

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. _____

CONSERVATION COMMISSION OF)
THE TOWN OF WESTPORT; and)
SUSAN BURKE PEDREIRA,)
TANJA RYDEN, EDMUND A. ROONEY JR.,)
and JOHN REYNOLDS, Individually and As)
Members of the Conservation Commission of)
Westport, Massachusetts,)
)
Plaintiffs)
)
v.)
)
VERONICA F. BEAULIEU, GARY MAUK,)
JOHN DUNCAN ALBERT, and ROBERT P.)
REBELLO, Individually and As Members of)
The Board of Selectmen of Westport,)
Massachusetts,)
)
Defendants)

COMPLAINT AND JURY DEMAND

INTRODUCTION

This is an action seeking declaratory judgment and injunctive relief against members of the Board of Selectmen of the Town of Westport, Massachusetts, because of their unconstitutional and otherwise unlawful conduct directed at Plaintiffs individually and as members of the Westport Conservation Commission. This action arises under the First and Fourteenth Amendments to the United States Constitution, Massachusetts General Laws Ch. 12 §§ 11H and 11I, and other relevant Massachusetts state law. There is subject matter jurisdiction in this Court under 28 U.S.C. §§ 1331 and 1343.

PARTIES

1. Plaintiffs are the Westport, Massachusetts Conservation Commission and four of its duly appointed members. They bring this action both individually and in their official capacities.

2. The Westport Conservation Commission was established in Westport in March 1963 pursuant to Mass. Gen. Laws. Ch. 40, §8C. The Commission has seven members. It has operated continuously in Westport since that time; its existence was not challenged until May 21, 2007.

3. The Board of Selectmen of Westport consists of five members. Four members are Defendants in this case in their individual and official capacities.

4. Defendant Veronica F. Beaulieu is a resident of Westport, Massachusetts. She is Chairperson of the Board of Selectmen.

5. Defendant John Duncan Albert is a resident of Westport, Massachusetts. He is Vice-Chairperson of the Board of Selectmen.

6. Defendant Gary Mauk is a resident of Westport, Massachusetts, and a member of the Board of Selectmen.

7. Defendant Robert P. Rebello is a resident of Westport, Massachusetts, and a member of the Board of Selectmen.

8. Defendants have engaged in conduct toward Plaintiffs that maliciously interferes with Plaintiffs' exercise of their First Amendment rights, and in particular their actions, deliberations and votes as Commissioners on matters involving enforcement of state laws and Town regulations affecting wetlands protection in Westport. At all relevant times,

Defendants acted under the color of state law, conspiring to nullify Plaintiffs' work as Commission members, and suppressing Plaintiffs' First Amendment rights.

FACTS

9. In December 2006, Defendant members of the Board of Selectmen solicited and collected complaints against the then Town of Westport Conservation Agent, Anne Phelps, falsely alleging misconduct by Phelps in the discharge of her official duties.

10. Pursuant to state law, Massachusetts General Laws Ch. 40, §8C, the Conservation Commission Agent and other staff are appointed by the Conservation Commission and work under the administrative supervision of the Commission, not the Board of Selectmen. Specifically, the Agent works under the administrative direction of the Chair or Vice-Chair of the Commission.

11. At a meeting on December 26, 2006, the Board of Selectmen voted to issue a 12-item list of complaints against the Agent, Phelps, and the Commission and "ordered" the Commission to prepare a response to each item on the list.

12. At its next meeting on January 8, 2007, Defendants voted to require the Conservation Commission and its Agent to meet with the Board on January 25, 2007 to respond to the list of complaints.

13. At meetings on January 18 and January 22, 2007, Defendants considered a package of materials prepared in connection with complaints against Phelps, including Phelps' personnel file, past records of the Commission's actions, and a memorandum submitted by Defendant Rebello called a "bill of particulars" listing allegations of Phelps' and Plaintiffs' purported misconduct.

14. The memorandum submitted by Defendant Rebello contained false accusations collected by Rebello from sources historically opposed to enforcement of state wetlands protection laws in the Town of Westport.

15. Defendants' false complaints asserted against the Conservation Commission included charges of unlawfully "doctoring" (editing) minutes, mishandling complaints against Phelps, and imposing a 25-foot "No Activity Zone" prohibiting certain activities within 25 feet of delineated wetland areas.

16. At its meeting on January 22, 2007, Defendants directed Westport Town Counsel (Kopelman & Paige) to review Defendant Rebello's "bill of particulars" against Defendants and Phelps, and to render an opinion whether there had been violations, "malfeasance" or abuse of power by Plaintiffs and Phelps. The Board also requested instruction from Town Counsel on how to terminate Phelps' employment.

17. The Board also directed Town Counsel to review video recordings of meetings of the Conservation Commission and to determine whether there had been violations of law, "malfeasance," or abuse of power by the Commission. Defendants also then requested Town Counsel to instruct on how to terminate individual Commissioners' appointments.

18. The Conservation Commission met on January 29, 2007, in an open posted emergency meeting, to consider retaining legal counsel to represent it at the meeting with the Board of Selectmen, scheduled to occur less than 48 hours later. No other Commission business was conducted at that time.

19. At its emergency meeting on January 29, 2007, the Commission voted to retain legal counsel to represent it at the January 31, 2007 hearing with Selectmen. Plaintiffs also

retained said counsel to represent them personally at the January 31 meeting with the Board of Selectmen.

20. At the January 31, 2007 meeting, Plaintiff Ryden as the Commission's Chair stated the Commission's position that Defendant Board of Selectmen had no authority over personnel decisions involving the Commission Agent; that the Commission was the Agent's supervisor with the authority to review and resolve any complaints related to her performance of official duties. The Commission had voted earlier to support the Agent and approve her work performance.

21. At its next meeting on February 5, 2007, Defendant Board directed Town Counsel to investigate the Conservation Commission's emergency meeting on January 29th (when the Commission hired legal counsel) and to provide an opinion whether said meeting violated the Massachusetts state Open Meeting Law. Other charges were listed including matters referred to in Paragraph 15 above. The opinion did not issue until May 18, 2007, as more fully described below.

22. As a direct result of Defendants' continuing unlawful interference with her work, Phelps resigned from her position as Commission Agent effective May 22, 2007.

23. On May 18, 2007, Town Counsel issued a letter to the Board of Selectmen, stating that there had been no valid emergency supporting the Commission's open meeting on January 29, 2007; the letter also provided comments on other issues regarding the Commission's actions and policies. During the intervening three-month "investigatory period," Town Counsel had not contacted Commission members for any fact finding relative to the allegations made in February.

24. On May 21, 2007, at its regularly scheduled meeting, but without prior notice to

Plaintiffs or to the public, and without public debate or discussion, the Board of Selectmen voted (4 to 1) to "dissolve" the Conservation Commission; and to re-create it as a five-member Commission; and to solicit replacement commissioners; and to authorize one of its own members, Defendant Duncan Albert, to serve as interim Conservation Agent. Defendant Albert had no qualifications or prior experience for that position. Further, the Board had no lawful authority to appoint him.

25. The Board of Selectmen's votes at the meeting on May 21, 2007 to dissolve and restructure the Conservation Commission, and to cancel the Commission's meeting, and to appoint an acting agent violated federal and state law.

26. The Board further instructed the Commission's clerk to call persons with business pending before the Commission and inform them that the scheduled Commission meeting on May 22, 2007 was cancelled. The Board also directed its own secretary to call Commissioners and inform them that there would be no meeting.

27. The Commission's Clerk is appointed by the Conservation Commission and, like the Conservation Agent, works under the supervision of the Commission; Defendants have no authority to direct the Commission Clerk in her duties.

28. The Board of Selectmen further ordered locks of the Commission's office changed and the Commissioners' access to its e-mail and electronic files for pending permits blocked.

29. On May 22, 2007, Defendant Albert, Vice-Chairperson of the Board of Selectmen, in reference to Plaintiffs' plan to go forward with its meetings, stated to Plaintiff Pedreira, Acting Chairperson of the Conservation Commission, that the Commissioners "can make it stinkier," and if they did, "*it* would come out in the open." Plaintiff Pedreira

understood Duncan's statement to be a threat and an attempt to intimidate her and other Plaintiffs.

30. On May 23, 2007, without prior notice to Plaintiffs or to the public, and without public discussion or debate, Defendants voted to rescind their May 21, 2007 vote to dissolve the Commission.

31. From May, 23, 2007 and continuing through the present, Defendants have declared (and voted) to continue in their effort to remove the Conservation Commission members. There is in fact no lawful basis for any such action by Defendants. Defendants are motivated by their individual and collective opposition to the enforcement of wetlands protection laws and regulations in the Town of Westport.

32. The Board of Selectmen continues to interfere with performance of duties by the Commission members, including the (unlawful) appointment of a Selectman (Defendant Albert) as acting Commission agent. Defendant Albert has no legal authority to act as Commission Agent, despite his purported appointment

33. Defendants continue their illegal pattern of action attempting to manage the Conservation Commission's business, to hire and fire the Commission Agent, and to direct the Commission staff.

34. As further explicit evidence of the unlawful plan that has been executed from January 2007 through the present, some or all Defendants (or their agents) began soliciting applications for new members on the Commission as early as March 2007, i.e. two months before Town Counsel delivered an opinion which later served as basis for dissolution of the Commission and the removal of four (or more) of its members (without just cause).

35. In addition to the unlawful acts described above, Defendants have misused and

unlawfully employed Town Counsel to effectively assist in the violation of Plaintiffs' constitutional and state law rights by having counsel frame charges, "investigate" and ultimately remove Commission members from office without just cause.

36. This use of Town Counsel is contrary to law and sound public policy in that the legitimate interest of the Town in the protection of its wetlands is being harmed by said practice.

COUNT I
DECLARATORY JUDGMENT

37. Plaintiffs repeat and incorporate the allegations stated above.

38. There is a justiciable controversy concerning Defendants' purported right to interfere with business of the Conservation Commission; prohibiting Plaintiffs from holding their meetings; denying Plaintiffs access to Town offices and denying Plaintiffs' access to Commission records.

39. There is an actual controversy concerning Defendants' claimed right to select the Conservation Agent and to direct Commission staff.

40. A declaration by the Court is necessary to resolve the controversies between the parties.

COUNT II
INJUNCTIVE RELIEF

41. Plaintiffs repeat and incorporate herein the allegations above. Defendants' actions are resulting in irreparable harm to Plaintiffs, and to the Town of Westport.

42. Injunctive relief is required to prevent ongoing harm to the public interest by the actions of the Board of Selectmen.

COUNT III
42 U.S.C. § 1983 and Mass.G.L. Ch. 12 §§11H and 11I
CLAIM FOR ATTORNEYS' FEES

43. Plaintiffs repeat and incorporate herein the allegations above.

44. Defendants have violated plaintiffs' constitutional rights, both state and federal.

Defendants are liable to Plaintiffs to pay their attorneys' fees incurred in protecting their rights and positions as members of the Westport Conservation Commission from January 2007 and continuing through the present.

COUNT IV
INJUNCTIVE RELIEF – 42 U.S.C. § 1983
and Mass.G.L. Ch. 12 §§11H and 11I

45. Plaintiffs repeat and incorporate herein the allegations above.

46. Injunctive relief is needed against Defendants individually and as members of the Board of Selectmen, enjoining Defendants from ongoing violations of Plaintiffs' constitutional rights.

WHEREFORE, Plaintiffs request the following relief:

1. Judgment for Plaintiffs and against Defendants on all counts, both officially and individually.

2. A declaration that Defendants may not deny Plaintiffs access to the Conservation Commission's office and to the Commission's electronic records and e-mail system; that Defendants may not prohibit Plaintiffs from holding meetings, or otherwise interfere with Plaintiffs' discharge of their official duties.

3. A declaration that the Conservation Commission has the sole right to supervise, manage, hire and/or terminate its Agent and its Clerk under Massachusetts state law.

4. A declaration that Defendants' actions violate Plaintiffs' First Amendment rights and Mass.G.L. Ch. 12, §§11H and 11I.

5. Injunctive relief against Defendants, enjoining Defendants both individually and officially from unlawfully interfering with Plaintiffs' discharge of their duties as members of the Conservation Commission.

6. Costs and attorney's fees.

7. Such other relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on factual issues so triable.

Respectfully Submitted,

The Plaintiffs,
By their Attorneys,

BEAUREGARD, BURKE & FRANCO

_____/s/ Philip N. Beauregard_____
PHILIP N. BEAUREGARD, BBO # 034870
TIMOUR ZOUBAIDOUILLINE, BBO # 656212
32 William Street, New Bedford, MA 02740
Tel. No.: 508-993-0333

Dated: June 11, 2007