

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jbllclaw.com
bob@jbllclaw.com

Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Patrick M. Groulx (MA, NH)
Keri M. Armstrong (MA, NH)
Gordon T. Glass (ME, MA)
Andrew Lechner (VT)

Of Counsel
Robert W. Lavoie (MA, NH)

Paralegals
Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

MEMO

To: Andover Conservation Commission
c/o Robert Douglas, Director of Conservation

From: Robert W. Lavoie, Esq.
Johnson & Borenstein, LLC

Subject: DEP File#090-1382: The bank's 10 parking spaces at 7 Tantallon Road

Date: January 9, 2023

1. This Memorandum concerns the 10 parking spaces on the southerly portion of 7 Tantallon Rd. adjoining Haverhill Street/route 133.
2. At its December 20, 2022 meeting, the Commission may clear it's sense that no Commissioners had an interest in granting a Waiver from the local Andover Wetlands Bylaw requiring parking spaces to be located 50 feet away from a resource area.
3. In response that evening to the straw vote taken on the Waiver issue, I mentioned that perhaps the thing to do at this point in time would be to literally delete those 10 parking spaces from the land area constituting the 7 Tantallon Project. (This could be done by preparing an ANR Plan of the 1620 ft.² comprising the 10 parking spaces, and Deeding that land to the Bank.)
4. As demonstrated in a separate written Memo submitted previously to the Commission, the Applicant has supplied proof that for the last 30+

years, those 10 parking spaces are dedicated to and are exclusively deeded easements appurtenant and belonging to the bank's real estate at 12 Haverhill Street.

5. The only indicia of ownership that the Applicant retains in the 10 parking spaces is fee ownership of the land underneath the parking spaces.
6. Given their close proximity to the bank's property at 12 Haverhill St., the location of those 10 parking spaces are unique and would be impossible to replicate as far as benefit to the bank. The bank has made clear that those 10 parking spaces are critical and essential to their land holding, and they stand ready to legally defend their rights to the same.
7. In hindsight, this whole issue might have been able to have been avoided by simply deleting the bank's 10 parking spaces prior to preparation and submission of the site plan for the 7 Tantallon Project. Had we done so, we would not have reached this crossroads with the Commission.
8. Obviously, we were never promised a Waiver, but history suggested that a waiver might be granted; in the prior 2018 Order of Conditions granted in DEP File#090-1299 the Project with all of the parking maintained along the river had been approved, which could have only come about with a de facto waiver having been granted by the Commission in 2018. (Nothing in the datum error contributing to the incorrect elevations on the 2018 Site Plans prompted the Commission in 2018 to allow the continuance of the grandfather riverfront parking Spaces. In 2018, the Commission had no issue in waiving the Bylaw provision that now stands as an obstacle to Project.)
9. Clearly, 2022 is not 2018, and there is a different composition to the Conservation Commission, but it seemed reasonable to the Applicant a few months ago that with the Applicant having given up all but the 10 parking spaces that had previously existed for 75+ years along the river, the Commission would see its way to once again granting a Waiver for the bank's 10th parking spaces, about which the Applicant can do little except remove them from the land area comprising the project. Had that small land removal been accomplished prior to the

filing, the current crossroads with the Commission would not have occurred.

10. Our request at this time is simply this: that the Commission not be offended or object to the Applicant at the present time removing the land area of the 10 parking spaces from the Project, and deeding the same to the bank, where they really belong.
11. The Applicant had nothing to do with the 10 parking spaces having been assigned to the Bank in 1988 when 12 Haverhill St. was first deeded for a bank use. Augustine Sheehy was the lead member of the partnership that developed the Shawsheen Commerce Center back in the 1980s. The Applicant's ownership of 7 Tantallon did come from that same Developer, but later than the bank property having been conveyed along with the permanent easement to the bank for the 10 parking spaces.
12. The benefit to the Commission of not objecting to the 1620 ft.² being now conveyed to the bank would be this: the Applicant could then eliminate any request for a Waiver, and the Commission would thus avoid having to even contemplate setting a precedent in 2023 of granting the Waiver that it had previously granted in 2018.