



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill
Rebekah Lacey | Ivria Glass Fried Eric Reustle Blake M. Mensing Katherine E. Stock

March 15, 2018

BY FEDERAL EXPRESS

Civil Clerk
Essex County Superior Court
145 High Street
Newburyport, MA 01950

Re: *John Doherty v. Town of Hamilton Conservation Commission and The Pingree School*
Superior Court Case No. 1777-CV-01927

Dear Sir or Madam:

Enclosed for filing in this matter is the Hamilton Conservation Commission's Assented-to Motion To Extend Deadline for Filing Administrative Record and Remove Trial From Schedule.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebekah Lacey', with a stylized flourish at the end.

Rebekah Lacey

Cc: S. Rikleen
 V. Pisegna

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1777-CV-01927

JOHN DOHERTY,

Plaintiff,

v.

TOWN OF HAMILTON CONSERVATION
COMMISSION and
THE PINGREE SCHOOL,

Defendants.

**HAMILTON CONSERVATION COMMISSION'S ASSENTED-TO MOTION
TO EXTEND DEADLINE FOR FILING ADMINISTRATIVE RECORD
AND REMOVE TRIAL FROM SCHEDULE**

Defendant Town of Hamilton Conservation Commission (the "Commission") hereby moves to: (1) extend the deadline for filing the record of the proceeding before the Commission, as required by Superior Court Standing Order 1-96, to 21 days after the Court rules on the Commission's pending Motion to Dismiss; and (2) remove the jury-waived trial, currently scheduled for April 23, 2018, from the schedule for this action. Both other parties have assented to this Motion. As grounds for this Motion, the Commission states as follows:

The plaintiff filed this action for *certiorari* review and a declaratory judgment on December 26, 2017 and served it on the Commission on December 27, 2017. Pursuant to Superior Court Rule 9A, the Commission filed a Motion to Dismiss the Plaintiff's Complaint on February 23, 2018.

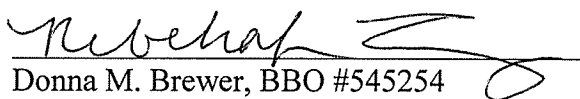
Standing Order 1-96, which applies to *certiorari* actions such as this one, requires the defendant agency to file the record of proceedings, "by way of answer," within 90 days of

service of the complaint. In this action, that date is March 27, 2018. Once the record is filed, Standing Order 1-96 requires that certain motions be filed within specified time frames. Because the record and subsequent motions will be rendered moot if the Court grants the Motion to Dismiss, resources of the parties and the Court will be best conserved if the Court allows the record to be filed after its ruling on the Motion to Dismiss.

Standing Order 1-96 also sets forth the procedure for *certiorari* actions, which are decided on the basis of the record of the decision being challenged. *M.G.L. c.249, §4; Gloucester v. Civil Service Commission*, 408 Mass. 292, 296-297 (1990). Under Standing Order 1-96, once the defendant board or agency files the record, the parties file motions for judgment on the pleadings, and the case is decided on the basis of those motions. Holding a trial in this action would be inconsistent with the statute, case law and the Standing Order.

WHEREFORE, the Commission respectfully requests that the Court order that (1) the deadline for filing the record shall be 21 days after the Court issues its written ruling on the pending Motion to Dismiss; (2) the jury-waived trial shall be stricken from the schedule for this action; and (3) once the record is filed, this action shall proceed according to Superior Court Standing Order 1-96.

Respectfully submitted,
Defendant
HAMILTON CONSERVATION COMMISSION
By its attorneys,



Donna M. Brewer, BBO #545254
Christopher H. Heep, BBO #661618
Rebekah Lacey, BBO #673908
Miyares and Harrington LLP
40 Grove Street • Suite 190
Wellesley, MA 02482
t: (617) 489-1600; f: (617) 489-1630
rlacey@miyares-harrington.com

ASSENTED TO BY:

Defendant
THE PINGREE SCHOOL
By its attorneys,

Sander A. Rikleen / RL

Sander A. Rikleen, BBO #420280
David A. Michel, BBO #682122
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
t: (617) 646-2000; f: (617) 646-2222
srikleen@sherin.com
damichel@sherin.com

Plaintiff
JOHN DOHERTY
By his attorneys,

Vincent J. Pisegna / RL

Vincent J. Pisegna, BBO #400560
Jill Brenner Meixel, BBO #652501
Jason B. Curtin, BBO #682120
Krokidas & Bluestein LLP
600 Atlantic Avenue, 19th Floor
Boston, MA 02210
t: (617) 482-7211
vpisegna@kb-law.com
jmeixel@kb-law.com
jcurtin@kb-law.com

Date: March 15, 2018

CERTIFICATE OF SERVICE

I, Rebekah Lacey, hereby certify that on the 15th day of March, 2018, I served a copy of this document via first-class mail on counsel of record for all parties in this action.

Rebekah Lacey
Rebekah Lacey