

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT  
CIVIL ACTION NO. 08-843

Peter K. Frei,	)	PLAINTIFF'S
Plaintiff	)	VERIFIED COMPLAINT,
v.	)	REQUEST FOR AN ORDER
	)	IN MANDAMUS,
Town Clerk-, Planning Board-,	)	REQUEST FOR A
and Zoning Board of Appeals	)	DECLARATORY JUDGEMENT,
of the town of Holland,	)	AND REQUEST FOR A
Defendants	)	COURT ORDER

INTRODUCTION

1. Earl Johnson, one of the three selectman, planning board member and tax assessor of the town of Holland, Massachusetts, has a legacy of illegal land use transaction and abuse of power that dates back more than 26 years. Over time, Earl Johnson, with the help of the members of the Planning Board of Holland (PBH), the members of the Zoning Board of Appeals (ZBA), engineers and attorneys, engaged in a scheme that entails the illegal acquisition of a 12-acre town owned land-locked parcel of land, the illegal procurement of a right of way to said land-locked parcel, the illegal "replacement" of a "grandfathered" structure that did not exist with a two-story three-bedroom home on said parcel, the subsequent illegal subdivision of said parcel of land, the construction of another home on an unbuildable lot created by the illegal subdivision, and the potential construction of a third dwelling on the third lot of said illegal subdivision.
2. The scheme set in motion more than 26 years ago by Earl Johnson is so egregious that there is no case law that would even come close.
3. The underlying history with scanned images of all relevant original deeds and other documents is published on the World Wide Web at:  
<http://www.01521.com/ots/Johnson-landgate.htm>

JURISDICTION

4. While the Zoning Act, M.G.L., c.40A, defines grandfathered lots, grandfathered structures, and grandfathered uses, c.40A also prescribes procedures to remedy violations of local ordinances and by-laws.

5. However, the Zoning Act does not include directives on how to seek judicial review in the instant situation. In the instant situation, the ZBA failed to conduct a public hearing, plaintiff's appeal became therefore constructively approved, none of the aggrieved parties filed a timely appeal, and the town clerk refused to issue the certificate that no appeals were taken and that the constructive approval of plaintiff's appeal became final.
6. The lack of further directives in the Zoning Act for the situation leading to the instant action forces the conclusion that the legislator intended the constructive approval to be final, and that the ZBA waived its right to challenge plaintiff's claim to a constructive approval of his appeal to the ZBA by its failure to file an appeal seeking judicial review.
7. This action is in the first place a petition for an order in mandamus to compel the town clerk to perform her ministerial duty and issue the mandatory certificate.
8. The inquiry into the facts by this Court therefore should be limited to procedural matters and not be expanded into facts concerning zoning violations.
9. In the event this Court interprets relevant sections of the Zoning Act different and expands its inquiry into the actual violations of the Zoning Act and local bylaws, plaintiff requests a declaratory judgment and order pursuant to M.G.L., c.231A and M.R.Civ.P. 57. The SJC found in *Town of Stow v. Pugsley*, 349 Mass. 329, (1965), "Controversies in respect of the enforcement of zoning by-laws or ordinances are appropriate for resolution under G.L. c. 231A."
10. **IMPORTANT:** The instant action primarily alleges that two dwellings built by the Johnson family are in violation of the Subdivision Control Law, M.G.L., c.41, s.s.81K- 81GG, and the Zoning Act, c.41, s.6.
11. Said two dwellings are also in violation of the local zoning bylaws.
12. It is therefore questionable if plaintiff was required to exhaust administrative remedies prescribed in the Zoning Act, as the directives of the Zoning Act pertain exclusively to actions seeking to enforce local ordinances and bylaws, and not actions to remedy violations of the Subdivision Control Law and the Zoning Act under M.G.L.
13. The public has a right to have the rule of law upheld.

## PARTIES

### PLAINTIFF:

14. Peter K. Frei, 101 Maybrook Road, Holland, MA 01521,  
Phone: 413 245 4660

### DEFENDANTS:

15. Kristin LaPlante, town clerk, 24 Forest Park Drive, Holland, MA 01521.
16. Donald Beal, member of the ZBA, 110 Brimfield Road, Holland, MA 01521.
17. Sarto Caron, 29 Shore Drive, member of the ZBA, Holland, MA 01521.
18. Christian Peterson, selectman, and member of the ZBA, 3 Morse Road,  
Holland, MA 01521.
19. Debra Benveniste, member of the PBH, 34 Maybrook Road, Holland, MA  
01521.
20. Steve Ross member of the PBH, 34 Maybrook Road Holland, MA 01521.
21. Lynn Arnold member of the PBH, 9 Shore Drive, Holland, MA 01521.
22. Joanne May member of the PBH, 77 Union Road, Holland, MA 01521.
23. Christine McCooe member of the PBH, 13 Lakeridge Drive, Holland, MA  
01521.
24. Earl Johnson, selectman, member of the PBH and tax assessor, 10 Hisgen Road,  
Holland, MA 01521.
25. Carl Johnson, co-owner of House located at 166B Stafford Road, Holland, MA  
01521.
26. Kimberly Johnson, co-owner of House located at 166B Stafford Road, Holland,  
MA 01521.
27. Brian Johnson, co-owner of lot 22, 61 Stafford Road, Holland, MA 01521.
28. Amy Johnson, co-owner of lot 22, 61 Stafford Road, Holland, MA 01521.

29. Albert West, co-owner of House located at 166 Stafford Road, Holland, MA 01521.
30. Renee Thibault co-owner of House located at 166 Stafford Road, Holland, MA 01521.

### FACTS

31. The town of Holland took in 1976 a 12.41 acre parcel for nonpayment of taxes, deed book 4248, page 335. Instead of selling said parcel at public auction, Earl Johnson, as one of the selectman, conveyed said parcel in 1980 over to his mother in law, deed book 5049, page 155. Earl Johnson's mother in law conveyed said parcel in 1987 to Earl Johnson's wife, deed book 6649, page 373. February 25, 2003, Earl Johnson's wife conveyed said parcel of land to his son Brian Johnson, deed book 12976, page 185.
32. Finally, on November 10, 2003, Earl Johnson's son Brian Johnson conveyed said 12.41 acre parcel to his brother Eric Johnson, see deed book 13762, page 384.
33. Said parcel, deed book 13762, page 384, was a landlocked parcel without any deeded right of access.
34. Eric Johnson retained ownership of said parcel of land until 4-27-2006 when he conveyed one part of it to his brother Brian, see deed book 15889, page 315, and another part to his brother Carl, see deed book 15889, page 317.
35. On November 18, 2003, Eric Johnson applied for a building permit for a single family dwelling.
36. The building permit application was denied the same day, November 18, 2003, by Jack Keough, building inspector and zoning enforcing officer of the town of Holland.
37. Keough stated as reason for the denial "Pre-existing lot, no frontage. New house to replace structure removed several years ago, zoning bylaw section 7."
38. On November 20, 2003, Eric Johnson applied for a variance. Under the heading, State Briefly Reasons for Variance, it says:

Construct a single family dwelling on a grandfathered non conforming lot per M.G.L. c.40A, s.6. Structure once existed on lot. New house to replace.
39. The ZBA never granted the variance for which Eric Johnson submitted an application on November 20, 2003.

40. On December 16 2003, the ZBA held a public hearing “on the application for a special permit for the replacement of an old structure with a new home on a non-conforming lot as provided by section 7.0 of the Holland Zoning By-Laws.”
41. The public hearing was continued on January 20, 2004.
42. The decision granting Eric Johnson a special permit is recorded at the registry of deeds in book 13962 page 437, see Exhibit 1.

43. The decision includes the following statement:

The proposed construction would be grandfathered due to a previous dwelling that was on this property. There are no current signs of this structure, however, Mr. Johnson has agreed to produce documentation that establishes a previous level of taxation on this land consistent with a dwelling. [...] Mr. Johnson produced the requested copy of an old deed and past tax bills that are dated from the 1850s.

See Exhibit 1

44. The ZBA granted grandfather status pursuant M.G.L., c.40A, s.6 for the landlocked parcel and a structure that allegedly existed based on tax bills from the 1850s. See Exhibit 1.

45. The decision on record includes the statement:

David Gibson of 3 Causeway Road was present to express his adamant position that the claimed right-of-way that runs over his land is not valid and that he will oppose any attempts to use said right-of-way in court. Mr. Gibson feels that the presented plot plan is in error concerning that portion of the right-of-way that is shown as crossing his land. Mr. Gibson in his frustration implied that such a drawing could have been illegally altered with the influence of town officials. Mr. Gibson was informed that his insinuations were out of order and that the board’s decision would be based on the facts as presented.

See Exhibit 1.

46. Said right-of-way over the Gibson parcel is shown on a plan registered at the registry of deeds in book of plans 310, page 92 and dated 6-12-97.

47. Said right-of-way over Gibson's parcel shown in book of plans 310, page 92, is a fabrication of two engineers and an attorney.
48. There is no record in any deed or plan in regards to said shown right-of-way predating the plan in book of plans 310, page 92.
49. Said plan in book of plans 310, page 92, states "PLAN OF RIGHT-OF-WAY FOR BRIAN JOHNSON STAFFORD ROAD, HOLLAND HAMPDEN COUNTY, MASSACHUSETTS,"
50. Brian Johnson was not the owner on 6-12-97, when the plan was drawn or any time prior to this date.
51. Theresa Johnson conveyed the parcel to her son Brian Johnson more than 5 years later, on 2-25-2003. See deed Book 12976, page 186.
52. Said deed book 12976, page 186, states, "Premises address: Off Hisgen Road, Holland, MA." The premises address is not given as off Stafford Road.
53. Eric Johnson subsequently constructed a dwelling based on the special permit granted by the ZBA and recorded at the registry of deeds, book 13962, page 437. The dwelling is shown in the upper right side in the photograph showing an aerial view of said parcel, see Exhibit 2.
54. Gibson conveyed his adjoining parcel to Eric Johnson on 2-24-2004 with deed book 13995, page 74.
55. On 7-28-2005, the voters of Holland voted in favor of Article # 1 and thereby approved the PBH's proposed change "[t]o remove section "n: of Common Driveway bylaw section 7.8 on p. 51."
56. Bylaw section 7.8 (n) provided:

Common driveways shall at no time be used to satisfy zoning frontage requirements. Each lot served shall have lot frontage on a street which serves to satisfy lot frontage requirements.
57. The PBH minutes never mentioned the proposed change in any way.
58. On 2-7-2006, Eric Johnson applies for a special permit with the PBH, see Exhibit 3.
59. On 3-7-2006, the PBH held a public hearing on Eric Johnson's special permit application that turned out to be a special permit application for a common driveway.

60. Eric Johnson's parcel consisted of the original landlocked parcel, deed book 13762, page 384, plus the Gibson parcel, deed book 13995, page 74.
61. Eric Johnson had a deeded right of way to the parcel Gibson conveyed to Eric Johnson, see book of plans 180, page 87.
62. Both of Eric Johnson's parcels mentioned in paragraph. 60 do not abut a public way, or a way shown on a plan theretofore approved or endorsed in accordance with the subdivision control law, or a way that was in existence at the time the subdivision control law became effective in the town of Holland.
63. The PBH granted Eric Johnson's special permit for a common drive way. See Exhibit 4.
64. The decision by the PBH was filed with the registry of deeds on 5-11-2006, and is registered in book 15889, page 311. See Exhibit 4.
65. On the same day the PBH granted the special permit for a common driveway the PBH endorsed Eric Johnson's Approval Not Required division of a tract of land (ANR), see Exhibit 5.
66. The minutes to the public meeting of the PBH on 3-7-2006 states: "After acceptance of the ANR concurrently presented, no further subdividing can occur. "
67. On 4-27-2006, Eric Johnson conveyed one of the parcels of his "ANR" to his brother Brian, deed book 15889, page 315, and the third parcel to his brother Carl, deed book 15889, page 317.
68. Carl Johnson thereafter built a dwelling on his lot.
69. Carl Johnson's dwelling is shown in the upper left in the photograph showing an aerial view of said parcel of the Johnson family, see Exhibit 2.
70. Plaintiff's name was on the ballot for the elections held on June 11, 2007, as a candidate seeking to serve a 5 year term on the PBH.
71. About 7 days before June 11, 2007, plaintiff distributed a 65 page press release to the press, the press release consisted of the underlying history and copies of all relevant original deeds and other documents as it is published on the World Wide Web at: <http://www.01521.com/ots/Johnson-landgate.htm>
72. On or around June 11, 2007, plaintiff handed personally a copy of said press release with the title "Holland Selectman Earl Johnson and Family Profit from illegal Land Use" to the town clerk Kristin LaPlante.

73. Kristin LaPlante was at that time married to one of the town employees which worked for the Highway Department. Kristin LaPlante was also the secretary of the Highway Department. Earl Johnson's son Brian was and still is the elected Highway Surveyor and head of the Highway Department.
74. Eric Johnson conveyed his property (lot 20) to Albert West & Renee Thibault on 9-25-2007, see quitclaim deed book 16946, page 496.
75. On 3-4-2008, plaintiff filed two requests to enforce the zoning laws with the town clerk and the building inspector/zoning enforcing officer pursuant to M.G.L., c.40A, s.7.
76. One request was concerning the dwelling with address 166 Stafford Road, lot 20, Exhibit 6; the other request concerning the dwelling located on 166B, lot 21 as shown in Exhibit 7.
77. Jack Keough, building inspector and zoning enforcing officer denied the two requests in a timely fashion on 3-17-2008. See Exhibit 8 for lot 20, 166 Stafford Road; and Exhibit 9 for lot 21, 166B Stafford Road.
78. On 3-31-2008, plaintiff filed two timely appeals pursuant to M.G.L., c.40A, s.s.8, 15. See Exhibit 10 for lot 20, 166 Stafford Road; and Exhibit 11 for lot 21, 166B Stafford Road.
79. The ZBA mailed letter dated 5-22-2008, claiming plaintiff failed to follow proper procedures, see Exhibit 12.
80. On or around 5-27-2008, plaintiff handed the town clerk in person a letter addressed to the ZBA together with a personal check in the amount of \$ 165.00, see Exhibit 13.
81. On 7-1-2008 Sarto Caron, chairman of the ZBA mailed letter claiming plaintiff did not file his appeal within the 21 day period and claiming plaintiff failed to present a check in a timely fashion, and that the ZBA voted to return plaintiff's check, see Exhibit 14.
82. On 7-8-2008, the 100 day period during which the ZBA was mandated to hold a public hearing and file its decision with the town clerk expired.
83. On 7-15-2008, plaintiff filed the two required notices with the registry of deeds pursuant to M.G.L., c.40A, s.7. After recording, the registry of deeds sent back the two originals. See Exhibit 15 for lot 20, 166 Stafford Road, registered in book 17390, page 541; and Exhibit 16 for lot 21, 166B Stafford Road, registered in book 17390, page 540.



84. On 7-15-2008, plaintiff mailed 23 letters by means of certificate of mailing notifying interested parties of the constructive approval of his two appeals and the possibility to appeal the constructive approval pursuant to c.40A, s.17. See Exhibit 17.
85. On 7-17-2008, plaintiff filed the required notice of constructive approval with the town clerk, see Exhibit 18.
86. On 8-11-2008, town clerk Kristin LaPlante refused to issue the certificate confirming that the 20 day time period expired without receiving any appeals and that therefore the constructive approval of plaintiff's two appeals became final, M.G.L., c.40A, s.17.
87. Same day, 8-11-2008, plaintiff informed the town clerk of her duty, see Exhibit 21.

#### FIRST COUNT

88. Paragraphs 1 through 87 are hereby incorporated into this first count as set forth in their entirety herein.
89. Kristin LaPlante, town clerk of the town of Holland, failed to perform her ministerial duty pursuant M.G.L., c.40A, s.15.
90. The town clerk failed to issue a certificate stating the fact that the ZBA failed to hold a public hearing, that plaintiff's/petitioner's appeal became constructively approved, that no appeal was filed in the 20 day period, and that the approval of plaintiff's/petitioner's appeal is final.
91. The town clerk also failed to forward a copy of such certificate to plaintiff/petitioner as mandated in M.G.L., c.40A, s.15.

#### SECOND COUNT

92. Paragraphs 1 through 91 are hereby incorporated into this second count as set forth in their entirety herein.
93. The ZBA had not the authority to grant Eric Johnson's special permit to "replace" a dwelling that allegedly existed a long time ago.
94. The special permit that allows replacing a dwelling that did not exist and probably never did exist is outside the law.

95. The parcel conveyed to Eric Johnson had never pre-existing non-conforming status pursuant to M.G.L., c.40A, s.6.
96. The parcel had no frontage and was land-locked.
97. There was no dwelling on the parcel.
98. Only existing dwellings can be grandfathered pursuant to M.G.L., c.40A, s.6.
99. The parcel was and still is an unbuildable lot.
100. The dwelling built by Eric Johnson and later conveyed to Albert West & Renee Thibault is therefore structure in violation of the Zoning Act and Subdivision Control Law under M.G.L. and local bylaws.

### THIRD COUNT

101. Paragraphs 1 through 100 are hereby incorporated into this third count as set forth in their entirety herein.
102. Subdivisions applications propose new ways which are in conformance with the requirements of the Subdivision Control Law. These newly created ways provide the required frontage for the created lots.
103. The PBH's approval of Eric Johnson's special permit for a common driveway to provide access to three parcels of land was outside the law.
104. The approval of Eric Johnson's special permit for a common drive way to serve three lots of a parcel of land that was never subdivided is an illegal circumvention of the Subdivision Control Law under M.G.L. and local Subdivision bylaws.
105. The special permit for a common drive way issued by the PBH to Eric Johnson also violates inter alia the following provisions of the town of Holland zoning bylaws as they applied at the time to the residential zone in which the dwelling is located; 1.0(a); 5, table 2, frontage requirement of 200'; 5, table 2, footnote(a); 7.82; 7.84; 7.85(1)(d); 7.85(3)(b); 7.85(3)(c); 7.85(3)(d); 7.85(3)(e); 7.85(3)(g); 7.85(3)(j); and 7.85(3)(k). See Exhibit 21.

### FOURTH COUNT

106. Paragraphs 1 through 105 are hereby incorporated into this forth count as set forth in their entirety herein.

107. The parcel Eric Johnson conveyed to his brother Carl Johnson with deed book 15889, page 317 is not a building lot pursuant to the Zoning Act M.G.L., c.40A and Subdivision Control Law, M.G.L., c.41, s.s.81K- 81GG.
108. The lot does not have the minimum frontage of 20' as required pursuant to M.G.L., c.41, s.81O.
109. The illegal structure is also in violation of the following sections of the zoning bylaws of the town of Holland: 1.0(a); 5, table 2, frontage requirement of 200'; 5, table 2, footnote(a); 7.82; 7.84; 7.85(1)(d); 7.85(3)(b); 7.85(3)(c); 7.85(3)(d); 7.85(3)(e); 7.85(3)(g); 7.85(3)(j); and 7.85(3)(k). See Exhibit 21.
110. The dwelling built by Carl Johnson on said parcel is therefore a structure in violation of the Zoning Act and Subdivision Control Law under M.G.L. and local bylaws.

#### FIFTH COUNT

111. Paragraphs 1 through 110 are hereby incorporated into this fifth count as set forth in their entirety herein.
112. The ANR plan submitted by Eric Johnson and approved by the PBH is in violation of the Subdivision Control Law, .M.G.L., c.41, s.s.81K- 81GG.
113. A common driveway can not provide legal frontage, see M.G.L., c.41, s.81L.
114. Section 81O of the Subdivision Control Law requires an absolute minimum of 20' frontage for lots along ways that are defined in s.81L.
115. The special permit for a common drive way is also in violation of the Rules and Regulations Governing the Subdivision and use of Land in the Town of Holland, Massachusetts, Section 1(C)(1); 1(C)(3), and Section 2. See Exhibit 20.
116. Section 1(C)(1) and Section 1(C)(3), of the Rules and Regulations Governing the Subdivision and use of Land in the Town of Holland (see Exhibit 20 ), adopts the rules outlined in Section 81L of Chapter 41 of M.G.L. Section 2 outlines the procedure to file a Subdivision Proposal.
117. All three lots created by Eric Johnson's ANR plan do not have any legal frontage.
118. The dwelling constructed on Carl Johnson's parcel is therefore illegal.
119. The dwelling constructed on Eric Johnson's parcel is therefore still illegal.

**WHEREFORE**, plaintiff respectfully demands that judgment be entered in his favor and against the defendants;

1. that this Court issues a writ of mandamus to compel the town clerk to issue the certificate as mandated by M.G.L., c.40A, s.15;
2. that this Court declares the constructive approval of plaintiff's two appeals as final;
3. that this Court declares the two houses built by Carl and Eric Johnson located off of Stafford Road in violation of the Zoning Act and sections of the zoning bylaws of the town of Holland;
4. that this Court declares said two parcels Carl and Eric Johnson constructed houses on unbuildable and in violation of the Subdivision Control Law under M.G.L. and local Subdivision control bylaws;
5. that this Court declares the two houses constructed by Carl and Eric Johnson illegal;
6. that this Court issues an order to have said two dwellings moved, dismantled, or demolished;
7. that this Court declares lot 22 conveyed to Brian Johnson unbuildable; and
8. such other relief in law or equity as this Court deems appropriate.

Plaintiff pro se

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