

OLD NORTH BRIDGE

## TOWN OF CONCORD

TOWN MANAGER'S OFFICE  
22 MONUMENT SQUARE - P.O. BOX 535  
CONCORD, MASSACHUSETTS 01742

TELEPHONE (978) 318-3000  
FAX (978) 318-3002

CHRISTOPHER WHELAN, TOWN MANAGER

April 12, 2017

**VIA E-MAIL AND HAND DELIVERY**

The Concord Journal and Acton Beacon  
150 Baker Av. Ext., Suite 101  
Concord, MA 01742

Re: Concord's Appeal of the Acton Board of Selectmen's Decision on Nagog Pond Water Treatment Facility Special Permits

Dear Editor:

The Town of Concord is compelled to seek judicial review of the March 29, 2017 Decision because of conditions that are beyond the authority of the Acton Board of Selectmen, are contrary to law, and are not supported by the evidence. Concord did not come to this decision lightly, and it still looks forward to collaborating with Acton on common issues and challenges. Unfortunately, there are fundamental flaws in the Decision that Concord can not leave unchallenged.

Among several items, the Board failed to acknowledge Concord's rights under the Water Management Act ("WMA"). The WMA established a state-wide mechanism for managing ground and surface water resources "as a single hydrological system" ensuring "balance among competing water withdrawals and uses." The WMA empowered the MassDEP to implement a system of registrations and permits preempting local control of water withdrawals. Consistent with the Water Management Act, absent a state of emergency, a registrant can continue to withdraw water at the rate established in its registration – forever.

Like Acton, Concord has a variety of registered and permitted water resources. Concord's withdrawal from Nagog Pond is registered. Concord's registration rights to withdraw water from Nagog Pond cannot be invalidated by a zoning decision. The Board acknowledged that Concord held a WMA registration, but it ignored the legal significance of that distinction in a web of conditions designed to limit Concord's right to withdraw water from Nagog Pond.

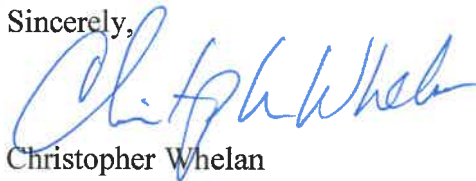
These conditions exceed the authority of the Board, and Concord was forced to seek judicial review to restore its WMA rights.

As Acton experienced with the Acton Water District's construction of the South Acton Filtration Plant, large scale infrastructure projects are costly endeavors. Concord's project to replace the over 100-year old intake pipe and to construct the new Water Treatment Plant will cost approximately \$13.9 million dollars. In addition to the considerable cost, time is of the essence for this project. If the aging intake pipe is not replaced soon, it will likely fail creating a significant public health issue for Concord and Acton water customers.

Despite the importance of this water supply project, Acton used the special permit process to extract unilateral concessions. While many of the conditions in the permit are presented as "opportunities" for the parties to conduct negotiations on a variety of issues, the Decision includes enforcement provisions that empower the Board to revoke Concord's special permits if Acton in its sole discretion decides that Concord has not conducted negotiations in "good faith." In some conditions, like the mandate to forge a regional water supply agreement, Acton predicted that negotiation could take over 5 years. Concord cannot appropriate the necessary investment for this project with these conditions that introduce unacceptable risk and uncertainty.

Concord is optimistic that the Court will eliminate the arbitrary and capricious conditions that exceed the authority of the Board of Selectmen, and put the intake and Water Treatment Plant project back on track so Concord can deliver consistently high quality drinking water for its customers in Concord and Acton.

Sincerely,



Christopher Whelan  
Concord Town Manager