

ZONING BOARD OF APPEALS PUBLIC HEARING

JANUARY 12, 2022

Petition #67-21

**Appeal by John C. Decas
16 Winship Avenue, Wareham, MA 02571**

Seeking to appeal the enforcement decisions by the Building Inspector in regards to Planning Board Special Permit #13-18 for clearing of more than 50,000 s.f. of trees at 20 Burgess Point, Wareham MA 02571 (Assessors Map 22 Lot 2) in the R-60 zoning district.

20 BURGESS POINT ROAD VIOLATION OF ZONING BYLAW ARTICLE 12

In 2016, more than 50,000 square feet of trees were clear cut, and in the process vegetation and woodland habitat was also removed from 20 Burgess Point Road, Wareham. This was done in violation of the Town's Zoning Bylaw, Article 12 which would have required a Notice of Intent and a public hearing prior to the possibility of any action being taken. Several neighbors immediately notified Town officials when cutting began, but the owners of the property were allowed to continue in violation of the Zoning Bylaw.

Public statements verifying that the Bylaw was violated have been made in the local media or in televised public meetings by Selectman Alan Slavin, Wareham Director of Planning and Community Development Kenneth Buckland, Wareham Building Commissioner/Enforcement Officer David Riquinha, Former Planning Board Chair George Barrett, Current Planning Board Chair Richard Swenson, Wareham Conservation Administrator David Pichette, Chair of the Conservation Commission Sandra Slavin, Town Consultant Engineer Charles Rowley, and all current and former members of the Planning Board from 2018 to the present. In addition, the owners of the property have been informed in writing and have been told publicly in meetings that they acted in violation of Article 12 of the Zoning Bylaw.

1. On January 14, 2019, the Planning Board issued a Special Permit with Order of Conditions to Winship LLC, based upon the Zoning Bylaws of the Town, specifically sections 1218.15 and 1461. Through letters and emails from Mr. Buckland to Mr. Clemmey during 2019 and 2020 obtained through a records request, the applicant was reminded that the Order of Conditions were not met. Specific instructions regarding the orders were sent to him repeatedly at the request of the Planning Board to no avail.

2. On October 19, 2020, Mr. Buckland informed the Planning Board that "The requirements of the Special Permit have not been met." He included this statement in a memo as well. Because the conditions were not met and winter was approaching, the original Special Permit was modified to include a deadline for May 15, 2021 which was unanimously voted on at the **October 26, 2020** meeting, and a letter was sent to Mr. Clemmey stating the extension was being granted for him "to have completed the property restoration specified by the Special Permit condition, as issued in January 2019." *Obviously, there would have been no reason to give an extension if the conditions had been met.*

During the **October 26, 2020** meeting, members of the Planning Board stated the following:

King: Why bother putting conditions on the special permit after the fact if we are not in position to enforce them? Why waste the time?

Buckland: We can enforce them through the Building Commissioner. If the Building Commissioner finds in conflict with the permit, he can issue a stop work order.

King: But there's no work to be stopped! That's the issue.

Buckland: Exactly.

Barrett: You can still assess a penalty of \$300 for a violation, and you can do it daily. That's within his right.

King: Mr. Decas had an excellent point. It's the end of the growing season. Now we're two years in. It still looks like a dump. We're going into the winter.... Are we better putting a letter together for a legitimate start date in the spring? No later than May 15th the lot is hydroseeded.

Buckland: If the Planning Board says that's what the conditions are, then that's what the Building Commissioner should be enforcing.

King: I was under the impression that we were the ones that accept the conditions, and he was the one to make it happen.

Barrett: **We gave the Clemmeyes conditions in the Special Permit. They have not met those.** Last meeting, we turned that over to the Enforcement Officer. I think we keep that in place.

Baptiste: When he [Mr. Clemmey] came before us, he laid out beautiful plans. We didn't agree to turn the lot to a barren wasteland. We are derelict in our duties on this piece of property. **Other than pulling the stumps out, nothing has been done.**

Barrett: Leave the Enforcement Order in place. The Enforcement Order is already active. We have a time date certain now.

King: May 15. If nothing is done penalties begin to accrue.

Barrett: The motion then: All work named in the Special Permit has to be done by May 15th.

3. On December 21, 2020, Mr. Riquinha, the Enforcement Officer, had filed a Compliance Report on the Order of Conditions where he admitted that only Condition #2 had been met. (Appendix B)

4. From October 26, 2020 to May 15, 2021, no activity took place on the property. At the **May 10, 2021** Planning Board Meeting, the members complained that the conditions on the property were unchanged and that the Order of Conditions were not met. The minutes state, "The Planning Board members expressed frustration with action on the site."

5. During the July 26, 2021 Planning Board meeting, Mr. Buckland informs the board that it can request a formal update from the Building Commissioner who has 14 days to respond. This refers to Mass General Law Chapter 40A, Section 7. The following discussion takes place:

Schultz: He [Mr. Riquinha] cannot ignore us. He has to respond. That's the law.

Buckland: That is correct. Correspondence does have to be responded to in 14 days, so we can make that clear to him as well.

Swenson: I would entertain a motion from this board to authorize our Town Planner Ken Buckland to request a formal status on the enforcement of the special permit at Winship Avenue.

Vote 5-0-0 Mr. Buckland, can that go out this week you think?

Buckland: Yeah. It will go out tomorrow.

6. On August 9, 2021, Mr. Buckland informed the Planning Board that **the Enforcement Officer would not respond to the request by the Planning Board.** However, this is in direct opposition to Mr. Riquinha's statement at the **December 14, 2020** Planning Board meeting when he told Mr. Bill Clemmey that **"if they [the Planning Board members] still decide that these conditions have not been met, and they request enforcement, then that's the action I have to take."**

7. At the August 9, 2021 Planning Board meeting, the members continued the discussion of the enforcement of the Order of Conditions. The members stated the following:

Swenson: Mr. Buckland, at our last meeting you were going to request an update from the Building Commissioner through a formal letter. Did that happen?

Buckland: No not through a formal letter. He told me he has completed his enforcement of the special permit at this site.

Swenson: So his report back to us is that he is done and he believes Mr. Clemmey is in compliance with the special permit?

Buckland: Correct.

Swenson: At this time, our wisest course of action is to step back and figure out where we go from here if anywhere. We keep this open on our agenda for now, but I don't know where else we go.

CURRENT APPEAL:

8. On **October 6, 2021**, Mr. Decas and his neighbors/abutters, Ron Enos, Peter Balzarini, Edmund Charlton, and Frederick Fuller made a request to the Planning Board to take action to enforce the Special Permit and the Order of Conditions per *MGL Chapter 40A, Section 7, Enforcement of zoning regulations; violations; penalties*. This was made after they received no response to a **September 12th letter** requesting similar action. That letter provides details of their evidence, that except for stump removal, the Order of Conditions have not been met. (Appendix C)

9. On **October 7, 2021**, Mr. Riquinha emailed Mr. Decas informing him that the request for enforcement had to be submitted to him directly.

10. On **October 8, 2021**, Mr. Decas and his neighbors/abutters submitted the same request for enforcement directly to the Enforcement Officer.

11. On **October 18, 2021**, **Mr. Riquinha acting as Enforcement Officer, responded to Mr. Decas et al and declined to enforce the Order of Conditions for the Special Permit** that all members of the Planning Board and Mr. Buckland publicly stated had not been met. He stated that in accordance with MGL chapter 40A, Section 15, his decision could be appealed. (Appendix D)

This is the request for enforcement that is being appealed to the Zoning Board on January 12, 2022.

Mr. Riquinha's photos included in his report that are taken from inside his vehicle are hardly sufficient to determine the failure of the Clemmeyes to perform any work on the property from October 2020 to May 15th or to his visit on October 18, 2021.

Note: Throughout the years, the Clemmeyes have used the empty lot as a dumping ground for branches, sea weed, wood chips and other detritus. After the November wind storm that caused a power outage and brought down many trees in town, the Clemmeyes brought truckloads of branches onto the property as can be seen in an attached photo.

Aerial photos taken in August of 2021 and attached here were submitted by Mr. Decas to the Planning Board in September 2021 when a request was made for the Board to take action on the Order of Conditions. These photos support the Board members' conclusions that the Order of Conditions were not met. In addition, a photo of a truck depositing brush and debris from the November 2021 wind storm is also included. (Appendix A)

CONCLUSION: The extension of the Special Permit was never properly filed. Therefore, the original Permit has expired and the original violation of the Zoning Bylaw Article 12 still stands.

According to MGL 40A Section 11, "A special permit, or any **extension, modification** or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk" . . . "is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title." The decision of October 26 to modify the Special Permit by extending the date to May 15, 2021, required Mr. Clemmey to register the modified permit with the registry of deeds. We have checked with the registry, and this was not done. Consequently, the original Special Permit was never in compliance by Winship LLC and never enforced by the Planning Board or the Enforcement Officer.

MEETING WITH TOWN ADMINISTRATOR NOVEMBER 23, 2021

The meeting took place between the TA, Engineer Bill Madden, Nora Bicki, and John Decas to discuss a possible resolution to this issue before appealing to the Zoning Board. Mr. Decas asked that if the Clemmeyes brought forth a site plan to build the houses/subdivision or paddock they had claimed they cleared the land for originally and proceeded to build, there would be no need to take further action. This site plan was discussed first in 2018.

At the **September 24, 2018** Planning Board meeting, when the request by the Clemmeyes for the Special Permit was being made, Mr. Decas had asked what the endgame would be. He supported stumping and wanted to know how long the open field would sit there empty. He asked for rehabilitation and complained then that it had turned into a dumping ground after the trees were illegally clear-cut in 2016.

Mr. Bill Clemmeyer claimed at the 2018 meeting that they had removed the trees to “see what it looks like.” He said they may put in a subdivision with one to three houses or a horse farm.

Board member Bianco asked what the plans for the timeline were. “Six months? Twelve months? Eighteen months away? They didn’t go through the proper approval process. If the plan does not happen within six months. If it is allowed to sit with years on end...it shouldn’t be open ended. What is fair to the abutters? Come back in the spring. Give 6-9 months for the plan.”

Mr. Clemmeyer stated he expected to have a site plan “probably within a year.”

The Clemmeyes never returned with a plan.

Chairman Barrett explained that the “Zoning Bylaw was created to avoid this exact situation.” The Special Permit and Order of Conditions was discussed. Mr. Barrett said, “**when you leave here you know what is required of you.**” The Planning Board and Winship LLC agreed to the Special Permit and Order of Conditions.

It was explained to the TA that without development on the site, the conditions will continue as is.

The open field has adversely affected the neighborhood and remained an environmental hazard since the illegal clear cutting of the trees in 2016.

During the time that the field has been left exposed, erosion has taken place. With no required topsoil and hydroseeding that was required, there was little to no filtration to groundwater taking place in an area so close to Onset Bay. In addition, the windbreak that had been created by the trees that are no longer there has caused a devastating effect on the surrounding conservation area as can be seen in the attached photos by the number of trees felled during wind storms.

Section 1461 of the Zoning Bylaws and the conditions of the Special Permit protects all adverse affects on the “neighborhood” and the “open area” created by the clear cutting. The adjacent areas are also supposed to be protected against detrimental environmental affects of drainage, dust, wind and air.

The conditions of the Special Permit **if enforced**: Will not adversely affect the neighborhood as, at least temporarily, an open area; Is an appropriate use of the land as, at least temporarily, an open area; Will not create a hazard for vehicles or pedestrians; Will protect adjacent areas against detrimental or offensive uses on the site by maintaining drainage, and without inclusions of adverse lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air; Will provide protection of environmental features on the site and in adjacent areas with inclusion of sediment and erosion controls; and Will comply with all applicable sections of Zoning Bylaws.

Unfortunately, no action for some sort of compromise or mediation with Winship LLC was taken by the Town Administrator after the meeting, so this Appeal to the Zoning Board of Appeals has been submitted.

Appendix A





APPENDIX B



December 21, 2020

Town of Wareham
Planning Board
54 Marion Rd
Wareham, MA 02571

Dear Planning Board Members,

I am writing you in response to your request for information regarding a parcel of land known as 20 Burgess Point Road in Wareham, MA. I have performed an inspection of the property and this letter will provide you an update of site conditions as it relates to the special permit dated January 14, 2019, issued by the Planning Board. The actual conditions are quoted below with my relative findings in italics below each condition. Please let me know if there are any questions or concerns at the completion of your review.

Conditions:

1. "Site visits for the Planning Board or its representative shall be called for by the Applicant when ready to begin work, when grading is finished, and before any repair of the travelled ways. Upon completion of stump removal and regrading, the Applicant shall call for a site visit by the Planning Board or its representative."

No specific findings relating to this condition.

2. "All stumps within the property as shown on the plan, and in the adjacent right of way or travel easement shall be removed."

It appears that the tree stumps have been excavated from the soil and removed from the site. There still remains a pile of branches on the site but the wording of condition #2 will make that difficult to enforce. I consider the current site to be in compliance with condition number two.

3. "Disposal of the stumps shall be off-site at an approved disposal facility. Location of said disposal facility shall be identified for the Planning Board."

I am not able to speak to this condition as I have no knowledge of the disposal location used.

4. "All finish grades shall be within 6 inches of existing grades as shown on the plan. An 'as built' survey shall be completed and submitted to the Planning Board upon completion of regrading."

The applicant provided an as-built plan to the Planning Board. If the Board is satisfied with the information provided, I would consider the project to be in compliance with condition number four of the special permit decision.

5. “When the weather and ground temperature are appropriate for vegetative growth, a grass and wild flower mix of seed shall be spread as ground cover. One or a combination of techniques to ensure germination and growth of the ground cover, such as hydro seeding, watering and/or fertilizing may be required as requested by the Planning Board or its representative.”

The applicant claims to have seeded the site on multiple occasions. It is difficult to determine the accuracy of those claims based on the current site conditions. Based on the language of condition number five, I do not consider this item to be in compliance with special permit decision and I recommend that further seeding be required at the beginning of the spring growing season.

6. “Repair and maintenance of existing Sediment and Erosion controls shall be completed as required or needed. All Sediment and Erosion controls shall be kept in place and maintained until stabilization of the soils, as that time is determined by the Planning Board or its representative. Additional Sediment and Erosion controls may be requested by the Planning Board’s representative where erosion and washouts may occur, until such time as the grades are stabilized.”

I was able to witness sediment and erosion controls in place at the time of the site visit. It appears that it was installed in the proper location but it is lacking required maintenance. The straw bale line should be touched up and maintained where needed until proper ground cover is achieved.

7. “Disturbance or damage to the travel ways shall be repaired immediately.”

There is damage along the road but it is extremely difficult to differentiate what was caused by the clearing project and what is normal wear due to traffic and weather. I believe that this matter should be discussed by the board to determine if the applicant has met your requirements in a satisfactory manner.

8. “This decision shall take effect only after Planning Board endorsement of the Special Permit plan and the recording of that plan with Plymouth County Registry of Deeds, with notice as to the book and page at which it was recorded.”

I was unable to certify that the special permit decision was recorded with the Plymouth County registry of deeds. Based on my research, the project is not in compliance with condition number eight of the special permit decision.

9. “Within 60 days of the approval of this decision, the applicant shall provide to the Board a copy of this decision as recorded with the Plymouth County Registry of Deeds, including notice as to the book and page at which it was recorded.”

I was unable to certify that the special permit decision was recorded with the Plymouth County registry of deeds. Based on my research, the project is not in compliance with condition number nine of the special permit decision.

Best regards,

David Riquinha

Town of Wareham

Building Commissioner

Zoning Enforcement Officer

Appendix C

September 15, 2021

To: The Wareham Planning Board

Ken Buckland, Director of Planning and Community Development

In 2016, Mr. Bill Clemmey began clear cutting over 5 acres of trees, vegetation, and woodland habitat located at 20 Burgess Point Rd. I, and others in my neighborhood, immediately called Town officials to stop the devastation noting that no permit had been obtained and no abutters had been notified for a chance to appear at a public hearing. At that time, several of us were informed by Town Officials that Mr. Clemmey had an "agricultural exemption," which we later were informed was unfounded. Work continued until more than 50,000 square feet (s.f.) of forest was decimated, leaving stumps and debris on the lot.

According to the Planning Board minutes for a Public Hearing on September 24, 2018, "Fall of last year the applicant was approached by the Building Commissioner, David Riquinha, who told him clearing 50,000 s.f. or more required a Special Permit from the Planning Board. Mr. Clemmey states the stumps are a hazard at the moment. They are requesting to clear the lot to see what they would like to do with the property."

The Planning Board, the Building Commissioner, and the Town of Wareham have admitted that Mr. Clemmey was allowed to clear cut more than 50,000 s.f. of trees in violation of our Zoning Bylaws even after they were informed of the activity taking place. On December 11, 2018, articles entitled, "Wareham Planning Board Postponed Decision on Controversial Stump Removal," appeared in both the Patriot Ledger and the Wareham Courier written by Mary McKenzie in which she wrote, "Alan Slavin said the town's bylaws include a section requiring plans for clearing 50,000 square feet or more to be approved by the Planning Board." She directly quotes Selectman Slavin as saying, "*This requirement was buried in another section (of town code) and it was missed.*" She then adds that "Slavin said this mistake, made two years ago, resulted in the matter coming back before the Planning Board today 'to get approval which should have been done before clearing of the land.'" A follow-up article in the Courier dated January 15, 2019 which covered the next Board hearing repeated Slavin's same quote.

While I disagree with Slavin that the "*requirement*" which is actually Article 12 of the Town's Zoning Bylaw is somehow "*buried*," I appreciate that all entities agree that the Town bears responsibility for not requiring Mr. Clemmey and Winship, LLC to stop action and file for the proper permit at that time. Had that been done, we would not be in the situation we are in today. And I would not need to ask why the Town is still refusing to take action.

Several of my neighbors and fellow abutters and I have attended many of your meetings and hearings. In addition, I have requested and received documents related to 20 Burgess Point Road and would like to explain the current condition of the property and show that the Conditions of the Special Permit have not been met according to the following timeline.

1. On January 14, 2019, according to the minutes of the Planning Board meeting, a *Special Permit For: Site Alteration – Land Clearing and Grading* was passed by the Planning Board with a unanimous vote. The Permit includes nine conditions to be met by the applicant, Winship, LLC. However, I would like to note that the minutes state that there was much discussion over whether or not a condition for a required bond should be removed from the Permit. Mr. Clemmey wanted it removed, while Mr. Daskalaskis disagreed and asked, “how they could ensure security without a bond.” In the end, the condition for the bond was removed from the Special Permit.
2. On July 25, 2019, Mr. Bill Clemmey and Mr. Buckland exchanged emails concerning the disposal of stumps removed from the property. According to Condition #3 “Disposal of the stumps shall be off-site at an *approved* disposal facility. Location of said disposal facility shall be identified for the Planning Board.” In the email exchange provided through the records request, Mr. Clemmey appears to be ready to dispose of the stumps and tells Mr. Buckland that he is making piles of stumps and will load them together. He states just the name, County Road Recycling in Marion MA, in his email. Mr. Buckland responds that the only recycling place he “can find” is in Wareham and “is this what you mean, or is there another facility in Marion?” Clearly, the disposal site had not been pre-approved by the Board and is not reflected in any minutes.
3. On December 16, 2019, Mr. Buckland sent a letter to Bill Clemmey. This letter was included in the records I requested and refers to a stump that was “removed at the edge of and into the road, and sand was used to fill the void. As expected, the well-sorted sand did not provide a good travel surface and is leaving a pothole. Proper patch material should be used to replace the sand. . . This is in accordance with Condition 7 of the Special Permit.” The letter also states, “the surface of the property was to be graded and seeded during the growing season to provide ground cover. This has not occurred yet. . . Consequently, the site is non-compliant with Conditions 4 and 5.” I would like to note that my neighbor fixed the pothole with a temporary improvement which I showed to Mr. Buckland and Derek Sullivan who both agreed that it needed to be properly repaired. At this time, it still has not been repaired by Mr. Clemmey.
4. The October 19, 2020 Planning Board minutes state that Mr. Buckland read a memo “regarding interaction and contacts with Clemmey.” In that memo obtained through the records request, Mr. Buckland states that in general, “**requirements of Special Permit have not been met.**” Buckland then specifically notes Condition #5 and several messages with Mr. Clemmey. The memo also states that on September 2, 2020, Mr. Clemmey was asked to “grade site, put down a layer of topsoil and hydroseed.” Mr. Clemmey responded that day stating he would “address this as soon as possible.” But according to Mr. Buckland, Mr. Clemmey “suggested that grading was not allowed by Special Permit conditions.” In fact, grading is clearly required in the conditions. Mr. Buckland stated in the memo that he met with Bill and Karl Clemmey on October 7 and reminded them then that the “original order still stands.”

5. At the October 26, 2020 Board meeting, the minutes state that Board member Mr. King asked if there were any controls that could be used to enforce the conditions of the Special Permit. The Board voted unanimously to set a deadline of May 15, 2021 to complete the property restoration. Mr. Buckland sent a letter to Bill Clemmey on October 28, that I obtained through the records request, informing him of the extension of the Special permit. He also stated in the letter, "The Board asked for a fine-graded lot, with 4" of topsoil placed on the graded surfaces and seeded with the grass. Seeds are to be at least germinated by that date."
6. On December 7, 2020, the Planning Board minutes simply state that "Buckland reported that Building Commissioner has not taken further action." However, I watched the Zoom recording of the meeting, and a lengthy discussion took place. During this time, three trailers, some without plates, were parked on the property. The Board was informed that the Enforcement Officer had taken no action. Mr. King stated that "this one site is a thorn in everyone's side, yet it doesn't seem like anyone is interested in addressing this. We've already decided that he's not going to grade and seed the property because of the time of year." He then requested the Enforcement Officer to submit a report on the actions and asked, "why after so much time, it has just been ignored." He added that "had we followed up the request with a lawyer, then that puts us in a position if we need to enforce fines, we've done our due diligence. At what point do we start issuing fines and stop accepting excuses?" He added that "This particular piece of property is getting a pass." Mr. King was then informed by Mr. Buckland and Mr. Alan Slavin that only Mr. Riquinha, the Enforcement Officer, could impose fines. However, according to our Town Bylaws, as I read them, in Division XII Article I, Enforcement Section 1, "The Town Administrator or *his/her designee(s)* may act as enforcement officer for any Town Bylaw." And Enforcement Officers can impose fines. Furthermore, Article II Section 3 states that the fine for violations of the Zoning Bylaws is "\$300 per offense, each day is considered a new offense."
7. On December 14, 2020, the Planning Board held a meeting which I also watched on Zoom. Enforcement Officer Riquinha was present, and Mr. Bill Clemmey joined later. Mr. Riquinha was asked for a progress report, but he stated that he had not had a chance to inspect the property yet. Mr. King asked him if he "should be imposing some sort of a fine for non-compliance. This has been going on for a good part of two years of non-compliance." Mr. Swenson then stated, "He (Mr. Clemmey) took all those trees down illegally. He got a special permit after the fact. That was over two years ago. He was supposed to return that property to its original natural condition. He's done nothing. If we're going to let him skate until next spring to do the reseed, those trailers can't be there when he reseeds." A discussion followed on the bylaw concerning trailers. Then Mr. King stated, "We're going to be three years into this project before he puts seed down, provided he does it."

Mr. Clemmey came on Zoom then and claimed he was in compliance with the Special Permit. Mr. Riquinha stated he had read the permit but not been able to make a site visit yet. Then Mr. Clemmey argued against putting topsoil and grading the site. He claimed that he did two plantings and did "as best we could." And said he got "great coverage" on the lot. He added, "we feel that the Special Permit has been met." Mr. Riquinha

replied, “Bill, in this case, with all the land, I am only able to report to the Board what I see. **If they still decide that these conditions have not been met, and they request enforcement, then that’s the action I have to take.**” Mr. Swenson then said, “Let Dave do his site visit . . . and report back. I have been to the site. I don’t think they have been met.”

8. On December 21, 2020, David Riquinha, the Enforcement Officer, submitted a Compliance Report that I obtained in the records request. Most of the conditions are not in compliance.

For **Condition #1** he states, “No Findings.” I have requested documentation of the site visits at certain stages of work through the records request. While I received some records of Mr. Buckland’s visits, they were not done as required at the request of the Applicant when “ready to begin work when grading is finished, and before any repair of the travelled ways” Or “upon completion of stump removal and regrading.” Therefore, Condition #1 has not been met.

For **Condition #2** I agree with Mr. Riquinha that all stumps have been removed.

For **Condition #3** Mr. Riquinha states he was unable to speak to the condition of the *approval* of an off-site disposal facility for the stumps. Mr. Clemmey is not in compliance with this condition as indicated by my explanation in Number 2 above with Mr. Buckland’s emails about the site. There is no evidence the Board approved of the disposal site.

For **Condition #4** Mr. Riquinha states an “as-built plan” had been provided to the Planning Board, so it was in compliance. On May 10, 2021, William Madden, acting as my agent, requested that record from Ken Buckland. According to state law, Mr. Madden should have received the document if it existed within 10 days or a written explanation of why it was not provided. Neither was produced. I made the same request on August 16 and had the same result. As-built plans are done when a project is complete. Since Mr. Buckland stated previously that Mr. Clemmey was *not in compliance with #4*, and no action has been taken on the property since that time, I disagree with this finding and the existence of an as-built plan done on completion of the project.

For **Conditions #5 and 6**, I agree with Mr. Riquinha’s determination that Mr. Clemmey is not in compliance, and he is still not in compliance to this date.

For **Condition #7**, Mr. Riquinha made no determination, but clearly, as explained above in Number Three concerning the pothole caused by the stump removal, Mr. Clemmey is not in compliance.

For **Conditions #8 and 9**, while I did receive one copy of a recording with the Registry of Deeds, there is no copy of the amended version that should have been submitted. Therefore, I agree with Mr. Riquinha that Mr. Clemmey is not in compliance with either of these conditions.

Of the Nine Conditions, only one Condition, #2, demonstrates compliance as all stumps have been removed.

9. At the Monday, January 11, 2021 Planning Board meeting, Mr. Buckland noted that “no enforcement can take place until deadline passes.” (The deadline date was May 15, 2021.)
10. At the May 10, 2021 Board meeting, according to the minutes, “the Board asked the Building Commissioner David Riquinha for a report on compliance. Mr. Riquinha said he had filed a report in October or November of 2020 and that *he had nothing to report now.*” I was at that meeting and complained that the conditions on the property were unchanged and that none of the conditions were met. The minutes add, “The Planning Board members expressed frustration with action on the site.” And further, “The Board asked the Chair to confer with Town counsel and invite him to Executive Session where the Board could discuss the situation and potential litigation.” A motion was passed unanimously. I would note: The Town Bylaws include sections on taking actions regarding violations of “any By-Law, rule, regulation or Ordinance of the Town” (Division IX, Article I and Division X, Article I).
11. The Wareham Board of Selectmen met in Executive Session on June 10, 2021 to determine if legal action should be brought against Mr. Clemmey. The Selectmen declined to take action because apparently, they were informed that Mr. Clemmey was in compliance with the Special Permit. I can’t understand how this is possible considering that Mr. Riquinha stood by his previous Compliance Report at the May 10, 2021 meeting of the Planning Board where the majority of conditions were in non-compliance, with Mr. Buckland’s correspondence that clearly demonstrates non-compliance, and with the Board’s strong opinion of non-compliance.
12. On June 10, 2021, Mr. Buckland sent an email to the Planning Board members stating that “Karl Clemmey came in the office today and said he is spreading loam over his property at Winship Ave.” I live directly across from this property, and no loam has been spread over that property. I have attached aerial photos taken on August 7, 2021 showing that is clearly not the case. The photos also show the deplorable state of the property. Patches of wood chips cover some sections of the ground. Mounds of soil covered with weeds appear scattered across the property. Piles of debris and seaweed can also be seen.
13. On July 19, 2021 I sent an email to Mr. Buckland and Derek Sullivan stating, “I strongly urge you not allow any changes to the Clemmey order of conditions without an appropriate public hearing with abutters notification.” Mr. Buckland responded the same day stating, “No changes are being considered by the Planning Board at this time.”
14. At the July 26, 2021 Planning Board meeting I watched, members asked Mr. Buckland what could be done about the situation. Mr. Buckland informed the Board it could request a formal update from the Building Commissioner, who by law, then had 14 days to respond. A motion was made and passed unanimously. Mr. Buckland agreed to send the letter the next day.

15. At the August 9, 2021 Planning Board meeting that I also watched, Mr. Swenson asked Mr. Buckland if the letter requesting an update voted on by the Board was sent to Mr. Riquinha. Mr. Buckland said, “No not through a formal letter. He told me he has completed his enforcement of the Special Permit at this site.” Mr. Swenson asked, “So his report back to us is that he is done, and he believes Mr. Clemmey is in compliance with the Special Permit?” Mr. Buckland responded, “Correct.” The Board decided to keep the case open on its agenda at this time because it did not “know where else to go.”

So just weeks after standing by his December 21, 2020 Compliance Report that showed that Mr. Clemmey was not in compliance with most of the conditions, Mr. Riquinha stated that that Mr. Clemmey was suddenly in compliance. As I watched this meeting, I could see that several members of the Board were upset by this development. Some said they had been to the site and saw several mounds of soil that had weeds growing on them, but no grading or seeding had been done. They even joked that Mr. Clemmey would probably say it was too hot to plant grass as he had said in the past.

I had also sent the Board several of the aerial photographs of the property prior to this meeting so they could see the condition of the entire property. Some of the members mentioned the photos as well. It was clear to me after hearing these comments that the Board agreed that Mr. Clemmey was NOT in compliance with the Conditions of the Special Permit.

I would also like to remind the Board of Mr. Riquinha’s words, to Mr. Clemmey, “Bill, in this case, with all the land, I am only able to report to the Board what I see. **If they still decide that these conditions have not been met, and they request enforcement, then that’s the action I have to take.**” It would seem to me that it is the Board’s right to request enforcement, and according to Mr. Riquinha himself, he must take that action.

I contend that Mr. Clemmey and Winship, LLC are in violation of Wareham’s Zoning Bylaw and have not complied with the Special Permit and its Orders of Conditions. Yet Mr. Clemmey has been allowed to do as he has pleased since he began to cut down the first tree. **I invite all members of the Board, the Enforcement Officer, and any Town Officials, especially those who believe the Clemmeyes are in compliance, to visit the site now.** Just this past week, the Clemmeyes have dumped more debris on the property. Branches, brush, leaves and so forth were just dumped there and were added to what has been dumped over the summer. It’s obvious that they have decided to use this property as a dumping ground and have no plans to complete any of the Conditions of the Special Permit beyond removing the stumps. The condition of the property will only get worse.

The Special Permit states that: In conformance with Section 1460, the Board finds that the completion of the improvements to the property, when completed as specified in this decision:

- a. Will not adversely affect the neighborhood as an open field.

My neighbors and I firmly attest that our neighborhood continues to be adversely affected because of the illegal clear cutting of the five acres located at 20 Burgess Point Road. The Special Permit was issued on January 14, 2019. This work could easily have been

accomplished within months of that date. And yet, we have had to live with this “open field,” such as it is, for going on three years. We have attended meetings, written letters, and emails, and had many personal conversations with Town Officials and employees to no avail.

It’s not right that all someone has to do is completely **ignore** the Town’s Bylaws and Special Permits, Orders of Conditions, rules or regulations, and nothing will happen. It’s not right that there are no consequences, no punishments, and no justice for the injured parties. I am asking the Planning Board to *make it right* and take action.

The Applicant has not complied with the Special Permit and the deadline has passed. The illegal action of clear cutting more than 50,000 square feet of trees still stands. I am asking that the Planning Board start over and issue another Special Permit with a more specific and effective Order of Conditions that in no way can be misconstrued or manipulated by the Applicant, Winship, LLC. I believe it is essential that the work be done, not by the Applicant, but by a professional company and that a bond must be required by the Board. After listening to the members of the Board, it is clear that you want to make this right. I believe you can and will do so. Thank you for your consideration.

Sincerely,

John Decas, 16 Winship Avenue

The neighbors below are in agreement with this letter and asked to add their signatures.

Ronald Enos, 7 Burgess Point Road

Peter Balzarini, 3 Burgess Point Road

Edmund Carlton, 2 Burgess Point Road

Frederick Fuller, 212 Great Neck Road

Appendix D



October 18, 2021

John Decas

16 Winship Ave.

P.O. Box 352

Wareham, MA 02571

Dear Mr. Decas,

I am in receipt of your email dated October 8, 2021, which requests enforcement of conditions 1, 3,4,5,6, & 7, of the Special Permit decision issued by the Wareham Planning Board dated January 14, 2019. I have once again, reviewed the information available to me, and my findings are as follows:

- Condition #1:

“Site visits for the Planning Board or its representative shall be called for by the Applicant when ready to begin work, when grading is finished, and before any repair of the travelled ways. Upon completion of stump removal and regrading, the Applicant shall call for a site visit by the Planning Board or its representative.”

Response: There have been numerous site visits at the Burgess Point Road clearing location, and I have been told conflicting information from both sides regarding notification to the Board. There is not enough information to base a case for retroactive enforcement; therefore, I decline to enforce on this matter.

- Condition #3:

“Disposal of the stumps shall be off-site at an approved disposal facility. Location of said disposal facility shall be identified for the Planning Board.”

Response: There has been conflicting information regarding this condition, and there is not enough evidence to warrant a case for retroactive enforcement; therefore, I decline to enforce on this matter.

- Condition #4:

“All finish grades shall be within 6 inches of existing grades as shown on the plan. An ‘as built’ survey shall be completed and submitted to the Planning Board upon completion of regrading.”

Response: After careful review of the as-built drawing labeled “Plan of Existing Conditions Winship Avenue”, it appears the contour lines substantially coincide with the original “Conservation Plan of land” dated December 7, 2015. There are two additional details on the existing conditions plan labeled “Existing mound” that I believe to be piles of topsoil that were later spread and seeded. I decline to enforce on this matter.

- Condition #5:

“When the weather and ground temperature are appropriate for vegetative growth, a grass and wild flower mix of seed shall be spread as ground cover. One or a combination of techniques to ensure germination and growth of the ground cover, such as hydro seeding, watering and/or fertilizing may be required as requested by the Planning Board or its representative.”

Response: Site visits to the property prove substantial vegetative growth from ground level, as a normal person would view in plain sight. (See attached photos) There are a few areas where the growth is sparse; however, in the absence of a written growth percentage requirement, I feel as though there is not enough information here to base a case for enforcement. I decline to enforce on this matter.

- Condition #6:

“Repair and maintenance of existing Sediment and Erosion controls shall be completed as required or needed. All Sediment and Erosion controls shall be kept in place and maintained until stabilization of the soils, as that time is determined by the Planning Board or its representative. Additional Sediment and Erosion controls may be requested by the Planning Board’s representative where erosion and washouts may occur, until such time as the grades are stabilized.”

Response: After speaking with the conservation agent, it is my understanding that the reasoning for the sediment control line was to demarcate the one hundred foot wetland buffer, and was installed per order of the Wareham Conservation Commission. Since that time, the Conservation Commission has signed off on this project and the sediment control barrier is no longer required. I decline to enforce on this matter.

- Condition #7:

“Disturbance or damage to the travel ways shall be repaired immediately.”

Response: Mr. Clemmy, and Mr. Decas have both taken responsibility for the repair of Burgess Point Road on numerous occasions. It is impossible to know who is being truthful in this matter and since this case began, the “traveled way” has been improved on several occasions, and has repeatedly degraded due to weather and normal traffic usage. In my opinion, there is no reasonable way to make a factual determination as to what damage was a result of the land clearing, and what is from normal wear and tear. I decline to enforce in this matter.















Sincerely,

David Riquinha
Town of Wareham
Building Commissioner
Zoning Enforcement Officer

In accordance with the provisions of M.G.L chapter 40A § 15, you may appeal this decision to the Zoning Board of Appeals within thirty (30) days of the date of this letter.