

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CASE NO.

TOWN OF NORTH ATTLEBOROUGH,

Plaintiff,

v.

STEVEN R. BANKERT, DEUTSCHE BANK
NATIONAL TRUST COMPANY, as Trustee
for Morgan Stanley ABS Capital I Inc. Trust
2006-HE4, Mortgage Pass-Through
Certificates, Series 2006-HE4, and JOHN
DOES,

Defendants.

COMPLAINT

NOW COMES Plaintiff Town of North Attleborough (the “Town”) and brings this quasi in rem action under the Court’s general equity powers pursuant to Gulda v. Second National Bank of Boston, 323 Mass. 100 (1948), to obtain an injunction to authorize the seizure of a 24-foot “pirate ship” floating structure belonging to Defendants Steven R. Bankert (“Bankert”), Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-HE4, Mortgage Pass-Through Certificates, Series 2006-HE4 (“Deutsche Bank, as Trustee”), and/or John Does, which structure is located on real property owned by the Town, and to authorize the Town to dispose of the structure. The Town also seeks a declaration of the ownership of the structure for the purposes of assessing the expenses for the Town’s seizure and disposal of the structure, as well as an order enforcing certain fines that have been assessed against Bankert payable to the Town.

PARTIES

1. Plaintiff Town is a municipal corporation with a main office located at 43 South Washington Street, North Attleborough, Bristol County, Massachusetts 02760.
2. Defendant Bankert is an individual last known to be residing at 42 Pratt Lane, North Attleborough, Bristol County, Massachusetts 02760.
3. Upon information and belief, Defendant Deutsche Bank, as Trustee is a corporation organized under the laws of the United States with its principal place of business located at C/O Specialized Loan Servicing, LLC, 8742 Lucent Blvd., Suite 300, Highlands Ranch, CO 80129.
4. Defendants John Does are other individuals or entities unknown to the Town but believed to be known to Bankert.

VENUE AND JURISDICTION

5. The Court has jurisdiction over this action pursuant to G.L. § 214, § 1, and G.L. c. 231A, § 1.
6. Venue in this Court is proper pursuant to G.L. c. 223, § 1, and G.L. c. 214, § 5.

FACTS

7. Falls Pond is a public body of water located in the Town on real estate owned by the Town. Falls Pond is subject to the Town Conservation Commission's Rules and Regulations Governing Structures on Falls and Whiting's Ponds, which are attached hereto as **Exhibit A** (as they existed in 2012) and **Exhibit B** (as they currently exist).
8. Up until at least 2020, Bankert owned a 24-foot "pirate ship" floating structure (the "Float"), which was moored on Falls Pond at a location adjacent to real property that Bankert then owned located at 42 Pratt Lane, North Attleborough, Massachusetts.
9. Upon information and belief, the Float is not, in fact, a ship and, indeed, is not a seaworthy vessel. The Float has no means of propulsion, and the Massachusetts Department of

Environmental Protection has refused to let Bankert register the Float as a boat or to issue a hull identification number for the Float.

10. The Float—for which Bankert did not apply or obtain any permitting—is the subject of a decade-plus-long dispute between the Town and Bankert.

11. On July 12, 2012, the Town’s Conservation Commission—which has the authority to regulate activity on Falls Pond—issued Bankert a Notice of Violation in which Bankert was ordered to stop work on construction of the Float. A copy of the Notice of Violation is attached hereto as **Exhibit C**.

12. Bankert disregarded the Conservation Commission’s Notice of Violation, leading to a hearing before the Conservation Commission in September 2012.

13. At the hearing, Bankert represented to the Conservation Commission that he would remove the Float by October 31, 2012.

14. Bankert did not remove the Float from Falls Pond by October 31, 2012.

15. On June 21, 2013, the Town’s Conservation Commission issued Bankert a Violation Notice/Cease and Desist, in which the Commission’s Conservation Agent informed Bankert that the Float violated the Commission’s Rules and Regulations Governing Structures on Falls and Whiting’s Ponds and ordered Bankert to remove the Float from Falls Pond. A copy of the Violation Notice/Cease and Desist is attached hereto as **Exhibit D**.

16. Bankert did not remove the Float from Falls Pond and the Commonwealth of Massachusetts took out an eight-count criminal complaint against Bankert in 2014, Case No. 1434CR001712.

17. In January 2016, after the Commonwealth moved to decriminalize each count pursuant to G.L. c. 277, § 70C, and proceeded with a civil bench trial, the District Court

Department of the Trial Court found Bankert in violation of the Town’s regulations and found that Bankert had refused to comply with the orders of the Town’s Conservation Commission. Although the District Court concluded that it lacked equity jurisdiction to order the removal of the Float, the District Court “notified” Bankert “of his obligation to remove” the Float from Falls Pond and ordered him subject to a fine of \$100 per day for each day after February 7, 2016, that Bankert failed to comply. A copy of the District Court’s Decision and Order is attached hereto as **Exhibit E**.

18. Bankert did not remove the Float from Falls Pond, notwithstanding the District Court’s order.

19. In May 2020, title to Bankert’s property at 42 Pratt Lane transferred to Deutsche Bank, as Trustee pursuant to a foreclosure deed registered with the Bristol County North Registry of Deeds at book 25936, page 7.

20. In the spring of 2023, the Float broke loose from its mooring adjacent to 42 Pratt Lane and began floating around Falls Pond.

21. This was not the first time that the Float has broken loose of its mooring adjacent to 42 Pratt Lane, as noted in the District Court’s January 2016 Decision and Order in Case No. 1434CR001712.

22. Moreover, in May 2016, the Float broke loose of its mooring and ran into a high hazard potential classification dam on Falls Pond, as referenced in a May 16, 2016 article of The Sun Chronicle and as reflected in the photograph below, which was published in The Sun Chronicle:¹

¹ Available at https://www.thesunchronicle.com/news/local_news/falls-pond-pirate-ship-goes-adrift-lands-at-dam/article_cd958aae-41a2-5355-8b5e-d86c33b0834a.html (last visited Dec. 15, 2023).



23. On June 2, 2023, the Town’s Conservation Administrator sent Bankert a letter advising Bankert of the fact that the Float had broken loose and directing Bankert to remove the Float from Falls Pond. A copy of the June 2, 2023 letter is attached hereto as **Exhibit F**.

24. According to a message that Bankert submitted to the Conservation Administrator through the Town website on or about June 6, 2023, in “early 2020”—around the time of the foreclosure of Bankert’s property at 42 Pratt Lane—Bankert ceased to own the Float. Bankert also represented that he would forward the Conservation Administrator’s June 2, 2023 letter to the purported new owner of the Float. Despite claiming not to own the Float, Bankert also represented (incorrectly) that the Float had been moved approximately two weeks prior and that it was secure. A screenshot of Bankert’s message (with his email address redacted) follows:

Contact Shannon Palmer

Your Name	Steven Bankert
Your Email Address	[REDACTED]
Subject	Your Letter
Message	<p>I received your letter today, It is dated last Friday and had a deadline of yesterday. I have not owned the pirate ship since early 2020. I will forward the letter to its owner. I disagree that the ship is loose on Falls Pond. It was moved about 2 weeks ago, it is secure and has not moved since. The police were mis-informed and it is posible you were mis-informed too. There in no safety or environmental issue. I had before and will again convey your desire to have the ship removed soon, I had expected it would have been between January and March but that, and other scheduled work, did not happen. Your letter may move things along.</p>
Attachments	<i>Field not completed.</i>

25. Despite repeated requests from the Town, Bankert has refused to identify the purported current owner(s) of the Float.

26. On July 6, 2023, the Town sent Bankert a last and final order to remove the Float from Falls Pond or identify the current owner(s) of the Float within thirty (30) days. A copy of the July 6, 2023 order is attached hereto as **Exhibit G**.

27. Neither Bankert nor any other unidentified owner removed the Float from Falls Pond by August 7, 2023, as reflected in the picture below, which was taken on August 9, 2023:



28. As of the date of this Complaint, Bankert has not identified the current owner(s) of the Float.

29. As of the date of this Complaint, Bankert has not paid the Town any portion of the \$100-per day fine assessed by the District Court for Bankert's failure to remove the Float from Falls Pond by February 7, 2016.

30. As reflected in the picture below, which was taken on November 13, 2023, the Float remains on Falls Pond.



31. The Float's presence on Falls Pond poses a significant safety issue, especially when it is not moored.

32. The Float presents a danger to the Town's first responders in the event of an emergency on or near Falls Pond.

33. The Float also presents a danger to the Town's residents that use Falls Pond for recreation and/or live on property adjacent to Falls Pond.

34. If the Float breaks loose again and penetrates the dam on Falls Pond, there is a significant likelihood that the Float will cause damage to person or property.

COUNT I
Injunctive Relief Authorizing Seizure

35. The Town hereby incorporates by reference the allegations set forth in the preceding paragraphs as though fully restated herein.

36. As an unpermitted structure build on Town property, namely Falls Pond, the Float is a nuisance to the Town and trespasses on Town property.

37. Pursuant to the Court's equity powers, as discussed in Gulda, the Court may issue an injunction to authorize the Town to seize the Float.

38. The Float's continued presence on Falls Pond, particularly where the Float's ownership is uncertain and the Float has repeatedly broken loose of its mooring nearing 42 Pratt Lane, poses safety issues to the Town's first responders and residents.

39. The Town thus requests the Court issue an injunction to authorize the Town to seize the Float, with any expenses related thereto to be borne by the Float's owner.

COUNT II
Authorization to Dispose of Seized Property

40. The Town hereby incorporates by reference the allegations set forth in the preceding paragraphs as though fully restated herein.

41. As an unpermitted structure build on Town property, namely Falls Pond, the Float is a nuisance to the Town and trespasses on Town property.

42. Pursuant to the Court's equity powers, as discussed in Gulda, the Court may authorize the Town to dispose of the Float once the Town has seized it pursuant to an injunction of the Court.

43. Maintenance of the Float once seized by the Town would place an unnecessary burden on the Town, which has no use for the Float.

44. The Town thus requests the Court issue an order authorizing the Town to dispose of the Float upon its seizure, with any expenses related thereto to be borne by the Float's owner.

COUNT III
Declaratory Judgment as to Ownership of the Float

45. The Town hereby incorporates by reference the allegations set forth in the preceding paragraphs as though fully restated herein.

46. An actual controversy has arisen among the Town, Bankert, Deutsche Bank, as Trustee, and John Does as to the ownership of the Float.

47. Specifically, Bankert claims to have ceased owning the Float in "early 2020," around the same time that 42 Pratt Lane was purchased by Deutsche Bank, as Trustee pursuant to a foreclosure deed. Despite repeated requests from the Town, however, Bankert has refused to identify the current owner of the Float if it is not him. As such, the Town remains under the belief that Bankert owns the Float.

48. Regardless of who owns the Float, the Town should not be forced to bear the expenses associated with the seizure and disposal of the Float.

49. As such, for the purposes of assessing those expenses properly, and pursuant to the injunctive relief sought above, the Town also seeks a declaration as to the identity of the owner of the Float and that said owner shall rightfully bear any expenses the Town incurs in seizing and disposing of the Float.

COUNT IV
Order for Payment of Fines

50. The Town hereby incorporates by reference the allegations set forth in the preceding paragraphs as though fully restated herein.

51. Pursuant to the District Court's January 2016 Decision and Order in Case No. 1434CR001712, Bankert is subject to a fine of \$100 per day for each day after February 7, 2016, that Bankert failed to remove the Float from Falls Pond.

52. As reflected in the Town's July 6, 2023 order to Bankert, the total fine amounted to \$272,100 as of June 20, 2023.

53. As of the date of this Complaint, the total fine amounts to \$287,300.

54. Bankert has not paid any portion of the fine.

55. The Town requests the Court enter an order enforcing the fine and requiring Bankert to pay it.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Town of North Attleborough respectfully requests that this Honorable Court:

1. Issue an injunction authorizing the Town to seize the Float from Falls Pond, with any expenses related thereto to be borne by the Float's owner;
2. Authorize the Town to dispose of the Float upon seizure, with any expenses related thereto to be borne by the Float's owner;
3. Enter a declaratory judgment identifying the current owner of the Float and requiring that said owner shall rightfully bear any expenses the Town incurs in seizing and disposing of the Float;
4. Order Bankert to pay the Town fines in the amount of \$287,300;
5. Enter corresponding judgment in favor of the Town and against Defendants; and
6. Grant the Town such other relief as the Court deems just and equitable.

Respectfully submitted,

TOWN OF NORTH ATTLEBOROUGH

By its attorneys,

A handwritten signature in blue ink, appearing to be 'B. L. Smerage', written over a horizontal line.

Carolyn M. Murray (BBO# 653873)

Roger L. Smerage (BBO# 675388)

KP Law, P.C.

Town Counsel

101 Arch Street, 12th Floor

Boston, MA 02110-1109

(617) 556-0007

cmurray@k-plaw.com

rsmerage@k-plaw.com

Date: December 20, 2023

889135/NATL/0047

EXHIBITS TO COMPLAINT

Ex. A (Town Conservation Commission’s Rules and Regulations Governing Structures on Falls and Whiting’s Ponds, 2012)..... 1

Ex. B (Town Conservation Commission’s Rules and Regulations Governing Structures on Falls and Whiting’s Ponds, Current)..... 6

Ex. C (July 12, 2012 Notice of Violation) 13

Ex. D (June 21, 2013 Violation Notice/Cease and Desist)..... 15

Ex. E (District Court Decision and Order, Commonwealth v. Bankert, Case No. 1434CR001712)..... 18

Ex. F (June 2, 2023 Letter from Conservation Administrator)..... 23

Ex. G (July 6, 2023 Order to Remove) 25

Exhibit A



**TOWN OF NORTH ATTLEBOROUGH
CONSERVATION COMMISSION**

**RULES AND REGULATIONS GOVERNING
STRUCTURES ON FALLS AND WHITINGS POND**

SECTION 1-PURPOSE

It is found to be for public good and welfare of the Town of North Attleboro to protect and preserve its submerged lands under Whiting's Pond and Fall's Pond from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for fish and wildlife, will damage or destroy habitats for plants, fish and wildlife, will eliminate, depreciate or obstruct the recreation and aesthetic enjoyment of the public, and will otherwise adversely affect the interests of the general public.

Therefore acting under the authority of Article VIII, Section 6 c of the Town By-Laws, these regulations are adopted.

SECTION 2 -DEFINITIONS

- 2.0 Definitions: (All words not defined in this section shall use the definitions found in 310 CMR 10 or in the current zoning regulations for the Town.)
- 2.1 Abutter: All property owners laterally within 100 feet of the property lines of the project location.
- 2.2 Alter: The changing of existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics; the placement of fill, excavation or re-grading, cutting or removing of vegetation, ground cover, trees; changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water, including but not limited to, the application of herbicides, pesticides, or fertilizers; any activities which cause displacement of the water body or groundwater; or any activities which cause alteration of wildlife habitat.
- 2.3 Applicant: The property owner, the property owner's representative, the Town of North Attleboro, or someone with a direct financial interest in the property and said interest shall be explained.
- 2.4 Clear Cut: The cutting down or removal of 80% or more of all trees and/or vegetation in an area.
- 2.5 Commission: The North Attleboro Conservation Commission
- 2.6 Construction: Any activity that requires a building permit and/or approval from the Conservation Commission
- 2.7. Deposit: Includes but not limited to fill, grade, dump, place, discharge or emit
- 2.8 Discharge: The emission of any water, substance or material into the any areas under the legal jurisdiction of the Commission.
- 2.9 Material: Any substance, solid or liquid, organic or inorganic, including, but not limited to soil, sediment, aggregate, land, gravel, clay, mud, debris, sand, refuse, vegetation and waste.
- 2.10 Person: Any firm, person, partnership, association, corporation, company, organization, or legal entity of any kind including governmental agencies or subdivisions thereof.
- 2.11 Pollution: Any harmful effect, or the contamination or rendering unclean or impure of any areas under the jurisdiction of the Commission by reason of any waste or other materials discharged or deposited therein.

- 2.12 Remove: Includes, but is not limited to, drain, excavate, mine, dig, dredge, suck, bulldoze, blast or clear-cut.
- 2.13 Rendering unclean or impure: Any alteration of the physical, chemical or biological properties of any areas under the jurisdiction of the Commission including, but not limited to, a change in color, odor, taste or turbidity.
- 2.14 Structure: Anything constructed or erected, the use of which requires location on the ground or into the water or attached to anything located on the ground, whether said ground is above or below the water.

SECTION 3 – CONSTRUCTION PERMITS

- 3.1. No person shall construct, repair or replace any structure(s) in or on any resource area as defined in 310 CMR 10.00, any bank on or in and adjacent to Whiting's or Fall's Pond without a construction permit from the Conservation Commission. The permit application together with a detailed plan and a map showing the exact location of the proposed project shall be submitted to the Town Clerk, accompanied by a filing fee in the form of a check made out by the applicant to the Town of North Attleboro. The permit application fee shall be ten dollars (\$10.00). At the time the application is submitted to the Town Clerk, the applicant shall provide postal receipts or copies, verifying that abutters have been notified by certified mail. The Town Clerk shall deliver the application, plan, map and filing fee to the Conservation Commission; and shall retain a copy of the application.
- 3.2. The grant of a permit does not alleviate the applicant from obtaining any other approval necessary under 310 CMR 10.00 or any other local, state or federal regulations.

SECTION 4 – CONSTRUCTION PERMIT EXEMPTION

- 4.1. The replacement or repair of existing structures in or adjacent to Whiting's or Fall's Pond which does not involve the excavation or filling of any bank or other resource area not an increase in the square footage or the structure's area shall require a permit, but shall be exempt from the fee provisions of these regulations.

SECTION 5 – LOCATION

- 5.1 Any structure shall comply with the current zoning side yard setback requirements.
- 5.2. A structure may be perpendicular or parallel to the shoreline or extend at some other angle into Whiting's or Fall's Pond depending on the needs of the landowners, factors relating to safe boat navigation, and the difficulty of construction. However, any boat secured to such a structure shall not extend beyond the extension of the abutter's property line.
- 5.3. No property owner shall have more than one structure at the property's shoreline.

SECTION 6 – PENALTIES

- 6.1. Any person who violates any provision of these regulations, a decision or condition of a permit issued under these regulations, or misrepresents any material fact in connection with any activity regulated or prohibited by these regulations, shall pay a fine of not more than One Hundred Dollars (\$100.00).
- 6.2. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense,

AMENDMENTS

EFFECTIVE DATE

SECTIONS AMENDED

6/02/02

8/22/03

Delete sections 6 and 7.3
(re-number as necessary)

Exhibit B



**TOWN OF NORTH ATTLEBOROUGH
CONSERVATION COMMISSION**

**RULES AND REGULATIONS GOVERNING
STRUCTURES ON FALLS AND WHITING'S PONDS**

Effective June 2, 2002
Amended August 19, 2003; April 6, 2004;
June 4, 2013; June 27, 2017

SECTION 1- PURPOSE

The Conservation Commission, as stewards of Falls Pond and Whiting's Pond, finds that it is for the public good and welfare of the citizens of the Town of North Attleboro to protect and preserve its ponds and the associated wetland resource areas from unregulated activities which may adversely affect the ponds and the values and interests they provide.

The purpose of these regulations is to establish definitions and to set forth guidelines and procedures for activities on Falls and Whiting's Ponds in order to ensure the protection of values and interests including, but not limited to, wildlife habitat, fisheries, recreation, aesthetics, public access, flood control, water pollution prevention, and storm damage prevention.

Therefore these regulations are promulgated pursuant to Article VIII, Section 6c of the By-Laws of the Town of North Attleborough.

SECTION 2 -DEFINITIONS

All words not defined in this section shall use the definitions found in 310 CMR 10.00 or in the Town of North Attleboro Zoning Bylaws.

- 2.1 Abutter: The owner of land within 100 feet of the property line of the land where the activity is proposed including, but not limited to, owners of land directly opposite said proposed activity across the body of water (Falls or Whiting's Pond) but not unreasonable distant from the project site.
- 2.2 Activity: The erection, reconstruction, or expansion of any structure.
- 2.2 Alter: The changing of existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics; the placement of fill, excavation or re-grading, cutting or removing of vegetation, ground cover, trees; changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water, including but not limited to, the application of herbicides, pesticides, or fertilizers; any activities which cause displacement of the water body or groundwater; or any activities which cause alteration of wildlife habitat.
- 2.3 Applicant: The property owner, the property owner's representative, the Town of North Attleboro or someone with a direct financial interest in the property and said interest shall be explained.
- 2.4 Clear Cut: The cutting down or removal of 80% or more of all trees and/or vegetation in an area.
- 2.5 Commission: The North Attleboro Conservation Commission

- 2.6 Construction: Any activity that requires a building permit and/or approval from the Conservation Commission
- 2.7. Deposit: Includes but not limited to fill, grade, dump, place, discharge or emit
- 2.8 Discharge: The emission of any water, substance or material into the any areas under the legal jurisdiction of the Commission.
- 2.9 Dredging: The removal of materials including but not limited to, rocks bottom sediments, debris, sand, refuse, or plant matter, either permanently or temporarily, from any stream, pond or other waters.
- 2.10 Fill: Any unconsolidated material that is confined or expected to remain in place in a water way, not including material placed by natural processes.
- 2.11 Material: Any substance, solid or liquid, organic or inorganic, including, but not limited to soil, sediment, aggregate, land, gravel, clay, mud, debris, sand, refuse, vegetation and waste.
- 2.12 Person: Any firm, person, partnership, association, corporation, company, organization, or legal entity of any kind including governmental agencies or subdivisions thereof.
- 2.13 Pollution: Any harmful effect, or the contamination or rendering unclean or impure of any areas under the jurisdiction of the Commission by reason of any waste or other materials discharged or deposited therein.
- 2.14 Remove: Includes, but is not limited to, drain, excavate, mine, dig, dredge, suck, bulldoze, blast or clear-cut.
- 2.13 Rendering unclean or impure: Any alteration of the physical, chemical or biological properties of any areas under the jurisdiction of the Commission including, but not limited to, a change in color, odor, taste or turbidity.
- 2.14 Structure: Any man-made object which is intended to remain in place (either permanently or temporarily) in, on, over, or under the pond(s). Structures do not include boats or motorboats as defined by Massachusetts General Law Chapter 90B and registered with the Massachusetts Environmental Police.
- 2.15 Wetland Resource Area: Bordering Vegetated Wetland, Bank, Land Under Water Bodies and Waterways and Land Subject to Flooding as defined in 310 CMR 10.00.

SECTION 3 –POND PERMITS

- 3.1. No person shall construct, repair or replace any structure(s) in, on, over or under, Whiting's or Falls Pond or on land adjacent to the ponds, owned by the Town of North Attleboro/ Conservation Commission, without a valid Pond Permit issued by the Commission.
- 3.2. The Pond Permit application shall be submitted via certified mail or hand delivery to the Conservation Commission and shall include: (a) a detailed plan of adequate size, scale, and detail to completely and accurately describe the site, resource area boundaries, and proposed work; (b) a map showing the exact location of the proposed activity; (c) a filing fee in the form of a check made out to the Town of North Attleboro in the amount of \$25.00; (d) verification that abutters have been properly notified.
- 3.3. Any person filing a pond permit application for a permanent structure with the Conservation Commission shall at the same time give written notice thereof, by certified mail (return receipt requested); certificates of mailing or hand delivery, to all abutters within 100 feet of the property line. The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. The notice shall state a brief description of the project and the date of any Commission meeting if known. Mailing at least 7 days prior to the public meeting shall constitute timely notice. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. If the pond permit application is being submitted concurrently with a filing under the WPA, the certified abutters list/ notification form used for the WPA filing may be utilized to meet the requirements of this section.
- 3.4. The Commission will consider the permit application at a regularly scheduled public meeting within 21 days of the permit filing, concurrently with the public meeting or hearing being held pursuant to the Wetlands Protection Act Regulations, 310 CMR 10.00, if applicable. The granting of a Pond Permit by the Conservation Commission does not alleviate the applicant from obtaining any other approval necessary under 310 CMR 9.00, 310 CMR 10.00 or any other local, state or federal regulations.

SECTION 4 –POND PERMIT EXEMPTIONS

- 4.1. The repair of an existing legally permitted structure which does not result in any increase in the square footage of the structure or any alteration to a wetland resource area. The Conservation Commission and/or Conservation Agent shall be notified prior to any such repairs.
- 4.2. Maintenance activities (e.g. plank and railing replacement of a dock) of legally permitted structures in accordance with the permit approval. The Conservation Commission and/or Conservation Agent shall be notified prior to any such repairs.

SECTION 5 – LOCATION AND DESIGN GUIDELINES (DOCKS)

The Commission shall consider factors relating to safe boat navigation, public access to the pond, public access to adjoining areas, and distance to adjacent property lines in its consideration of permit applications for new docks. In addition, all docks shall conform to the following guidelines:

- 5.1 No property owner shall have more than one structure at the property's shoreline.
- 5.2 A dock may be perpendicular or parallel to the shoreline of Whiting's or Falls Pond. Any boat secured to such a structure shall not extend beyond the extension of the abutter's property line.
- 5.3 Docks shall not exceed the minimum size and length necessary to achieve the intended water related use.
- 5.4 Docks shall be positioned to span the Bank and Bordering Vegetated Wetland (BVW) as feasible to avoid alterations to wetland resource areas and negatively impacting the functions the wetland resource areas provide. Docks resulting in impacts to wetland resource areas shall comply with the performance standards set forth under 310 CMR 10.00 which shall be demonstrated in the Notice of Intent filing.
- 5.5 The Commission recommends against use of "CCA pressure treated" lumber (i.e. treated with copper chromated arsenic) for decking and pilings and recommends alternative materials be utilized if feasible. Paints and wood treatments containing creosote are prohibited.
- 5.6 Floating docks, boats, or any floating objects shall be removed from the pond by October 31st of each year and may be returned to the pond no sooner than March 31st of each year.
- 5.7 Application of non-leaching wood preservatives shall be conducted out of water (floating docks) or no more than one time per year for permanent docks.

SECTION 6 – PENALTIES

- 6.1. Any person who violates any provision of these regulations, a decision or condition of a permit issued under these regulations, or misrepresents any material fact in connection with any activity regulated or prohibited by these regulations, shall pay a fine of not more than One Hundred Dollars (\$100.00) as set forth under Article VIII, Section 8c of the By-laws of the Town of North Attleborough.
- 6.2. Each day or portion of a day, that any violation is allowed to continue shall constitute a separate offense.

AMENDMENTS

EFFECTIVE DATE	SECTIONS AMENDED
6/02/02	
8/19/03	Delete sections 6 and 7.3 (re-number as necessary)
4/6/04	
6/4/13	Amendments to Sections 1.0-5.0
6/27/17	Amendment to Section 3.3

Exhibit C



**Town of North Attleborough
CONSERVATION COMMISSION**
43 South Washington Street North Attleborough, MA 02760
Phone (508) 699-0125 Fax (508) 699-0154
E-mail sdoyle@nattleboro.com

NOTICE OF VIOLATION

TO: Steven Bankert
42 Pratt Lane
North Attleboro MA 02760

SITE: 42 Pratt Ln (Falls Pond), North Attleboro, MA

DATE: July 12, 2012

Certified Mail#:7009 2820 0002 1351 6008
Sent via email on July 12, 2012

NOTICE:

It has come to the attention of the Conservation Commission that you or your agents may have violated Massachusetts' environmental laws with regard to the provisions of the Wetlands Protection Act (M.G.L. Ch. 131 § 40). The Wetlands Protection Act applies to all wetland resource areas within the Town of North Attleborough.

REPORTED ACTIVITY:

Based on visual observations made by the agent on July 12, 2012, an accessory structure is being constructed in a wetland resource area/buffer zone without a permit from the Conservation Commission.

In addition, the unauthorized structure is on property owned by the Town of North Attleboro Conservation Commission.

YOU ARE HEREBY ORDERED TO:

- Immediately cease and desist any work relative to the Reported Activity above.
- Schedule a time to attend the next Commission meeting (July 17, 2012) held at in the Meeting Room in the Town Hall, at 43 South Washington Street.
- **Remove the structure from the Town of North Attleboro's land immediately.**

Questions regarding this Notice may be directed to:

Shannon M. Doyle, Conservation Agent
(508) 699-0125
sdoyle@nattleboro.com

c: file
Building Inspector
Town Counsel

Exhibit D



**Town of North Attleborough
CONSERVATION COMMISSION**
43 South Washington Street North Attleborough, MA 02760
Phone (508) 699-0125 Fax (508) 699-0154
E-mail sdoyle@nattleboro.com

David Scanlan, Chairman
Clifford Bassett, Vice-Chairman
Deborah Cato

Linsie Dillon, Secretary
Edward Hickey

Shannon Doyle, Conservation Agent

June 21, 2013

Mr. Steven Bankert
42 Pratt Lane
PO Box 2723
North Attleborough, MA 02760

RE: VIOLATION NOTICE/CEASE AND DESIST; 42 PRATT LANE; ASSESSORS MAP 14 LOT 119;
FALLS POND

Dear Mr. Bankert,

In the letter dated September 28, 2012, attached, you were directed by the Conservation Commission to remove the floating structure from Falls Pond and the Town of North Attleboro property no later than October 31, 2012, the pond drawdown date. The structure was not removed from the pond at that time, but rather moved to a different location adjacent to 21 Pratt Lane. Since that time the floating structure has been moved back to a location approximately 150 feet off the shore of 42 Pratt Lane, as observed by the Conservation agent.

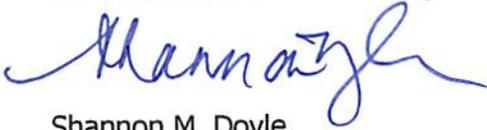
The letter dated September 28, 2012 also directed you to provide any available documentation to support your claim made at the September 11, 2012 public meeting, that the structure is a "boat". To date, the Commission has not received any additional documentation or information to verify this claim. Furthermore, the Conservation agent has received information from the Detective Siliba of the Environmental Police which indicates that the Environmental Police determined that the structure does not meet the standard for a vessel, was denied a Hull Number, and cannot be registered as a boat.

Therefore, the bottom anchored, floating structure in Falls Pond which has not been permitted by the Conservation Commission, is currently in violation of the Conservation Commission's Rules and Regulations Governing Structures on Falls and Whiting's Ponds, attached. In addition, the unauthorized structure may also be a violation under the MA Wetlands Protection Act, M.G.L. Ch. 131 §40 and implementing regulations, 310 CMR 10.00.

AS SUCH, THE COMMISSION HEREBY ORDERS YOU TO REMOVE THE STRUCTURE FROM FALLS POND AND THE TOWN OF NORTH ATTLEBORO PROPERTY WITHIN 7 DAYS OF THE DATE OF THIS NOTICE. IF YOU DO NOT COMPLY WITH THIS ORDER YOU MAY BE SUBJECT TO FINES OF NOT MORE THAN ONE HUNDRED DOLLARS (\$100.00) AS SET FORTH UNDER ARTICLE VIII, SECTION 8C OF THE BY-LAWS OF THE TOWN OF NORTH ATTLEBOROUGH. EACH DAY OR PORTION OF A DAY, THAT ANY VIOLATION IS ALLOWED TO CONTINUE SHALL CONSTITUTE A SEPARATE OFFENSE (SECTION 6.0 OF THE COMMISSION'S RULES AND REGULATIONS GOVERNING STRUCTURES ON FALLS AND WHITING'S PONDS).

If you have any questions regarding this notice, please contact the Conservation Agent at sdoyle@nattleboro.com. Thank you for your cooperation in this matter.

On behalf of the Commission,



Shannon M. Doyle
Conservation Agent

Cc: Town Counsel
DEP SERO
Board of Selectmen

A true attested copy of this document (9-total pages) was served at the last and usual address of Mr. Steven Bankert located at 42 Pratt Lane, North Attleborough MA 02760 on June 24, 2013 at 11:39 a.m. In addition, a true attested copy was mailed to 42 Pratt Lane, North Attleborough MA 02760.

Joel A. Picchi 6/24/2013

Joel A. Picchi, Constable

Exhibit E

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss

Trial Court Department
Attleboro Division
No. 1434CR001712

Commonwealth of Massachusetts)

v.)

Steven R. Bankert,)
Defendant)

Decision and Order

PROCEDURAL HISTORY

This case is not a tale from the Barbary Coast or the Spanish Main, but it does involve what has become a significant “pirate ship” dispute in the Town of North Attleboro. The case originated as a criminal complaint taken out by the Commonwealth against Steven R. Bankert (“defendant”) for eight counts of violating a Town of North Attleboro miscellaneous municipal ordinance, to wit, his failure to remove the “pirate ship” from the Falls Pond as ordered in a violation notice dated June 21, 2013. The defendant repeatedly filed motions to dismiss the case, and each Motion was heard and denied. Ultimately, when the matter was scheduled for trial on November 16, 2015, the Commonwealth moved to decriminalize each count under G.L. c. 277, §70 C. The case then proceeded to a civil bench trial before me on January 5, 2016.

After hearing the testimony and examining the exhibits, I make the following findings of fact by a preponderance of the evidence, and issue my Decision and Order.

DECISION

The defendant is a resident of the Town of North Attleboro, and occupies a home adjacent to a small, man-made body of water known as the Falls Pond. There is no dispute that the Town of North Attleboro owns Falls Pond and the land that it occupies. The pond actually spreads out to a “high water” area when full, and a “low water” area when it is drained by the Town on or about October 31st of each year. There is also no dispute that the Conservation Commission has authority to regulate activities on the pond for the benefit of the inhabitants of the town.

For purposes of this case, the issue between the town and the defendant occurred when the defendant constructed a 24-foot floating, toy "pirate ship" which he moors to the bottom of the pond with a series of lines connected to 5-gallon cement buckets. The defendant never applied for a permit and this "pirate ship," complete with a "Jolly Roger" flag, was never granted a Letter of Marque or other authority to enter the waters of the Falls Pond. Instead, as the credible testimony of Conservation Commission Agent Shannon Doyle established, the town got wind of the ship's nascent construction in July, 2012 and issued the defendant a "stop work" order (which was not part of the proceeding before me). Undeterred by such early governmental objections, however, the defendant pursued his adventures and launched the offending structure into the pond for his amusement. Fortunately, the defendant did not arm his creation with muskets, swivel guns or cannons, but he did fire broadsides of nautical nonsense at the Conservation Commission over the course of this case, and ultimately laid siege to the inhabitants of North Attleboro by keeping this large structure on town property, despite multiple notices for him to remove it. Indeed to this very day, the pirate ship defiantly remains on town land, repugnant to the interests and dignities of the local inhabitants.

In any event, the nautical nonsense proffered by the defendant is that he considers this structure to be a "boat," thinking that if it were characterized that way, then the town would have no authority to regulate it or ban it from the public pond. That, of course, is simply not true under any applicable statutory, regulatory or case law authority. The defendant's argument also runs aground on several factual bases, and one need only listen to the defendant's own testimony at the trial and at the Conservation Commission hearing of September 11, 2012 (which the defendant displayed by way of DVD recording at trial) to see that this item is simply not a boat. It was intended to be moored in position on the town's pond, it has no means of propulsion, and it is clearly a floating "dock" or "raft" type of structure, despite its creative, second-story "poop deck" and fanciful "mainmast." The defendant never made a trailer for this structure and he described at the Conservation Commission hearing that it was very difficult for him to have to relocate it off of the pond property. At trial, the defendant also inexplicably put testimony into the record that the Department of Environmental Protection would not let him register this structure as a boat and would not issue him a hull identification number. It makes sense, of course, because the structure is not a boat, although it did break loose from its moorings once and drifted perilously close to the town's dam, causing the Fire Department to secure it and the Police Department to notify the defendant about the problem. Lastly, despite the defendant's repeated assertions that the structure is a boat, he argued at trial that he was being singled out because the town has not bothered any of "the other dock owners" on the pond, thereby inadvertently implying that this structure is indeed a dock and not a boat. On this issue and several others, the defendant fails to navigate the rocky shoals of logic.

During the Conservation Commission hearing, the defendant assailed the members with challenges to their authority and flatly disagreed with the members on virtually every legal and factual point. However, in view of repeated Commission member comments that he had to remove the structure immediately, the defendant changed his tack, put up the "white flag," and

ultimately agreed that he would remove the pirate ship before the "draw down" date of October 31st. The defendant repeatedly assured the members that he would remove the structure, but kept referencing the "high water" area in what appears to be an attempt to mask the fact that he was not going to pull it up onto his own property.

When it became clear at the trial before me that the defendant never actually moved the structure out of the high water area at all, and instead just dragged it into a nearby cove, the defendant once again altered course and testified that his intention was only to move it to the "mean high water" mark (which area would still logically imply town property). His argument makes no sense because this is not a tidal pond where a mean high water mark would have legal significance. Once again, the defendant defies logic, reason and credibility.

As the trial transcript will bear out, the defendant made several distortions during the trial for which he had to be admonished. I also observed the DVD of the Conservation Commission hearing and find more examples of the defendant's efforts to intentionally mislead and frustrate the town officials. It is abundantly clear that the Commission members told the defendant that the structure needed to be removed from the town property and the defendant numerous times agreed to remove it, but he did not do so by October 31, 2012, nor has he done so through the present time. The agent for the Conservation Commission sent fifteen notices of violation to the defendant, although only eight notices were offered into evidence. The defendant testified that he never received any notices of violation, yet during his closing argument, he referenced some body of law that he was familiar with after having read the back of the tickets. These were the very same tickets he had just denied receiving. The defendant's careless disregard for the truth is as troubling as his disregard for the rights of his Falls Pond neighbors.

It should be noted that the Town of North Attleboro has not charged the defendant with Trespass or Nuisance, or otherwise attempted to assess him for the unauthorized use and occupancy of town lands in this complaint. Instead, the town has simply tried to enforce its obligations to appropriately regulate the Falls Pond for the enjoyment of all local inhabitants by getting the structure off of town property. I find that the Commonwealth has proven, by a preponderance of the evidence, that the defendant is in violation of the town's regulations by failing to remove the structure from Falls Pond as ordered by the Conservation Commission, and that despite having been given notice of each violation, the defendant has not complied.

Accordingly, judgment shall enter for the Commonwealth and against the defendant. However, with regard to the Commonwealth's request for this court to order removal of the structure, I find no such equity jurisdiction in the District Court, unless the complaint were to be for money damages (which it is not) or such relief is specifically authorized by statute (which it is not). Therefore, in the absence of appropriate jurisdiction, the specific equity relief cannot be granted by this court.

ORDER

Judgment shall enter for the Commonwealth, and the defendant shall be ordered to pay a civil fine in accordance with the violation notices produced at trial in the amount of six hundred and seventy five dollars (\$675). The fine is to be paid in full to the Town of North Attleboro on or before February 7, 2016.

The defendant is also hereby notified of his obligation to remove the subject "pirate ship" structure from the land owned by the residents of the Town of North Attleboro known as the Falls Pond, and that failure to comply by February 7, 2016 shall result in continuing fine amounts of one hundred dollars (\$100) per day for each violation under G.L. c. 277, §70C and the town's regulations, in addition to any other forms of allowable relief as may be ordered by this court.



Daniel J. O'Shea,
First Justice
Attleboro District Court

January 7, 2016

Exhibit F



Town of North Attleborough
CONSERVATION COMMISSION

43 South Washington St. North Attleborough, MA 02760
P (508) 699-0125 www.nattleboro.com/conservation-commission

Clayton Hutchinson, Chair
Linsie Dillon, Vice-Chair
Patricia Wash, Secretary

Deborah Cato
Clifford Bassett

Shannon Palmer, Conservation Administrator

June 2, 2023

Mr. Steve Bankert
42 Pratt Lane
North Attleboro, MA 02330

Dear Mr. Bankert,

The town has been made aware that your “pirate ship” structure is not secured and is loose on Falls Pond. The “ship” should be immediately removed from the pond as it poses a significant safety issue and is not permitted by the Conservation Commission.

If the “ship” is not removed by Monday June 5, 2023, it will be removed from town property and disposed of, at your expense, due to safety and environmental considerations.

On Behalf of the Commission,

Shannon Palmer
Conservation Administrator

cc. Town Manager
Chief, NAFD

Exhibit G

MICHAEL D. BORG
Town Manager



TOWN OF NORTH ATTLEBOROUGH
43 South Washington Street
North Attleborough MA 02760
508-699-0100

July 6, 2023

CERTIFIED MAIL- RETURN RECEIPT REQUESTED AND FIRST-CLASS MAIL

Mr. Steve Bankert
42 Pratt Lane
North Attleboro, MA 02330

Re: ORDER TO REMOVE STRUCTURE FROM TOWN PROPERTY

Dear Mr. Bankert:

On June 2, 2023, the Conservation Commission issued you a letter concerning the “pirate ship” structure that is located on Falls Pond, which body of water is the property of the Town of North Attleborough (“Town”). As set forth in that letter, the structure has not been secured at various times in the recent weeks, posing a significant safety issue, and is not permitted by the Commission. Indeed, the presence of the structure on Town property is both a public nuisance and a trespass that may give rise to civil liability for the structure’s owners and anyone else responsible for its continued presence on Falls Pond.

On January 7, 2016, you were ordered by the Massachusetts Trial Court, District Court Department (Attleboro Division) to remove the structure from Falls Pond or face a \$100 per day fine. Nevertheless, the structure remains on Falls Pond, with no sign that anyone exercising ownership has taken, or is taking, steps to remove the structure.

The Town acknowledges that on June 6 and June 15, 2023, you represented to the Conservation Administrator that you no longer own the structure. Nevertheless, you have refused to supply the identity of the purported new owner upon request. Moreover, the Town understands that the structure has now been moved back to your dock but remains on Town property. As such, and as the Town has no way to independently verify ownership of the structure, you are hereby ORDERED to remove the structure from Town property or to identify the person(s) who currently own the structure within thirty (30) days of the date of this order.

Failure to comply with this order will result in the Town seeking a court order authorizing the Town to remove and demolish the structure at your expense, as well as requiring you to pay the Town fines in the amount of \$272,100 (as of June 20, 2023). In the meantime, the Town reserves all rights and waives none.


Michael Borg
Town Manager

cc: Town Attorney