

Dear Maria: I continue to reserve all rights of my client Cheryl Eppel, and that was the reason for the recent filing of the Third-Party complaint in regards to the Enforcement Order, as the 60 day deadline to file was about to expire and yet Cheryl's team of experts had been barred by the force of law issued by the Doanes themselves from entering in the Area of Concerns and performing a study and mapping and otherwise documenting in full the conditions there. Preserving a sense of those conditions is essential for both WTCC purposes but also for the lawsuit filed by the Doanes. If the WTCC were to allow planting, despite the fact that we've just had frosts in West Tisbury over the prior nights, the Doanes will use that as an excuse for the rush to plant to try to avoid the penalty they would surely endure called "spoliation of evidence." The doctrine of law called "spoliation" is one in which a party, without due excuse, destroys evidence of the conditions that pertain to a claim for relief and damages.

Here, the Doanes have been pushing and pushing for an ORDER from the WTCC to direct them to plant in the area of concern BEFORE the Eppel environmental team can document and study and map the conditions. We had hoped that the WTCC might understand there was a reason for the rush by the Doanes.

Wisely the WTCC has taken time to carefully view the area and understand what excess planting was involved in the Doanes' self-guided proposal (combined with blocking any real meaningful study and submittal by the Eppels) and asked that the plan be dialed back. Given that there has been a frost and the planting season has likely ended, my client asks that the WTCC further consider simply deferring any decision until one can see what re-grows in the spring and establishes through the summer of 2021, with the plan then to review the conditions and then determine what remediation plan would then be needed and then decided what plants if any would be needed for planting late in September 2022.

If I understood the sentiment of the WTCC from the last meeting, it makes ultimate sense to defer any planting from now until a future date to be determined from further study and review next summer.

Further, as the Third Party Complaint filed (but not yet served) indicates, my client's immediate concerns are that the area not be disturbed but that time be permitted for her team to gain unfettered entry for purposes of a reasonable study. It appears, but I await further guidance from the environmental team, that it may be too late, given the frost, to gather all of the information one would prefer to have to properly document the area. However, entry at any stage to document what one can then would be preferred to any "permission" to disturb the conditions with even a 20 bush planting plan. Roots, stumps, and the soil itself will all be disturbed thus forever changing the conditions of the evidence of what had been cut (and not simply be based on the "belief" of the Doane experts who have never produced any mapping showing what had been removed and exactly from what locations, but who have simply relied on the "belief" as to what had been removed).

In reviewing the West Tisbury website, there is no meeting on any calendar for the WTCC for November 9, 2021. There is no agenda, and no listing of any submittals from Ox Bow Associates. It has become evident that with the recent frosts in West Tisbury, that the planting season likely has ended. Until our team has a further submittal from the Doanes promised by Mr. Smyers, there is little else we can comment upon, except for the new information as to the planting season having ended with the recent frosts and prospects for more, and urging the WTCC to hold off until after the growing season in 2022 has had a chance to take hold and establish new re-growth.

Best, Ben

Benjamin Lambert Hall, Jr., Esq.
Attorney-At-Law
PO Box 5155 - 45 Main Street
Edgartown, MA 02539-5155
508-627-5900

PLEASE TAKE NOTE that this transmission should not, on its own, be construed as an acceptance of electronic communication by the sender as a due means of communication nor shall any documents sent to the sender hereof be deemed as duly served for purposes of the matter under consideration. Electronic communication has repeatedly not proven to be a reliable means of communication and the sender rejects any notion that communications or documents transmitted can be deemed as received, regardless of any attached electronic mail receipt attached to the transmission, without an affirmative written acknowledgement of actual receipt.

NOTICE: This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. This electronic mail transmission and any files attached hereto may constitute an attorney-client communication or attorney work product which are both privileged at law. This electronic mail is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail in error, please delete it from your system without copying it, and notify the sender by reply e-mail so that the address record may be corrected.

IRS CIRCULAR 230: U.S. Treasury Regulations require a statement that, to the extent this communication contains tax advice, it is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

In compliance with the Standards for the Protection of Personal Information for Residents of the Commonwealth (a/k/a Data Security Regulations) found at 201 C.M.R. 17.00 et. seq., it is the policy of this office to encrypt certain electronic mail if we first make the determination that it contains protected information. We will encrypt these emails. We do not, however, encrypt routine emails and cannot guarantee the security of email communications. Any questions regarding this policy should be addressed to Benjamin L. Hall, Jr. in accordance with the written information security plan maintained by this office.

Kindly note that this message, on its own, does not create an attorney-client relationship. The statements made herein are not to be construed as representations or warranties of any kind. No attorney/client relationship is created unless and until a signed retainer agreement along with the retainer fee is received by my office. Therefore, at this time, unless the relationship has been formed by way of a signed retainer agreement and retainer fee, I cannot accept professional responsibility on this matter. If you are seeking professional advice on this matter, it is recommended you hire an attorney who can give professional advice on the matter.

DISCLAIMER REGARDING ELECTRONIC TRANSACTIONS: If this communication relates to the negotiation of a contract or agreement, any so-called electronic transaction or electronic signature statutes shall not be deemed to apply to this communication; contract formation in this matter shall occur only upon the mutual delivery or exchange of manually-affixed original signatures on original documents. Emails sent or received shall neither constitute acceptance of conducting transactions via electronic means nor shall create a binding agreement nor shall they be construed to be an offer or an acceptance of an offer in the absence of a writing

physically subscribed by handwritten signature by the duly authorized signatory of the principal. Communications made herein shall be construed only be for the purposes of negotiating a resolution of a dispute and thus shall be inadmissible. The author is merely acting as a conduit for communicating and has no authority to bind the principal absent express language. Any agreement regarding a modification of a written agreement or resolution of a dispute must be in writing and physically subscribed by hand written signature by the duly authorized signatory of the principal. Nothing shall be otherwise inferred from any course of conduct or communications between the parties.

WARNING: FRAUD ALERT – IF YOU RECEIVE AN E-MAIL FROM THIS OFFICE REQUESTING THAT YOU WIRE, OR OTHERWISE TRANSFER FUNDS, OR SEND FINANCIAL INFORMATION, YOU MUST CONFIRM THE REQUEST AND ANY CORRESPONDING INSTRUCTIONS VIA TELEPHONE BEFORE YOU INITIATE ANY TRANSFER. HACKERS ARE TARGETING E-MAILS OF ATTORNEYS, REAL ESTATE AGENTS AND OTHER BUSINESSES IN AN ATTEMPT TO INITIATE FRAUDULENT WIRE REQUESTS. DO NOT SEND ANY FUNDS WITHOUT FIRST CONFIRMING WITH OUR OFFICE BY TELEPHONE.

On 11/03/2021 5:13 PM Conservation Commission <concomm@westtisbury-ma.gov> wrote:

Gentlemen,

If you are planning to submit paperwork for the November 9 meeting, please do so by the end of the day tomorrow November 4 if at all possible. The office is closed on Fridays and I do not check email.

I ask again that you not send me emails and paperwork at the last minute on Tuesday. I don't have time to keep checking email and my board may or may not see anything you submit on Tuesday before the meeting. Town Hall closes at 4:30 and nothing can be posted to the agenda. I have no access to the town website for that purpose.

Thank you for your cooperation.

Maria McFarland

Board Administrator

West Tisbury Conservation Commission

508-696-6404