

**Atkinson Conservation Commission Minutes**  
**Saturday, April 16, 9:00 AM**  
**Stickney Town Forest**

Approved April 27, 2022

**Members Present:**

Paul Wainwright, Chair  
Bill Steele, Vice Chair  
Jeff Nenart  
John Fournier

**Others Present:**

Stephen Horaj  
Sadie Horaj  
Kathleen McMahon

**1. Call to Order, and Attendance:**

Chair Wainwright called the meeting to order at about 9:00 AM, declared that a quorum was present, and stated that the meeting announcement had been posted in two places more than 24 hours ago.

**2. Site Walk of Encroachment of Map 23 Lot 39-1 onto the Stickney Town Forest**

Members of the Commission viewed the property line between Map 23 Lot 39-1 and the Stickney Town Forest, which had been surveyed and staked by surveyor James Lavelle and Associates. The fence in the rear southeast corner of the abutting property was observed to be encroaching into the Town's land by what looked to be about 15 feet. Also, Members observed that a shed along the property line closer to the street was also encroaching by a foot or two.

There was discussion.

Chair Wainwright read the legal advice from attorney Stephen Buckley which is attached to these minutes.

Mr. and Mrs. Horaj expressed concern about the cost they would incur to move the fence, which has been there long before they purchased the property. They also questioned the practicality of removing the fill that previous owners had used to make the back yard somewhat level. After further discussion, Commission members agreed that the fence should eventually be moved, but that the fill could stay as long as it was allowed to return to natural forest plants.

Commission members did not feel there was an immediate need to move the fence.

**Vice Chair Steele made a motion pursuant to NH RSA 41:11-a to issue a written demand to the owners of Map 23 Lot 39-1 that they cease the unlawful occupation of the Stickney conservation land, including the demand that the property owners remove the encroaching fence and shed from the Town's property, and to allow the growth of natural forest plants on the Town's side of the property line in order that that the conservation land may return to its original condition. Furthermore, the town's Code Enforcement Officer shall be directed to take any and all enforcement actions necessary to insure compliance with these demands. Member Fournier seconded the motion. Vote: 4/0/0, the motion carried.**

The resolution letter that was sent to Mr. and Mrs. Horaj is attached to these minutes.

### **3. Brief Site Walk to view the property line of the neighboring parcel**

Commission Members then proceeded to hear concerns from Kathleen McMahon, 6 Stickney Road, the abutting neighbor to Mr. and Mrs. Horaj, who was concerned about people walking in the conservation land behind her house. Chair Wainwright assisted Ms. McMahon to locate the rear property line for her yard.

### **4. Adjournment**

The meeting was adjourned by consensus around 9:40 AM.

### **Attachments:**

- Legal advice from Stephen Buckley at NHMA
- Resolution Letter and Referral to Code Enforcement

12/19/2021

Good afternoon, Paul:

Under RSA 41:11-a, the Conservation Commission is delegated the authority to manage and regulate the use of land committed to the care of the Commission.

Since the subject land was explicitly committed to the control and supervision of your Commission, your Commission has the ability, and obligation, to ensure there are no encroachments from abutters. This would include issuing a written demand that the encroaching landowner cease the unlawful occupation of conservation land.

In this instance, enforcement should come from the Conservation Commission. Before issuing that written demand, it would be prudent to advise the select board of the actions the Commission intends to take.

It would also be prudent to verify that the boundary location you believe establishes the abutter is encroaching is accurate. To that end, it would be incumbent on the Conservation Commission to establish the boundary location in field with the assistance of a surveyor.

Once a survey has established that boundary, then the Commission should demand soil and fence removal.

Stephen C. Buckley  
Legal Services Counsel  
NH Municipal Association  
25 Triangle Park Drive  
Concord, NH 03301  
Tel: (603) 224-7447  
Email: [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)

**TOWN OF ATKINSON CONSERVATION COMMISSION**  
**19 Academy Avenue**  
**Atkinson, New Hampshire 03811**

April 20, 2022

Stephen F. Horaj  
Sadie Pappas-Horaj  
4 Stickney Road,  
Atkinson, NH 03811

**Re: Stickney Town Forest Encroachment Resolution**

Dear Mr. and Mrs. Horaj:

At our meeting on Saturday, April 16, 2022, the Conservation Commission held a site visit to view the property line between your land, Map 23 Lot 39-1, and the Stickney Town Forest, Map 20 Lot 35, which has recently been staked by surveyor James Lavelle and Associates. We observed that a portion of your fence in the southeast corner of your yard is on the Town's land by about 15 feet, and that your shed is on the Town's land by a foot or two. We also observed that, in both cases, soil has been graded onto the Town's land. It was not determined exactly when these encroachments occurred, and you have stated that they have been there since before you purchased the property in 2020.

At that meeting, we came to a mutual agreement that you would move the shed and the fence to be only on your property. The Commission also agreed that time is not of the essence with clearing these encroachments, but that you should clear them within a reasonable amount of time as your budget and family obligations allow.

Concerning the soil that has been graded onto the Town's land, since it appears that this likely occurred prior to when you purchased your property, and, in fact, has likely been there for some time, and since it would accomplish no practical purpose to remove it, the Commission agreed that you should allow natural forest plants to grow there so that the graded area eventually returns to its natural forested state.

This letter directs the Town's Code Enforcement Officer to follow up with you on the clearing of these encroachments, as documented above, the to report progress thereof to the Conservation Commission.

Sincerely,



Paul Wainwright, Chair  
Atkinson Conservation Commission

Copy to:

Conservation Commission Members  
Bob Worden, Selectman  
Bryan Boyle, Code Enforcement Officer  
Sumner Kalman, Town Attorney  
Tim Lavelle, James Lavelle and Associates  
Thomas J. Donovan, Director of Charitable Trusts, NH DOJ  
Bill Gegas, NH Department of Natural and Cultural Resources