

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

HOUSING COURT  
WESTERN DIVISION  
Civil Action No.

NORTHEAST CONCEPTS, INC, )  
Plaintiff, )  
v. )  
TOWN OF HOLLAND, JAMES )  
WETTLAUFFER, EARL JOHNSON, )  
AND CHRISTIAN PETERSON AS )  
BOARD OF SELECTMAN, AND )  
BRIAN JOHNSON, HIGHWAY )  
SURVEYOR )  
Defendants, )

**VERIFIED COMPLAINT  
AND REQUEST FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

I. PRELIMINARY STATEMENT

1. Plaintiff Northeast Concepts, Inc., (“Northeast Concepts” or “NC” ) brings the within action seeking a Declaratory Judgment and Injunctive Relief. The within action arises from an application for a driveway permit which the Town of Holland (“the Town”) has failed to issue, as well as the channeling of water across Plaintiff’s land, such actions denying the Plaintiff’s right to use and enjoy its property intended for use as a place of human habitation as well as members of the general public, and which land use is subject to regulation by the Town under the By Laws for the Town.

II. PARTIES AND JURISDICTION

- 2. The Plaintiff is a Massachusetts Corporation having a principal place of business at 14-16 Lakeridge Drive, Holland, Hampden County, Massachusetts 01521.
- 3. Defendant Town is a Municipal Corporation with a principal place of business at 27 Sturbridge Road, Holland, Hampden County, Massachusetts 01521.

4. Defendant, Board of Selectman, (“Board”) consists of James Wettlauffer, (Chairman), Earl Johnson, (Member), and Christian Peterson, (Member) whose business address is 27 Sturbridge Road, Holland, Hampden County, Massachusetts 01521. The Board is responsible for issuing driveway permits for the Town pursuant to Chapter X, Section 2 of the Town Bylaws and named herein solely in their official capacity.
5. Defendant Brian Johnson is the Town Highway Surveyor (“Highway Surveyor”) with an office located at 5 Sturbridge Road, Holland, Hampden County, Massachusetts 01521 and is authorized to enforce the Driveway Bylaw of the Town and is named herein solely in his official capacity.
6. Jurisdiction is conferred upon this Court pursuant to M.G.L. c.231A § 1 et seq and M.G.L. c. 185C, § 3.

### III. FACTUAL ALLEGATIONS

7. On or about August 8, 2008, the Plaintiff submitted its application for Driveway Permit, requesting approval for property shown on Assessors Map 10 Parcel A-06, Mashapaug Road in Holland, Massachusetts known as Huguenot Farm. (“Subject Property” or “NC/HF Project Site”). A true copy of the application is attached as Exhibit A.
8. At all times relevant hereto, the plaintiff has owned the real estate comprising property consisting of approximately 76 acres of land and has been responsible for general superintendence and maintenance. A map of said property is attached as Exhibit B.
9. The property is bisected by Mashapaug Road, which divides the property into two parcels. The smaller parcel, which is approximately 0.15 acres in size, is located east of Mashapaug Road and provides private shorefront access to Hamilton Reservoir. The larger parcel, which is approximately 75.8 acres in size, is located on the west side of

Mashapaug Road and is actively being forested and is the intended site for construction of a building for human habitation and has been used in the past as the location of a farmhouse.

10. An access road is located on the larger tract of the Subject Property and serves as the main entrance.
11. This existing access road and proposed driveway is located along the same alignment of an historic access road at this parcel, as documented in the 1915 book entitled "*The History of Holland*" by Reverend Martin Lovering. A reproduction of a map from that book is presented on Exhibit C, showing the relative location of Hamilton Reservoir, Mashapaug Road, and Amber Brook. The labels have been added for clarification.
12. Local tax maps and other site mapping also depict a former dirt cart road in this location.
13. Amber Brook flows in a northeasterly direction along the southern border of the larger parcel and flows beneath Mashapaug Road into Hamilton Reservoir. Approximately half of the site is located within the Amber Brook watershed. The Subject Property and the Amber Brook watershed are depicted on Exhibit D.
14. The Town Highway Surveyor denied the initial application for a driveway permit and has failed to act on the subsequent application.
15. Plaintiff has complied with the provisions of the Driveway Bylaw and the Town has sufficient grounds to approve the application.
17. The application was properly filed with all necessary information and documentation submitted.
18. The discretion of the Highway Surveyor with regard to the application for the driveway permit is so narrowly circumscribed that approval of a proper application is virtually

assured.

19. Defendant Johnson, as Highway Surveyor, in reviewing the application is performing a nondiscretionary, ministerial act.
20. Plaintiff has a legitimate claim of entitlement to the driveway permit.
21. In addition to the failure to issue the driveway permit, Defendants, using Town resources, have acted in the past to physically block the Property's access in an attempt to, in effect, prevent the Plaintiff's use of the property.
22. Moreover, Defendants have falsely claimed that construction at the site in the general location where the permit is being requested has caused safety concerns caused by a lack of drainage, and falsely claimed that the runoff of water and materials from the property carried onto Mashapaug Road resulting in a hazard to travel on Mashapaug Road.
23. In fact, runoff of water onto Mashapaug Road is the result of the Town's failure to properly apply the provisions of the Town Bylaw with regard to driveway permits and the Town's failure to properly maintain Town drainage facilities for the roads and land in the Amber Brook watershed.
24. Said failures of the Town to properly apply the provisions of the Town Bylaw with regard to driveway permits and the Town's failure to properly maintain Town drainage facilities for the roads and land in the Amber Brook watershed has caused damage to Plaintiff's land through the runoff of surface water onto Plaintiff's land and has endangered the health and safety of the general public and the natural resources within the Town of Holland.
25. Said water runoff is a substantial and unreasonable interference with Plaintiff's land and harm to the public through sedimentation and runoff into Hamilton Reservoir, the shore

of which abuts plaintiff's property.

26. An investigation outlining the runoff and sedimentation was conducted by Milone & MacBroom, Inc., a consulting firm providing services in Civil Engineering, Transportation Engineering, Water Resource Engineering & Environmental Planning, Landscape Architecture, and Surveying & Construction Management. A true copy of the Milone & MacBroom investigative report is attached as Exhibit F.

COUNT I

CIVIL ACTION IN THE NATURE OF CERTIORARI PURSUANT TO  
M.G.L. c. 249 8 4

27. Plaintiff incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 26 as if fully set forth herein.
28. The Town's failure to issue a Driveway Permit is not based on substantial evidence.
29. The Town's failure to issue a Driveway Permit is arbitrary, capricious, or both.
30. The Town's failure to issue a Driveway Permit is erroneous as a matter of law,
31. The Plaintiff has suffered substantial hardship and incurred substantial expenses as a result of the Town's failure to issue a Driveway Permit.

WHEREFORE, Plaintiff respectfully requests this Court:

- A. Order the Defendants to file with the Clerk of this Court a certified copy of the entire proceedings before the Town, Board of Selectman, and Highway Surveyer, including but not limited to true, accurate, complete and perfect copies of all papers submitted to the Town, its officers, officials, agents or employees, all reports, papers, transcripts (or transcriptions of tape recordings) of testimony of the hearing before them, if any there was.

- B. Afford the parties a hearing for the purpose of oral argument of this matter.
- C. Enter judgment quashing any denial of a driveway permit.
- D. Direct the Defendants through a preliminary and permanent injunction to issue a Driveway Permit in accordance with and in conformity to the Bylaws of the Town.
- E. Grant such other and further relief as it deems just and proper.

COUNT II

REOUEST FOR DECLARATORY JUDGMENT PURSUANT TO M.G.L. c. 231A

- 32. Plaintiff incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 31 as if fully set forth herein.
- 33. There exists between the parties to this action an actual justiciable controversy within the jurisdiction of this Court.

WHEREFORE, Plaintiff respectfully requests this Court:

- A. Direct the Defendants through a preliminary and permanent injunction to issue a Driveway Permit in accordance with and in conformity to the Bylaws of the Town.
- B. Adjudicate the rights of the parties and grant such other and further declaratory relief as it deems just and proper.

COUNT III

NUISANCE

- 34. Plaintiff incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 33 as if fully set forth herein.

35. Said water runoff is a substantial and unreasonable interference with Plaintiff's land and has caused damage to its land through diminution in value and cost to repair as well as harm to the public through sedimentation and runoff into Hamilton Reservoir, the shore of which abuts plaintiff's property.

WHEREFORE, Plaintiff respectfully requests this Court:

A. Order Defendant to take specific actions to remedy the runoff of surface water from Town property onto Plaintiff's land through actions including but not limited to:

- a. Stabilize steep roads within the watershed;
- b. Stabilize private driveways within the watershed;
- c. Design and install sediment collection devices such as formal sediment basins, catch basins with deep sumps, and/or Vortech units;
- d. Dredge the existing manmade pond located on west side of Mashapaug Road;
- e. Construct more formal sediment basins near Mashapaug Road;
- f. Construct a sediment forebay within Hamilton Reservoir at the outlet of Amber Brook that can be accessed by Town crews for routine sediment removal;
- g. Conduct annual street sweeping and cleanout of all stormwater structures; and
- h. educate residents within the watershed of the importance of removing road sands from driveways each spring.

- B. Enter judgment for the Plaintiff;
- C. Award damages for the diminution of market value and cost of repair of the land;
- D. Grant such other and further declaratory relief as it deems just and proper.

**VERIFICATION**

I, JAMES LAMOUNTAIN, hereby depose and state as follows:

1. I am an employee of the Plaintiff in the above-captioned case.
2. I have read the Verified Complaint filed herein and, knowing the contents thereof, have found that the allegations of fact set forth therein are based on my own personal knowledge and are true, except as to those allegations based on information and belief which I believe to be true.

Signed under the penalties of perjury on this \_\_\_\_\_ day of July, 2009.

\_\_\_\_\_  
JAMES LAMOUNTAIN

Respectfully submitted,

PLAINTIFF NORTHEAST CONCEPTS, INC.  
BY ITS ATTORNEY

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