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January 18, 2022

Via Email and Overnight Mail

Donald Gentile, Chair
Lynnfield Conservation Commission
55 Summer Street
Lynnfield, MA 01940

RE: Bryan Last, 0 and 36 Elmwood Road

Dear Chairman Gentile and Commission:

As you are aware, our office represents Bryan Last, owner of the properties located at 0 and 36 Elmwood Road, which are on opposite sides of the end of Elmwood Road abutting Pillings Pond. We are writing to follow up on questions that the Commission has had regarding Mr. Last's ownership of the land located along the Pond at the termination of Elmwood Road.

While we understand the Commission's questions as to property ownership, we want the Commission to be aware that it is well-settled in Massachusetts law that local boards, such as a Conservation Commission, do not have the legal ability to make determinations on ownership issues or property law issues. See *Tindley v. D.E.O.E.*, 10 Mass. App. Ct. 623 (1980). The Massachusetts Appeals Court in *Tindley* found that it "would also be anomalous for the Legislature to impose the responsibility of adjudicating property interests – traditionally left to the courts – on the harbormaster, whose powers are narrow... or on the DEQE [former DEP], whose area of expertise is far removed from such adjudication." *Id.* at 625. The Appeals Court further found that the DEP or a local board may only engage in an inquiry as to whether there is a "colorable" claim of title, which means "nothing more than disputed." *Id.* at 626-27, n. 5. This question typically arises where there is a dispute as to whether an applicant has the authority to conduct the work. *Matter of Town of Scituate – DPW*, Docket No. 2000-064, Recommended Final Decision (January 17, 2002), Final Decision (May 8, 2003). Therefore, as Mr. Last clearly has a colorable claim of title, this Commission is without legal authority to determine property rights/ownership issues. Accordingly, the Notice of Intent should be considered on its merits.

With all of the above said, we understand that you may still have questions regarding the ownership issues from a practical standpoint. In order to resolve this and move forward with the substantive permitting issues, we request that the Commission confirm by way of a written opinion

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from Town Counsel what the Commission has already been told on the ownership issue. We think this would provide a resolution on this issue, and allow the permitting process to move forward.

As stated in our previous correspondence dated August 12, 2021, it is our opinion that Bryan Last owns the land at issue at the termination of Elmwood Road. To clarify, Mr. Last owns the properties located at 0 and 36 Elmwood Road by way of a Quitclaim Deed recorded on April 29, 2016, which was attached to our prior correspondence. These properties are on opposite sides of the end of Elmwood Road abutting Pillings Pond. Both 0 and 36 Elmwood Road were conveyed with the benefit and rights of way over the street – Elmwood Road. As indicated, Elmwood Road is a private road in the area between 0 and 36 Elmwood Road, and therefore pursuant to the Derelict Fee Statute, M.G.L. c.183, §58, an owner on either side of a private road owns to the centerline. Therefore, since Mr. Last owns the properties on both sides of Elmwood Road abutting the Pond, he therefore owns the entirety of the Road in the center of his properties. Further, as the Road terminates at Pilling Pond per the assessors map, Mr. Last also owns the property located at the end of the road abutting the Pond.

We further request that a hearing be continued until February 15, 2022.

Please provide us with a timeline, if possible, on this process of obtaining a legal opinion. Thank you.

Sincerely yours,



Glenn A. Wood

cc: Bryan Last