

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss

MISCELLANEOUS CASE
NO. 17 MISC 000281 (RBF)

_____)
PETER KIRK, BRYAN JOHNSON, and)
MAXINE BREEN,)
)
Plaintiffs,)
)
v.)
)
WINIFRED I. LI, JANE FISHER)
CARLSON and STEPHEN J. LAROCQUE,)
as they constitute the WESTON BOARD)
OF APPEALS, and 269 NORTH AVE, LLC,)
)
Defendants.)
_____)

J U D G M E N T

This action is an appeal of a decision of the Weston Board of Appeals, filed with Weston Town Clerk on May 3, 2017, granting 269 North Ave, LLC (Developer) a Comprehensive Permit for the construction of a sixteen unit affordable housing development on property it owns located at 269 North Avenue, Weston, Massachusetts (Comprehensive Permit Decision). The Complaint was filed on May 22, 2017. The Answer of Defendant Weston Zoning Board of Appeals was filed on June 20, 2017. The Answer and Counterclaim of 269 North Ave, LLC was filed on July 21, 2017. The Plaintiff's Special Motion to Dismiss was filed on September 18, 2017. The Defendant 269 North Ave. LLC's Motion to Dismiss Counts II and III of the Complaint was filed on September 18, 2017. The Defendant Weston Zoning Board of Appeals Joinder in Defendant 269 North Ave, LLC's Motion to Dismiss was filed on October 19, 2017. The motions to dismiss were heard on October 20, 2017, Count II of the Complaint was dismissed (Dismissal), and the remainder of the motions were taken under advisement. In a Memorandum and Order dated October 30, 2017, the remainder of the parties' motions to dismiss were denied.

The Stipulation of Dismissal as to Maxine Breen and Count III was filed on January 16, 2018 (Stipulation of Dismissal). The Pre-Trial conference was held on March 20, 2018. A view was taken on May 25, 2018. Trial was held on May 31, and June 6, 2018. The court reporter was sworn. Exhibits 1-66 were admitted. Testimony was heard from William Doyle, Sean Reardon,

Peter Kirk, Brian Johnson, Michael Boucher, Edward Ionata, and John Coppinger. The trial transcript was filed on July, 3, 2018. The Defendant 269 North Avenue, LLC's Post-Trial Brief and Plaintiff's Post-trial Memorandum of Law were filed on August 3, 2018. I heard the closing arguments on August 8, 2018. At that time the court found that the Abutters' presumption of standing had been rebutted and took the remainder of the case under advisement. In a Decision of even date, the court (Foster, J.) has made findings of fact and rulings of law.

In accordance with the October 29, 2017 Dismissal, the January 16, 2018 Stipulation of Dismissal, and the court's Decision issued today, it is

ORDERED, ADJUDGED, and DECLARED that the Comprehensive Permit Decision is **AFFIRMED**. It is further

ORDERED and ADJUDGED that Count I of the Complaint is **DISMISSED** with prejudice. It is further

ORDERED and ADJUDGED that Count II of the Complaint is **DISMISSED** without prejudice. It is further

ORDERED and ADJUDGED that Count III of the Complaint is **DISMISSED** with prejudice as to a claim seeking prospective declaratory relief against the Developer for trespass or nuisance on Maxine Breen's property at 266 North Avenue, Weston from stormwater runoff from the Project, but does not preclude Maxine Breen from appealing the issuance of a permit from the Town of Weston to the Developer to connect the Project's stormwater management system to the drainage system in Route 117 (the Connection Permit), or from bringing any other claims against the defendants arising from the connection of the Project's stormwater management system into the Route 117 drainage system. It is further

ORDERED and ADJUDGED that Count IV of the Complaint as to Maxine Breen is **DISMISSED** with prejudice. It is further

ORDERED, ADJUDGED, and DECLARED under Count IV of the Complaint that the Developer may not unilaterally destroy trees situated either on the property lines that it shares with Peter Kirk and Bryan Johnson or on their properties, with the caveat that the Developer has the right to cut roots and branches on its property irrespective of the effect such actions have on living trees. It is further

ORDERED and ADJUDGED that 269 North Ave, LLC's Counterclaim is **DISMISSED** with prejudice except to the extent that there is an appeal of the Connection Permit or the initiation of any other claims arising from said connection. It is further

ORDERED and ADJUDGED that a copy of this judgment may be filed with the Middlesex Registry of Deeds and marginally referenced on all relevant documents.

 By the Court (Foster, J.)

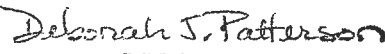
Attest:

Deborah J. Patterson, Recorder

Dated: January 7, 2019

A TRUE COPY

ATTEST:


RECORDER