



Town of Duxbury

Conservation Commission

Executive Session Minutes of March 10, 2020

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Approved 12/1/2021
Voted to release 12/7/2021 **REDACTED**

TOWN CLERK
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DUXBURY, MASS.

The Executive Session began at 7:00 pm during the Tuesday, March 10, 2020 Conservation Commission meeting that began at 7:00 PM in the Mural Room at the Duxbury Town Hall.

Members Present: Corey Wisneski; Sam Butcher; Tom Gill; Mickey McGonagle; Scott Zoltowski

Members Absent: Robb D'Ambruoso; Holly Morris

Staff Present: Joe Grady; Conservation Administrator; Susan Ossoff, Administrative Assistant

Nicole Costanzo of KP Law was present to discuss the Hornbeam Road Enforcement situation. Nicole Costanzo said the Commission issued an Enforcement Order (EO) because the Russell's removed trees and shrubs on their property and the Lloyd's property. The EO was appealed. The Lloyds filed a motion to intervene. The Russell's said the Lloyds will not let them on the property and they believe the enforcement should be directed at the Lloyds. This case was scheduled in court for November but there have been 2 continuances and the next court date is in April. In the meantime, there is an attempt to negotiate a settlement.

The Lloyds sued the Russells separately with claims of trespassing. The Russells have claimed adverse possession of part of the Lloyd's property. The Lloyds claim the Russells trespassed on their property and removed trees, and are asking for treble damages.

There have been meetings with the parties, and although a settlement agreement has been discussed, it is not yet finalized. The Lloyds said that the Russells can do work on their property to remediate the damage. A proposed agreement to judgement was drafted and a red-lined version was returned from the Russells with judgement in favor of the Russells and saying the Commission improperly issued the Enforcement Order.

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If a settlement agreement is reached, to enforce it will require filing in court. An option is to proceed with litigation. There would be a hearing on the Lloyd's request to intervene, and a hearing on the motion to strike documents from the Administrative Record. Nicole Costanzo has requested that these hearings be held together for both cost savings and for speed. If a motion for judgement is filed on the pleadings, a judge will issue Orders. The Court's Order can be appealed.

Mickey McGonagle suggested pursuing action against the Lloyds and let them take action against the Russells. Scott Zoltowski asked if there is precedent for a Town issuing an Enforcement Order against a non-property owner.

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Tom Gill asked about arbitration; Nicole Costanzo said they could all agree to mediation. Joe Grady said he is concerned that with a settlement agreement, it will be necessary to get the court involved to ensure compliance.

Scott Zoltowski suggested withdrawing the Enforcement Order from the Russells. The goal is to get the wetlands restored and it is better to avoid court. Issue the EO on the Lloyds and let them go after the Russells. Mickey McGonagle concurred with this approach, let the Lloyd's remediate the area and let them sue the Russells for damages.

Nicole Costanzo said the Enforcement Orders were issued to both parties and the Russell's did not appeal the EO. Scott Zoltowski encouraged an agreement be reached between the Russell's and Lloyds; he is concerned about losing the case in court and this will avoid costly litigation.

Nicole Costanzo suggested going back to the Russells and inform them the Commission will not agree that they did anything wrong but encourage a settlement agreement be reached and the court cases dismissed. If there is a lack of compliance with the agreement, then the Commission can file against them in court at a later time. The next court hearing is scheduled for April 4, she recommends setting a deadline for a settlement agreement of April 1.

Scott Zoltowski made a motion to leave Executive Session and reconvene in Open Session; this motion was seconded by Sam Butcher. Roll call vote: Sam Butcher, yes; Tom Gill, yes; Mickey McGonagle, yes; Corey Wisneski, yes; Scott Zoltowski, yes.