Suite 403, City-County Building  
400 Main Avenue  
Knoxville, TN 37902

Re: Agenda Item No. 28 – James McClain

Dear Metropolitan Planning Commissioners:

In support of the above-captioned rezoning application and to support a change in the Northwest County Sector Plan adopted in 2003, I would submit the following:

1. Changes in conditions - Lovell Road is in the process of being four-laned, and will be four-laned in front of the McClain Nursery at 2214 Lovell Road within the next several years.
2. Obvious error or omission in plan - Just to the northeast of the property is the West Knox Utility District, which has its office and shops and truck parking at the site. This property is zoned CB.
3. Obvious error or omission in plan - Knox County and the State of Tennessee for many years have recognized this nursery as a legal commercial business.

To that end, I enclose herewith the following:

- A. Certificate of Occupancy issued by Knox County on March 23, 1998;
- B. Plant Dealer Certificate issued by the State of Tennessee in 2011;
- C. A Retail Agricultural Seed License issued by the State of Tennessee in 2010;
- D. Business License and Gross Sales Receipt issued by the Knox County Court Clerk for 2010; and
- E. Construction Permit issued by Knox County in 1997 recognizing this location as a commercial use and the type of occupancy as business.

I enclose herewith photographs of the operation.

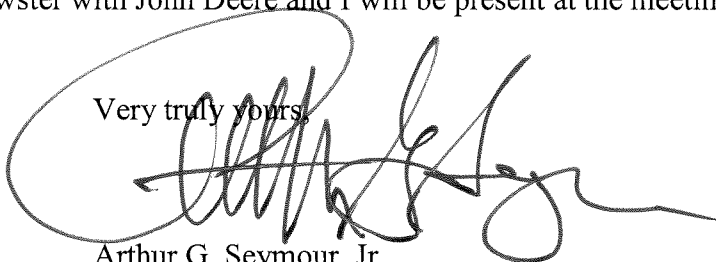
The rezoning would simply recognize the existence of a nursery business which has been permitted by Knox County for many years and will not adversely affect any part of the County, nor the surrounding homes.

The applicant is simply asking the Planning Commission to recognize an existing business that has been permitted to operate for many years.

Also enclosed is my argument to the BZA (which I lost) regarding this being a permitted use in the Agricultural Zone.

Mr. McClain, Mr. Brewster with John Deere and I will be present at the meeting tomorrow to discuss this.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Arthur G. Seymour, Jr.', is written over the closing 'Very truly yours,'. The signature is fluid and cursive, with a large loop at the end.

Arthur G. Seymour, Jr.  
FRANTZ, McCONNELL & SEYMOUR, LLP

AGSJ:lbb  
Enc.

S:\WDOX\CLIENTS\5241\0000001\CORRESPO\01054174.DOC

# CERTIFICATE OF OCCUPANCY

Knox County, Tennessee  
Issued by the Department of Code Administration and Inspection

Permit #: 45965

Zone: AG

Project: McGinnis Farms Office Building

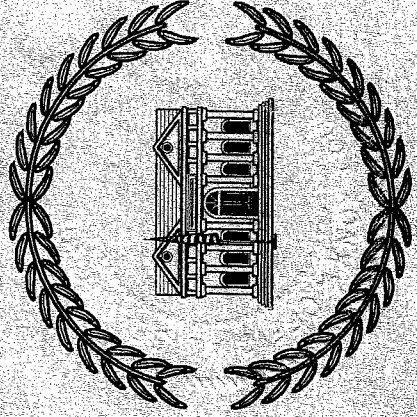
Project Address: 2214 Lovell Road

Owner: McGinnis Farms

Contractor: Owens Construction

Date: March 23, 1998

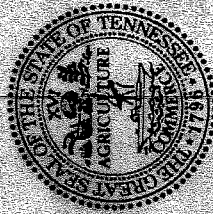
This Certificate issued pursuant to the requirements of Section A103.9.1 of the Southern Building Code Certifying that at the time of issuance this structure was in compliance with the various ordinances of the County regulating building construction or use.



*Roy C. Braden*  
Chief Building Official



# PLANT DEALER CERTIFICATE



STATE OF TENNESSEE  
DEPARTMENT OF AGRICULTURE  
REGULATORY SERVICES - NASHVILLE, TENNESSEE 37204

The UNDERSIGNED HEREBY CERTIFIES that the stock belonging to the individual or firm whose name appears hereon, is hereby authorized to re-ship such nursery stock and other plants or plant propagating material, purchased from sources in Tennessee and other States as is received under valid Nursery Inspection Certificate of Tennessee or other State or origin, provided said stock otherwise complies with the State of Tennessee rules and regulations.

Cert # 1165

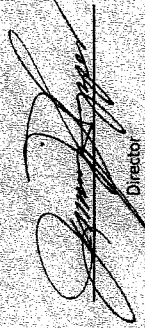


This certificate expires September 30, 2011  
*unless sooner revoked*

JOHN DEERE LANDSCAPES # 196  
MIKE GRIFFITH  
2200 LOVELL ROAD  
KNOXVILLE, TN 37932

As Required by: TCA 43-6-101  
Date Issued: Wednesday, September 1, 2010  
Fee Paid: \$ 200.00  
Late Fee Paid: \$ 0.00

Issued to  
JOHN DEERE LANDSCAPES  
ATTN: KAY LIGHT, REG. AFFAIRS  
1385 EAST 36TH ST.  
CLEVELAND, OH 44114

  
Director

AG-0127-03

Must be posted in a conspicuous place

Document #



RETAIL AGRICULTURE SEED LICENSE  
STATE OF TENNESSEE  
DEPARTMENT OF AGRICULTURE  
REGULATORY SERVICES  
NASHVILLE, TN. 37204

Issued for:

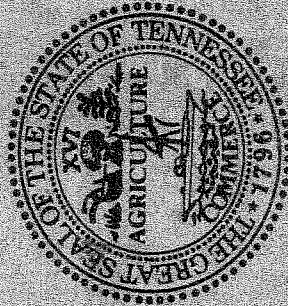
Permit# 31-33519-33521

2010-11

JOHN DEERE LANDSCAPES, INC.  
ATTN: KAY LICHT, EXT. 2218  
1385 EAST 36TH ST.  
CLEVELAND, OH 44114-4114

JOHN DEERE LANDSCAPES #196  
2200 LOVELL ROAD  
KNOXVILLE, TN 37932

The above entity is authorized to conduct business within the State of Tennessee conditioned on the faithful observance of the Laws, Rules, and Regulations governing such.



As Required by: ICA 43-10-118  
Date Issued: 06/17/2010  
Expiration Date: 06/30/2011  
Amt. Paid: 10.00  
066830

*[Signature]*  
Division Director

*[Signature]*  
Commissioner

Post Conspicuously

**FOSTER D ARNETT JR  
KNOX COUNTY CLERK**

PO BOX 1566  
300 MAIN AVE. ROOM 226  
KNOXVILLE, TN 37901

LICENSE  
**0231962**

MINIMUM BUSINESS LICENSE AND GROSS SALES RECEIPT, NOT A BILL

196

Mailing

Location

56109 JOHN DEERE LANDSCAPES, INC.  
650 STEPHENSON HWY  
TROY, MI 48083

JOHN DEERE LANDSCAPES, INC.  
2200 LOVELL RD  
KNOXVILLE, TN 37932

JOHN DEERE INC

LOCAL ACCOUNT NUMBER 56109  
STATE ACCOUNT NUMBER 165238604  
TRANSACTION NUMBER \_\_\_\_\_  
CLASS 1B  
SALES TAX NUMBER 103643265

ISSUE DATE 03/04/11  
TAX PERIOD 01/01/2010 - 12/31/2010  
EXPIRATION DATE 12/31/2011

  
DEPUTY CLERK SIGNATURE DRW WK29 Drawer:100 Site:1

-- POST AT LOCATION OF BUSINESS --  
IF BUSINESS CLOSES, MOVES, OR CHANGES OWNERS, NOTIFY THIS OFFICE

DETACH THIS PORTION FOR CONFIDENTIAL FILE

**FOSTER D ARNETT JR, KNOX COUNTY CLERK**

LICENSE  
**0231962**

MINIMUM BUSINESS LICENSE AND GROSS SALES RECEIPT, NOT A BILL

Arthur Seymour  
919-0035

637-5249

CONSTRUCTION PERMIT - KNOX COUNTY

PERMIT NO: 45965 APPLICATION DATE: Sep 3, 1997 INT: DEH  
RECORDED: Sep 18, 1997 FINALED: Feb 6, 1998

REMARK:  
USE CLASSIFICATION: COMMERCIAL TYPE OF OCCUPANCY: BUSINESS  
TYPE PERMIT: 57 DESCRIPTION: OFFICE BUILDING UNITS:  
CLTM: 104 GROUP: PARCEL: 168 LOT#: ZONING: AG  
LOTSIZE: DWELLINGS PER PARCEL: FLOODPLAIN APP'D:

PROJECT NAME: MCGINNIS FARMS PADD: 2214  
PROD: LOVELL RD.  
SUBDIVISION:  
CONTACT PERSON: ERNIE OWENS DAYTIME PHONE: 523-1181

OWNNAME: MCGINNIS FARMS OWNPHN: SAME:  
OWNRD: LOVELL RD. OADD: 2200  
OWNERS CITY/STATE: KNOXVILLE, TN.

ARCHITECT/ENG: HOWARD WARE ARCH LIC NO: 10481  
ARCH ADDRESS: CUSTIS DR.  
ARCH CITY/STATE: KNOXVILLE, TN. 37920 ARCH PHONE: 573-5623  
CONNAME: OWENS CONSTRUCTION CONT LIC NO: 14196  
CONROD: N.FOURTH CONADD: 748  
CONT CITY/STATE: KNOXVILLE, TN. 37917 CURRENT BUSINESS LIC#:  
CONT PHONE: 523-1181 CONTACT PERSON: ERNIE  
WORKMAN'S COMP SUBMITTED:

PLUMBER: PLUMB LIC NO:  
PLUMB PHONE:

MECHANICAL: MECH LIC NO:  
MECH ADDRESS:  
MECH CITY/STATE:  
MECH PHONE:

RECORDED SURVEY: TYPE CONSTRUCTION: METAL  
SQUARE FT: 4000 HEIGHT: 1 BASEMENT: NO HEATING:  
SANITATION: SEWER MASONRY FIREPLACE:  
FRONT SB: 50 LSIDE: 35 RSIDE: 35 REAR: 35

VARIANCES GRANTED BY BZA: DATE:  
CONST. STAN APPS: DATE: COMMIS: DATE:  
PRE-APPROVED PLANS: PLANS DATE: PERMIT NO.:

ESTIMATED COST: \$100,000.00 REINSPECTION FEES DUE: \$30.00  
BLDG. FEE: \$366.25 1ST LETTER: Mar 23, 1998  
INSPECTION FEE: 2ND LETTER:  
PLANS REVIEW: \$50.00 3RD LETTER:  
TOTAL FEES: \$416.25 DATE REINSP PAID: Apr 13, 1998

CO SENT: Mar 23, 1998 INITIALS: PC FBCO: REC'D FBCO:

TYPE OF CO SENT: LETTERS NEEDED:

REMARKS:

GAS PERMIT INFORMATION SECTION

UNIT1: BTUS1: 1NO:  
UNIT2: BTUS2: 2NO:  
UNIT3: BTUS3: 3NO:  
UNIT4: BTUS4: 4NO:

Knox County  
CONSTRUCTION PERMIT

Get a copy  
OKC 10  
45965

DATE: Sep 3, 1997 DEH.

Department of Code Administration & Inspection  
Phone: 215-2325, City/County Building

45965

PERMIT NO.

45965

PROJECT NAME: MCGINNIS FARMS

PERMIT TYPE: OFFICE BUILDING

JOB ADDRESS: 2214 LOVELL RD. SUBDIVISION:

MAP: 104 GROUP: PARCEL: 168 LOT#: ZONING: AG

OWNER: MCGINNIS FARMS ADDRESS: 2200. LOVELL RD. KNOXVILLE, TN. PHONE:

ARCH/ENG: HOWARD WARE ADDRESS: CUSTIS DR. KNOXVILLE, TN. 37920 PHONE: 573-5623

CONTRACTOR: OWENS CONSTRUCTION ADDRESS: 748 N. FOURTH, KNOXVILLE, TN. 37917 PHONE: 523-1181

CONTRACTOR'S LICENSE # 14196 CONTACT: ERNIE OWENS PHONE: 523-1181

PLUMBING: PHONE:

MECHANICAL: ADDRESS: PHONE:

LOT SIZE: FLOOD PLAIN: STORIES: 1 BASEMENT: NO S/F: 4000 DWELLINGS ON PARCEL:

BOARD OF ZONING: DATE:

PRE-APPROVED PLANS: DATED: PERMIT#:

REMARKS:

ESTIMATED COST: 100,000.00

FRONT SETBACK: 50

BUILDING FEE:

L. SIDE SETBACK: 35

INSPECTION FEE:

R. SIDE SETBACK: 35

PLANS REVIEW FEE:

REAR SETBACK: 35

TOTALS FEES: \$0.00 416.25

INSPECTION REMARKS

1ST INSPECTION

2ND INSPECTION

FINAL

OK Slab Plumbing 10-13-97 RD ①

OK Slab WW 10-16-97 ②

OK with 4999  
FOP & Rndy letter  
& revision approval.  
JF RB

Ref Final JRB 1/21/98 (6) (50)  
Cancel Final 11/14/98

ENGINEERING REVIEW DATE

BUILDING REVIEW DATE

FIRE BUREAU REVIEW DATE

- NOTES
1. It is the responsibility of the owner/contractor to telephone the Code Administration office for all required inspections.
  2. The building shall not be occupied without a Certificate of Occupancy.
  3. Building permit expires if construction has not begun within six months of issuance.
  4. Applicable codes are:
 

|  |                                      |
|--|--------------------------------------|
| 1991 SBCC Standard Building Codes      | SEWER                                |
| 1991 SBCC Fire Prevention Code         | METAL                                |
| 1991 SBCC NFPA - 101: Life Safety Code | 1992 CABO 1 & 2 Family Dwelling Code |

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and resolutions governing this type of work will be complied with whether specified herein or not. The granting does not presume to give authority to violate or cancel the provisions of any other State or Local law regulating construction or the performance of construction.

Signature of Owner/Contractor

Date

No. 3056 P. 2

Aug. 10, 2011 8:29AM Knox County Records Management

MAR 23 1998





COMMERCIAL PERMIT NO: 45965

NAME: Own Const / McGinnis Farm

DATE: 3 Feb 98

LOCATION: 2214 Lowell Rd

O.K.  REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- Occupied before final approval  
- NO approved plans on site

- completed everything required for reinspection except the plans on site (approved set)

INSPECTOR: M. Wicker SHEET: 7



COMMERCIAL PERMIT NO: 45965

NAME: McGinnis Farms

DATE: 2-6-98

LOCATION: 2214 Lowell Rd

O.K.  REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

Pending approval of fire inspectors

INSPECTOR: R. Ayers SHEET: 8

COMMERCIAL PERMIT NO:

45965

NAME:

McGinnis Farms

DATE:

1-16-98

LOCATION:

2214 Lovell Rd

O.K.

REJECT

Final



THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- 1) Install disconnect switch for furnace above office area
- 2) Add hangers on gas line - every 6 ft. max spacing.

Reinspect on Final

INSPECTOR:

R. R. Rye

SHEET:

5



COMMERCIAL PERMIT NO:

45965

NAME:

Owen Const

DATE:

7/21/98

LOCATION:

McGinnis Farms

O.K.

REJECT

Final

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

- 1) Need letter from plumber stating plumbing has been tested. Drains & vent
- 2) Need letter from Engineer/Arch accepting fiber concrete in place of 6x6 wire.
- 3) Need splash blocks on get water away from Bldg
- 4) Need permanent power

INSPECTOR:

J. R. Rye

SHEET:

6

COMMERCIAL PERMIT NO: 45965

NAME: McGinnis Farms

DATE: 12-24-97

LOCATION: 2214 Lovell Road

O.K. Framing & Plumbing  REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

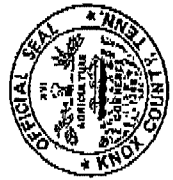
1) Submit plans revisions on offices being rearranged.  
2) No test on PVC drain. Must retest & submit letter.

\* O.K. pending Fire Bureau approval & plan revision approval of letter.

INSPECTOR: W. Williams

3

SHEET:



GAS & BOILER INSPECTIONS OFFICE  
Final Approval  
GAS EQUIPMENT & BOILER INSPECTION

TO: K.U.B. GAS DEPARTMENT  
Owner/Occupant McGinnis Farms  
Address 2214 Lovell Rd.

Contractor Carroll  
Permit Number 45965

The following gas equipment has been inspected and approved:

|              |             |        |          |
|--------------|-------------|--------|----------|
| 1.           | Furnace     | Amana  | 92,000   |
|              | (Unit)      | (Make) | (B.T.U.) |
| 2.           | Unit Heater | Reznor | 50,000   |
|              | (Unit)      | (Make) | (B.T.U.) |
| 3.           | Unit Heater | Reznor | 50,000   |
|              | (Unit)      | (Make) | (B.T.U.) |
| 4.           |             |        | 200,000  |
|              | (Unit)      | (Make) | (B.T.U.) |
| 5.           |             |        | 200,000  |
|              | (Unit)      | (Make) | (B.T.U.) |
| Total B.T.U. |             |        | 592,000  |

DATE 1-16-98 BY R. A. [Signature] Inspector



4

COMMERCIAL PERMIT NO: 45965

NAME: McGinnis Farms

DATE: 10-13-97

LOCATION: 2214 Lovell Rd

X O.K. Slab plumb.  REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

Slab plumbing

Need Engineers letter on Footing



COMMERCIAL PERMIT NO: 45965

NAME: McGinnis Farms

DATE: 10-16-97

LOCATION: 2214 Lovell Road

X O.K. Slab  REJECT

THIS FACILITY MUST BE INSPECTED AS DIRECTED BY BOTH THE KNOX COUNTY BUILDING INSPECTION DEPARTMENT AND THE KNOX COUNTY FIRE PREVENTION BUREAU.

Note: Will use Fiberglass mesh instead of 6x6 wire mesh.



INSPECTOR: Buddy Dumb

SHEET: 0

INSPECTOR: W.W. Williams

SHEET: 6





Howard R. Ware, Jr.

Post Office Box 9719

~~6009 John Hall Road~~

Knoxville, Tennessee 37940

Architect

Telephone 423-573-5623

15 October 1997

Owens Construction Company, Inc.  
748 N. 4th Avenue  
Knoxville, TN 37917

Re: McGinnis Farms project  
2200 Lovell Road  
Knoxville, Tennessee

To Whom It May Concern:

The soil bearing for the wall footings is solid, undisturbed, and satisfactory. The basic building loads will be transferred the column footings which are also on solid bearing. All footings have steel reinforcing rods. The column footings are as per the plans and the wall footings have 2 #4's continuous.

If I may be of further service, please call me.

Very truly yours,

*Howard R. Ware, Jr.*  
Howard R. Ware, Jr.

HRWJr/rw

8380100

FERSNER PLBG. 7 7

01/28/98 00:18

P01

FERSNER PLUMBING COMPANY  
7907 BLACKS FERRY RD.  
KNOXVILLE, TN 37931  
(423) 938-0100

January 28, 1998

Roy Braden  
Inspections Office  
400 Main St.  
Room 547K  
Knoxville, TN 37902

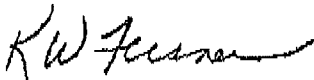
*Bldg. Permit # 45965*

Re: McGinnis Farms

Mr. Braden:

This letter is to inform you that the above slab plumbing work at McGinnis Farms has been installed and tested according to National Plumbing Code. If there are any further questions please feel free to contact our office.

Thank you,



K. W. Fersner, Owner

RECEIVED  
JAN 28 1998  
By \_\_\_\_\_

ERNIE OWENS



PHONE 523-1181  
FAX: 523-256

748 16 4th Avenue — Knoxville, TN 37917

DATE: 1/28/98

TO: John Bird

FROM: Lone Hix

SUBJECT: Permit # 45965

NUMBER OF PAGES TO FOLLOW: \_\_\_\_\_

MESSAGE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

P. 01



Howard R. Ware, Jr.

Post Office Box 9719

5829 John Hall Road

Knoxville, Tennessee 37940

Architect

Telephone 615-573-5623

23 January 1998

Owens Construction Company, Inc.  
748 N. 4th Avenue  
Knoxville, TN 37917

Re: Building for McGinnis Farms  
2200 Lovell Road  
Knoxville, Tennessee

*Blds. Permit # 45965*

To Whom It May Concern:

Fibermesh reinforcing for the concrete slab was specified on the drawings for this project. It provides better reinforcing for concrete slabs than wire mesh.

Because of the need for OSB liner panels in the repair and storage area, the building shall be reclassified from Type IV to Type VI, unprotected, and unspinklered. This also meets the requirements of Table 400, 1991 SBC.

If I may be of further service, please call me.

Very truly yours,

*Howard R. Ware, Jr.*  
Howard R. Ware, Jr.

HRWJr/rw



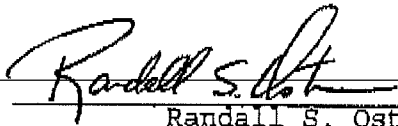
KNOX COUNTY FIRE PREVENTION BUREAU  
CERTIFICATE OF COMPLETION  
FOR  
FIRE PROTECTION FEATURES  
AND INSPECTION

To: Knox County Building Official  
Subject: Certificate of Completion

This Certificate of Completion is issued for Permit Number 45965, Project Name MCGINNIS FARMS located at 2214 LOVELL RD.. This certifies that the facility listed hereon has complied with the Fire Prevention Bureau Plans Review and Fire Inspection process, the Standard Fire Prevention Code, Standard Building Code, and NFPA Life Safety Code 101. This certificate of completion is only applicable to the fire protection features of the facility.

This certificate was issued on Feb 6, 1998, by CHIP WIDENER

This facility shall not be occupied until the Certificate of Occupancy is issued by the Building Official of Knox County.

  
\_\_\_\_\_  
Randall S. Osterman  
Knox County Fire Marshal

certcom.crt

ARTHUR G. SEYMOUR, JR.  
FRANCIS A. CAIN  
ROBERT L. KAHN  
REGGIE E. KEATON  
DONALD D. HOWELL  
DEBRA L. FULTON  
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MATTHEW A. GROSSMAN  
SHARON POTTER  
KEVIN A. DEAN

LAW OFFICES  
**FRANTZ, MCCONNELL & SEYMOUR LLP**  
ESTABLISHED 1902

Email: [cjseymour@fmsllp.com](mailto:cjseymour@fmsllp.com)  
Direct Fax: 865-541-4612

550 W. MAIN STREET  
SUITE 500  
P.O. Box 39  
KNOXVILLE, TENNESSEE 37901  
TELEPHONE: 865-546-9321  
FACSIMILE: 865-637-5249  
WEB SITE: [WWW.FMSLLP.COM](http://WWW.FMSLLP.COM)

October 27, 2009

Knox County Board of Zoning and Appeals  
c/o Mr. Grant Rosenberg  
400 Main Street, Suite 345  
Knoxville TN 37902

and

Robert C. McConkey, Esq.  
Knox County Law Department  
400 Main Street  
Suite 612, City County Building  
Knoxville TN 37902

Re: 1049 4a. Request of James L. McClain for variance of the Knox County Board of Zoning Appeals to appeal the decision of Knox County Zoning Inspectors to cease work and to be allowed to operate a nursery and irrigation distribution business in AG zone. Property is located at 2214 Lovell Rod. CLT Map 104, Parcel 168. Property is zoned AG. (Commission District 06)

## I. QUESTION

Do the current uses of the property leased by John Deere Landscapes, located at the Southeast side of Lovell Rd. and the northeast side of Hickey Rd., ("the property") meet the statutory definitions of "Agriculture" and "Agricultural Use"? If so, does Tenn. Code Ann. § 13-7-114 prohibit Knox County from using its zoning authority to regulate John Deere's operations?

The answer based upon Tennessee Law is clearly yes.

## II. DISCUSSION

### A. Factual Background:

This property is presently zoned as STPA (Stream Protection Area)/ A (Agricultural) and its sector plan is LDR (Low Density Residential). The property, leased by John Deere Landscapes, was developed as a wholesale/retail nursery that also incidentally sells irrigation and landscaping supplies. The business has expanded to include the storing and distribution of

nursery stock, grown off-site and kept on the property, for subsequent distribution or sale on a commercial basis.

The property has been used for the above-described purposes since 1996. The property continued its storage and sale of nursery stock until the present. Grant Rosenberg, with Knox County, issued a Notice of Violation based upon his opinion that the storage of nursery-stock, grown off site but kept on the property for subsequent sale and distribution on a commercial basis, exceeded the property's Agricultural Zoning under the Knox County Ordinance.

### **B. Legal Background:**

Local governments, like Knox County, lack the inherent power to regulate or control the use of private property within their boundaries. Their power is derived solely from the State of Tennessee through specific delegations of the General Assembly. As zoning laws are in derogation of the common law and operate to deprive property owners a use of their property that would otherwise be lawful, these regulations and ordinances are to be strictly construed by the courts in favor of a property owners' right to the free use of their property. *Tennessee Mfr's Housing v. Metropolitan Gov't of Nashville*, 798 S.W.2d 254 (Tenn. Ct. App. 1990).

Pursuant to Article 5, Section 5.22.02(C) of the Knox County Zoning Ordinance "Farming, including all types of agriculture and horticulture" shall be permitted in property in the Agriculture zone. The Knox County Zoning Ordinance does not define the term "Agriculture." As the Knox County Zoning Ordinance does not define "Agriculture", we must look to the enabling statutes to determine how the legislature has defined "Agriculture" or "Agricultural Uses" and to determine to what extent, if any, a county may affect, limit or control the agricultural uses of land. The Knox County Zoning Ordinance cannot be more restrictive than the grant of authority to regulate land use authorized by the Tennessee Legislature.

Tenn. Code Ann. § 1-3-105 is the definition section of the Tennessee Code. As mandated by statute, the definitions in this part determine the definition of all terms used in the Tennessee code, and any local ordinances enacted pursuant to the Tennessee code, unless the context otherwise requires. Pursuant to Tenn. Code Ann. § 1-3-105:

(2)(A) "Agriculture" means:

- ~~(i) The land, buildings, and machinery used in the commercial production of farm products and nursery stock;~~
- ~~(ii) The activity carried on in connection with the commercial production of farm products and nursery stock; and~~
- (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock;

(B) As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and

grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food, feed, fiber or fur;

(C) **As used in this definition of agriculture, the term “nursery stock” means all trees, shrubs, or other plants, or parts of such trees shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis;**

*Id.* (Emphasis Supplied).

Having defined Agriculture, the question becomes to what extent a municipality may regulate agriculture or agricultural uses with the zoning authority as it is granted by Title 13 of the Tennessee Code. This answer to this question is found in Title 13.

**13-7-114. Construction – Building Permits – Agricultural use of land.** – This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided that such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.

*Id.* (Italics Supplied). Quite simply, as mandated by 13-7-114, if the activities on the property meet the Code’s definition of agriculture, then Knox County cannot limit its agricultural activities nor redefine what constitutes “agriculture” or “agricultural uses” for land located in Knox County.

### **C. Application of Law to Facts:**

Having already determined that, as a matter of law, Knox County is prohibited from limiting or affecting in any way or controlling the agricultural uses of land, the threshold question is do the current uses of the property meet the statutory definitions of “Agriculture” and “Agricultural Use”?

As will be set forth in more detail at the upcoming BZA meeting, the primary use of the property is the storage, maintenance, and distribution and/or sale of nursery stock. Trees (conifers and both deciduous fruit bearing and deciduous but non-fruit bearing variety), shrubs, flowers, and flower bulbs constitute the majority of business on the property accounting for approximately 39% to 42% of the annual sales on the property. As photographs of the property reveal, over 50% of the property’s acreage is used in the storing and maintenance of this nursery stock. Agricultural supplies such as compost, pine straw, wheat straw, plant seed, plant fertilizer, landscaping constitute another 32% of the annual sales on the property. Irrigation equipment used in farming/landscaping operations constitutes another 24% of annual sales while the remaining 2% is miscellaneous retail of farming hand tools etc.



Knox County Codes Enforcement's rationale for determining that the property was not being used for agricultural purposes is based on the fact that the plants are not grown on site but are rather brought to the site to be stored and maintained until they can be sold. This rationale does not have any basis in Knox County's Code and contradicts the Tennessee Code's definition of nursery stock. As stated above, nursery stock includes plants "grown or kept for, or capable of, propagation, distribution or sale on a commercial basis." All of the plants on the property are being kept for, or are capable of, propagation, distribution or sale on a commercial basis. That is the basis of the business on the property. There is no requirement in Tennessee's Code that the plants be grown "on site" although the plants continue to grow while they are maintained, pruned, watered, feed and fertilized, as needed, while awaiting sale. The use of the property meets the very definition of nursery stock and agriculture and is in conformity with State Law and by necessity with the Knox County Zoning Ordinance.

### CONCLUSION

Pursuant to Tenn. Code Ann. § 1-3-105(2) subsections (A) to (C), the uses of the property meet the statutory definitions of Agriculture. In Tennessee, a county is prohibited from using its zoning authority to regulate buildings "used for agricultural purposes" as well as "the agricultural uses of land." Tenn. Code Ann. § 13-7-114. As defined by statute, the activities on the property are "agricultural uses." As such, Knox County, and the Knox County BZA, must grant the appeal and overturn the Code's Enforcements determination that the property is not being used for agricultural uses.

Sincerely,

Arthur G. Seymour, Jr.  
FRANTZ, McCONNELL & SEYMOUR, LLP

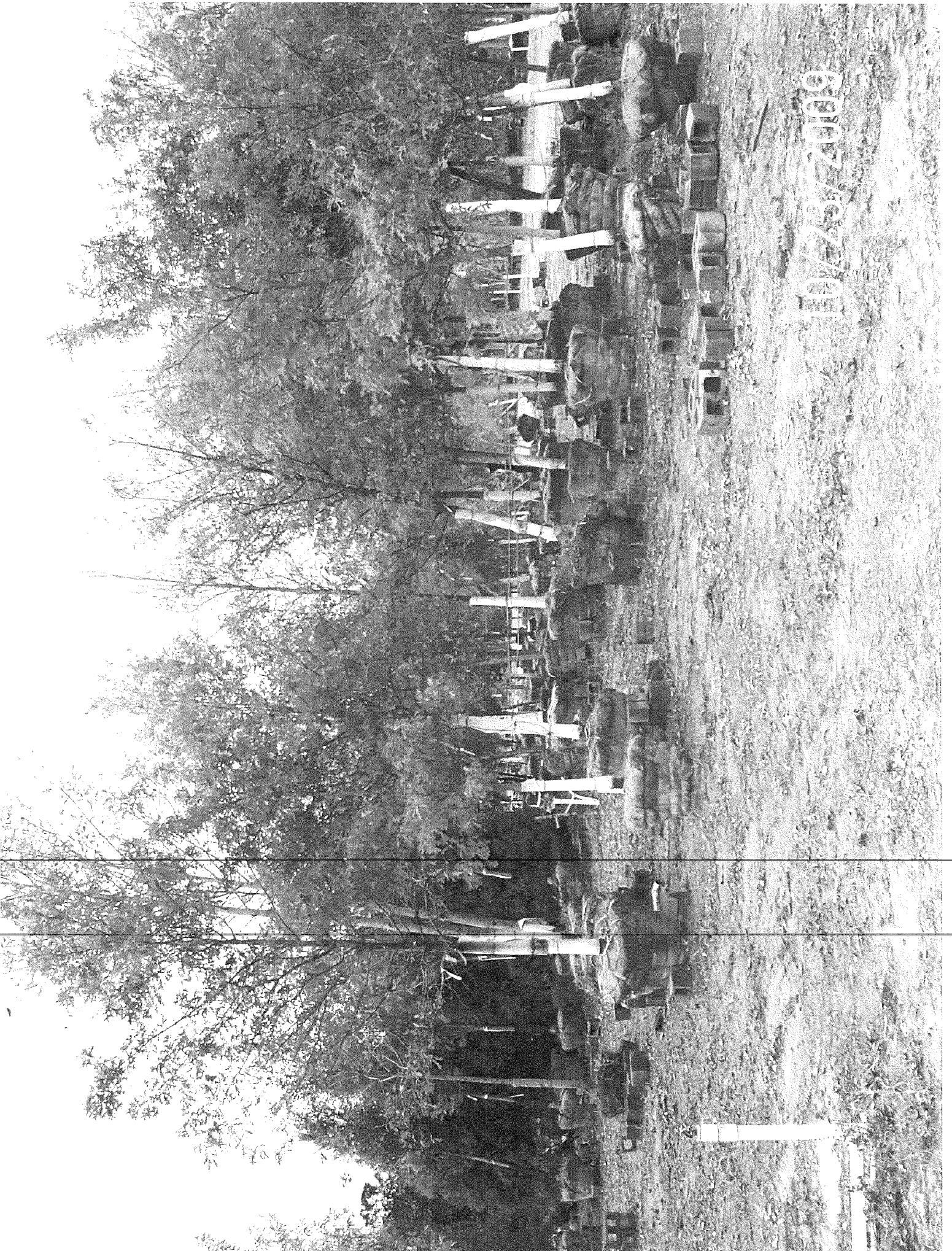
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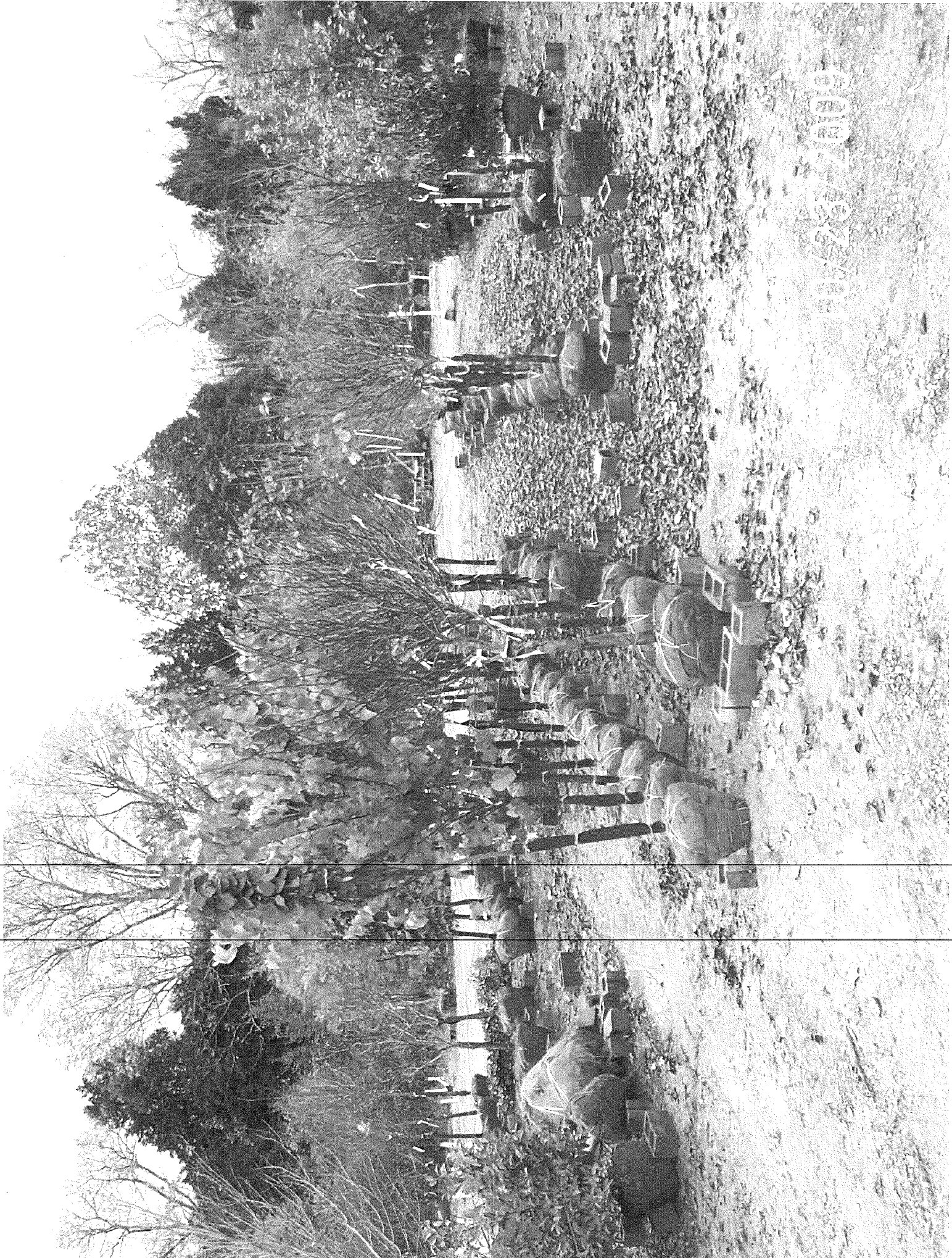
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