

To: Attorney Richard A. Nylén Jr.
From: Paul Martindale, Chair, LCC
Date: July 16, 2019

Subject: Your letter of July 12, 2019 concerning Boston Clear Water Company (BCW), enforcement order.

Dear Attorney Nylén,

A. In response to your letter of July 12, 2019 arguing that the enforcement order against BCW be rescinded it may be helpful to clear up several misunderstandings and misinterpretations in your text.

1. The placement of granite benches in the 25 foot no-disturb zone between the spring house and the pump house is not the focus of the enforcement order. It could certainly be argued that the fixing of a permanent structure into the ground with a foundation or footings constitutes a "structure" according to the Lynnfield by-law. Since these granite benches have not been permanently fixed into place and have no footings it could be argued that they are not "structures" per se according to the Lynnfield by-law. The placement of these benches in the 25 no-disturb buffer zone is at the very least ill advised but they are not the reason for the enforcement order.
2. The placement of the religious cross at the top of the hill is not at issue in this enforcement order.

B. The Lynnfield Conservation Commission found BCW in violation of the Wetlands Protection Act (WPA) under 310 CMR 10.08 for the following:

1. Working without an Order of Conditions (OOC) in the 25 foot no-disturb buffer zone adjacent to the spring house. While the clearing of weeds from around the foundation of the spring house will ultimately be permitted by the final OOC issued for BCW's NOI this is not yet agreed or in effect. Therefore, this activity is done in violation.
2. Working without an Order of Conditions (OOC) in the 100 foot extended no-disturb buffer zone on the hillside and leaving a large area cleared of understory vegetation, removal of tree limbs and opening of the canopy, and leaving the area in an altered and unstable condition without any erosion controls. The clearing and disturbing of this area constitutes the alteration of a no-disturb buffer zone (100 foot extended).

C. As for the assertion that commission members have no authority to enter the property without permission in order to monitor compliance we would argue the contrary. While it is true that commissions have no overriding authority to enter private property without permission or a warrant the Supreme Court has somewhat relaxed restrictions on administrative inspections of commercial property where owner's expectations of privacy are weaker than in their homes. See *New York v.*

Burger, 482 U.S. 691 (1987). This case was made a standard by a published decision of the Appeals Court, Commonwealth v. Trembley, 48 Mass. App. Ct. 454 (2000) related to inspections of premises used for licensed occupations such as junkyards. We would also draw your attention to the standard WPA form #5, Order of Conditions, Section C, General Conditions Under the Massachusetts Wetlands protection Act, page 6, condition #15:

"The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission for that evaluation." (wpaform5.doc rev 6/16/2015, accessed 7/16/2019, copy attached)

In light of the above condition the LCC is still waiting for BCW to furnish us with the video surveillance recordings on the dates of the clearing work done on the hillside as previously requested by Town Counsel Tom Mullen. This data is deemed necessary for the LCC to evaluate the work done in violation.

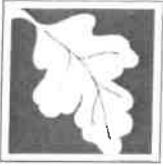
D. In order for BCW to bring its site into compliance with the enforcement order the following steps need to be taken:

1. The debris piles along the ridge of the hillside must be removed from the site.
2. Erosion controls along the ridge of the hillside must be installed until such time as the altered area becomes re-vegetated and stable. This area is uphill of a public water supply source, Willis Brook, which also may be considered as a perennial stream.
3. Erosion control must be installed at the bottom of the path to control the silt and runoff coming down the hill.
4. The cleared area must be restored of its understory. Until such time as the vegetation is re-established mulch, hay or some other material should be spread out on all bare soil areas.

Sincerely,



Paul Martindale
LCC, Chair



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP

MassDEP File # _____

eDEP Transaction # _____

City/Town _____

C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number _____"
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.