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1918-1987

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May 26, 2020

Harvard Conservation Commission  
By Email

Gentlemen and Ladies,

As you know, I represent Ms. Debra Murray who purchased the property at 98 Shaker Street, Harvard, Massachusetts. That property is shown as Lot 2 on a plan of land recorded with Worcester District Registry of Deeds in Plan Book 475, Plan 44. On or about October 30, 2015, Lot 1 shown on that plan was deeded to the Town of Harvard, acting by and through its Conservation Commission. That deed contains a grant to the Town of a "nonexclusive 10 foot wide easement for access to and egress from Shaker Road to the premises...". There was also a provision in that deed for the reservation of a portion of that right to way to allow the Grantor (the predecessor's the Schwaab's, "Schwaab reserved easement") to cross the Conservation land at the most northeasterly corner to access Lot 2. The reserved Schwaab easement was to expire upon the sale of the Schwaab property.

Some months ago, we met with the Conservation Commission to request and were granted a waiver of that requirement to extinguish the reserved Schwaab easement because of many factors, including:

(A) There were historic rock walls and mature trees which would be destroyed in relocating the easement.

(B) The use of the reserved Schwaab easement by Ms. Murray, a relatively reclusive individual was not burdening the reserved Schwaab easement area in any way;

© The town was enjoying the right to mow and hay areas north of the easement between Lot 1 and the easement without the benefit of any easement rights, to keep the tick population down, notwithstanding that there was no deeded right to do so; and

(D) The two parties were seeking mutually cooperative coexistence.

As a result of that meeting, we agreed that the reserved Schwaab easement could remain and not be extinguished in exchange for Ms. Murray's agreement that the Town could continue to have a "right but not an obligation to maintain the field from the edge of driveway easement to the Conservation area and that Ms. Murray would release and indemnify the Town from any liability

for her use of the reserved Schwaab easement”.

I was to draft a document and I apologize that it was not yet done.

In a recent turn of events, however, right after the Covid outbreak, Ms. Murray placed a chain across the 10' wide driveway easement granted to the town.

In response to that action, Ms. Murray received a letter from the Conservation Commission questioning that action. It was not intended to exacerbate any earlier discussions and agreement we had with the Commission. This letter is to explain her perceived need for that action.

First and foremost, Ms. Murray is an immuno-compromised individual who has heightened anxiety issues coupled with extreme asthma. The worldwide Corona virus pandemic caused her great panic over the possibility that visitors and others would congregate along the driveway and in the conservation area contrary to the express requirement of the State to close conservation areas, parks and other places of gathering. She expected that you would have taken the initiative to prevent access by the public, and posted the driveway as inaccessible during this quarantine period, just as you did with the Fruitlands overlook. When you didn't Ms. Murray felt the need to protect herself.

Furthermore, in a more general sense, there are other overriding reasons why Ms. Murray objects to the public use by vehicular traffic of this 10' easement driveway from Shaker Road.

1. The easement was granted to the Town, not to its inhabitants or to the general public. Expanding the easement area to include vehicular use by the general public is not warranted by the language of the easement. It is also not a permissible use within the meaning of Chapter 40, Section 8C, which speaks to the Commission acquiring lands for “conservation and passive recreation use”.
2. The conservation area that this easement accesses does not connect to any trail system or have a parking area for use by vehicular access. It does not provide views in any direction. It was never intended to be used as a destination for vehicular traffic by the general public. It was intended by the commission and the neighbors to be “open space” preserved from having another home built. It has been preserved and maintained by the Commission as a wildlife corridor and a sanctuary for flora and fauna. The Commission mows or hays it, and in fact, they have extended the mowing all the way to the edge of easement, trespassing on Ms. Murray's lot to do so to keep it as a sanctuary as a wildlife corridor and a natural setting, and to keep the tick population down, which is why we had negotiations over consenting to this maintenance. Ms. Murray has never objected to this extension of the mowing. I even believe that some of the area near the street was granted by the commission to an individual to harvest the syrup from the trees along Shaker Road. Ms. Murray has not objected to any trespass on her land for that purpose. In all respects, the major value of this “field” is for a visual open vista from historic Shaker Road and for any value it might have as a hay field and for harvesting syrup crops. Without adequate parking and accessibility, the only reason any of the public would have to drive on the easement area would be for off road motorized vehicles and for nefarious purposes such as drinking, smoking, and or

spooning, none of which are “conservation purposes” within the meaning of Chapter 40, Section 8C. (The times that individuals were seen driving to the top of this driveway, they actually parked on the easement area and sat drinking wine on Mr. Murray’s property).

3. The 10' easement driveway clearly was not designed for a volume of traffic, especially ordinary motor vehicle traffic. During the winter last year, the driveway from the Conservation area to the street was so treacherous that on most winter days the driveway was completely frozen with deep ruts and impassible. On the few days of thawing when Ms. Murray herself could exit the driveway, her four wheel drive vehicle actually slid out of control nearly hitting the tree at the first 90 degree right turn, and failing to stop at the street. On as many occasions, she found it difficult to ascend the driveway to return to her home. If any of the public, especially a young, inexperienced driver, was to try to navigate that gravel driveway this past winter, the result could have been disastrous, or even fatal, creating great liability for the town and to Ms. Murray. The easement was not designed or improved for any volume of vehicular traffic by the general public. The easement area has insufficient drainage and grade to be safe for vehicular passage to and from the conservation area and the street.

4. After experiencing a near forced confinement due to the driveway condition this past winter, Ms. Murray arranged to have the ruts in the driveway filled and compacted. Within days of completing that very expensive work, the driveway was again immediately rutted and destroyed by what appears to be 4-wheel drive tire tracks and truck tires. Continued use of the easement by uncontrolled vehicular traffic with no particular destination is completely unwarranted and unacceptable and overburdensome.

5. The risk to Ms. Murray’s safety is great if the public at large is allowed and encouraged to “hang out” in this Conservation area. Again, there is no reason to be there in vehicles except to drink, smoke and loiter. Ms. Murray is a single woman living alone in a secluded spot. There is no clear boundary definition between the conservation land and her private property. There is no way to prevent access and trespass onto and around her home. If there was a catastrophic or evil intended trespass, she would not be able to summons help fast enough for it to be effective.

Ms. Murray has no intention of preventing the Conservation Commission and the Town acting through the Conservation Commission from accessing the Conservation Easement by vehicular traffic for conservation purposes for maintenance of the easement area, as stated in the grant of easement. To that end she is agreeable to sharing a key with your Commission or your designee, or reverting to a coded lock, shared by your commission and her. She also has no objection to use of the easement area for passive recreation on foot by the general public should the neighbors and others wish to enjoy the quiet and solace. However, she has great objection to the motorized recreational vehicular use of her easement area and to the truck and vehicular usage by the general public as it is overburdening the express grant, as well as the intent and purpose of the easement, and because it is patently unsafe for use by the general public.

I look forward to meeting with you next month for addressing these concerns. Please note I have a scheduled Planning Board Zoom meeting at 7:30 and would appreciate any other time for Harvard. Thank you.

Very truly yours,

SHERILL R. GOULD

SRG/J