

LAND COURT  
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COMMONWEALTH OF MASSACHUSETTS  
LAND COURT

BERKSHIRE, ss.

21 MISC

BERKSHIRE NATURAL RESOURCES COUNCIL,  
INC.,

Plaintiff

v.

ZONING BOARD OF APPEALS OF RICHMOND,  
and WILLIAM E. MARTIN, INA WILHELM,  
PETER KILLEEN and ROBERT GNIADEK, as  
they are members of the Zoning Board of Appeals,

Defendants

NATURE OF THE ACTION

1. This is an appeal, pursuant to G.L. c. 40A, s. 17, of the decision of the Richmond Zoning Board of Appeals ("ZBA") filed with the Town Clerk on June 17, 2021 ("Decision"), reversing the decision of the Building Commissioner dated January 30, 2021, which denied an enforcement request by residents of Perry Peak Road with regard to property owned by Berkshire Natural Resources Council, Inc. ("BNRC") known as "Hollow Fields" located off Perry Peak Road in Richmond, Massachusetts (the "Subject Property"). The Decision is attached hereto as Exhibit 1.

PARTIES

2. BNRC is a 501(c)(3) nonprofit educational corporation committed to protecting and preserving the natural beauty and ecological integrity of the Berkshires for the education, benefit, and enjoyment of the public. BNRC's principal office is located at 20 Bank Row, Pittsfield, MA 01201.

3. The Zoning Board of Appeals (ZBA) of Richmond is a duly appointed municipal agency with an office located at Town Hall, 1529 State Road, Richmond, MA 01254.

4. William E. Martin is a member of the ZBA with a mailing address of 115 Osceola Road, Richmond, MA 01254. Mr. Martin is named as a Defendant solely in his representative capacity.

5. Ina Wilhelm is a member of the ZBA with a mailing address of 180 Cheever Road, Richmond, MA 01254. Ms. Wilhelm is named as a Defendant solely in her representative capacity.

6. Peter Killeen is a member of the ZBA with a mailing address of 316 Branch Farm Road, Richmond, MA 01254. Mr. Killeen is named as a Defendant solely in his representative capacity.

7. Robert Gniadek is a member of the ZBA with a mailing address of 741 Summit Road, Richmond, MA 01254. Mr. Gniadek is named as a Defendant solely in his representative capacity.

### **STATEMENT OF THE FACTS**

8. BNRC is a nonprofit 501(c)(3) corporation organized in 1968. BNRC's original Articles of Organization stated:

The purposes for which the corporation is formed are as follows:

To promote and protect the natural resources of Berkshire County to the end that said County shall be more livable and more attractive; to strive to eliminate pollution of streams and lakes, preserve open spaces for recreation and scenery, and discourage unsightly development in the interest of the County as a whole; to take an active interest in local and regional planning and zoning, pollution abatement programs, roadside beautification, the rural leisure home movement, and the conservation of selected fields and forests for recreational use, for livability, for protection, and for beauty; to work closely with the many groups concerned with allied issues and to coordinate and supplement the activities of such groups as they relate to the natural resources of Berkshire County .

9. In 2009, the statement of purposes in BNRC's original Articles of Organization was amended, as follows:

To promote and protect the natural resources of Berkshire County to the end that said County shall be more livable and more attractive; to strive to eliminate pollution of streams and lakes, preserve open spaces for recreation and scenery, and discourage unsightly development in the interest of the County as a whole; to take an active interest in local and regional planning and zoning, pollution abatement programs, roadside beautification and the conservation of selected fields and forests for recreational use, for

livability, for protection and for beauty; to acquire, hold, manage and dispose of land and interests in land within and adjacent to Berkshire County in accordance with generally accepted conservation objectives and practices; to work closely with the many groups concerned with allied issues and to coordinate and supplement the activities of such groups as they relate to the natural resources of Berkshire County.

10. BNRC's educational mission and activities throughout the Berkshires provides a resource for local children and adults, and for people throughout the country who visit the Berkshires. BNRC provides living open space museums and laboratories for children and adults to learn about Berkshire County's geology, plants and wildlife. It publishes educational maps of the Berkshires. <https://www.bnrc.org/learn/>. BNRC provides guidance to find educational resources and networking opportunities to learn about nature and conservation at their properties. See <https://www.bnrc.org/learn/>. BNRC offers and schedules guided educational outings throughout Berkshire County. See <https://www.bnrc.org/upcoming-hikes/> (reduced significantly during COVID). BNRC also publishes a newsletter educating the public about ongoing local conservation issues and other educational matters and opportunities. See, generally, <https://www.bnrc.org/press/>.
11. BNRC owns the Subject Property. The Subject Property is composed of the following lots as designated by the Richmond Board of Assessors: 249-401.0-0002-0000.0; 249-402.0-0002-1000.0; 249-402.0-0002-1100.0; 249-402.0-0002-1200.0; 249-402.0-0003-0000.0; and 249-402.0-0005-0000.0.
12. The Subject Property contains approximately 660 acres and is located in the RA-C Zoning District as established in the Richmond Zoning Bylaw (the "Bylaw").
13. The Subject Property is a unique natural area that contains a diversity of wildlife habitats and environmentally sensitive areas including open fields, streams and forested slopes, as well as an abundance of local flora and fauna. It hosts a variety of important and declining wildlife, including bobolinks and Savannah sparrows, which nest only in grasslands. Milkweed, a food source and habitat for Monarch butterflies, is abundant in the fields. The location is regularly visited and studied by local and visiting bird watchers who have documented more than fifty-five species of birds at the location, such as indigo bunting, eastern towhee, and bobolink. See <https://ebird.org/hotspot/L11426512>.
14. In May of 2004, Ronald Shaw and Judith Shaw, as Trustees of the Shaw Berkshire Realty Trust, granted a Conservation Restriction to a portion of the the Subject Property to BNRC.
15. In 2013, the BNRC acquired the Subject Property and assigned the Conservation Restriction to the Subject Property to the Richmond Land Trust, Inc. pursuant to G.L. c. 184 ss. 31-33. See Berkshire Middle District Registry of Deeds in Book 5133, Page 48. The Conservation Restriction specifically requires public access to the Subject Property and was approved and signed by the Town of Richmond Board of Selectmen and the Town of Richmond Conservation Commission. BNRC also established a Conservation Restriction on the entire Subject Property.

16. Over the past few years, BNRC's educational programs for the Subject Property have included:

**Bobolink hikes and The Bobothon** - events held when the Bobolinks return to Hollow Fields from overwintering grounds in the South America. These grassland birds are in decline due largely to habitat loss, and in Spring, they return to Hollow Fields to nest. BNRC management and mowing of Hollow Fields is informed by the "Best Management Practices for Nesting Grassland Birds" published by Mass Audubon Society;

**The Basics of Hiking OLLI Course;**

**Hollow Fields Boulder Train Hike** - highlighting the unique and internationally significant glacial trail of boulders on the Subject Property;

**Roots Rising Educational Hike** - empowering young people from all backgrounds to learn about and enjoy the natural history and beauty the Berkshires has to offer.

**Firefly Hikes, Sunset Hikes, Full Moon hikes and Volunteer Workdays** all provide residents with a guided opportunity to learn about and enjoy Hollow Fields's many natural resources, as well as conservation principles.

**Richmond Land Trust Pie Social** - an opportunity to visit with neighbors and recognize the great work of the Richmond Land Trust and all its supporters.

17. In addition, the BNRC regularly publishes educational materials, including brochures and maps, provides online information to the general public, and offers guided excursions to the Subject Property and other BNRC locations.

18. The members of the general public who partake of the offerings of BNRC at the Subject Property have an educational experience, in that the experience enhances the mind, body, and spirit of the participant.

19. G.L. c. 40A, s. 3 states, in pertinent part that:

No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for ... educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

20. The Bylaw, at Section 4.8, Table of Use Regulations states in pertinent part:\*

3. Municipal or governmental use including parks, playground or other recreational facilities owned or operated by Town agency. Yes+

4. Religious or educational use on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a non-profit educational corporation. Yes

5. Private non-profit library, museum or philanthropic institution not exempt by M.G.L. c. 40A s. 3. SPP

8.a Golf, swimming, tennis or sportsmen's club, or other recreational facility of similar character. SPA

\*Yes+ means the use is as of right subject to site plan approval by the Planning Board; Yes means as of right; SPP means special permit, Planning Board; SPA means special permit, ZBA.

21. The Bylaw at Section 2.2, contains the following definition:

Recreational Facility: A facility for leisure time sport activities that usually require equipment including golf, outdoor skating rinks, tennis, and other court games, baseball and other field sports, track, swimming, and playground activities.

22. The Bylaw, at Section 6.6, contains the following provision regarding site plan approval for certain parking areas:

6.6 Off-Street Parking and Loading. An off-street parking area in accordance with a Site Plan approved by the Board of Selectmen shall be provided for any public use hereafter established or expanded. The parking area shall be adequate in size for the maximum use of the proposed facility; shall be suitably surfaced, and shall be attractively screened from any abutting residential use or district. The term public in this section shall include any use by a business, professional or private organization.

23. On or about January 28, 2021, Jeffrey and Linda Caligari, Jeffrey and Jennifer Morse, and Ira and Jamie Grossman (the "Neighbors"), by and through counsel, corresponded with the Richmond Building Inspector, Paul Greene, seeking enforcement of the Bylaw.

24. Mr. Greene denied the enforcement request in writing on January 30, 2021 (the "Denial").

25. The Neighbors appealed the Denial of Mr. Greene to the ZBA on February 12, 2021.



26. After a site visit scheduled in the early evening, the ZBA held a duly noticed public hearing on May 13, 2021, which was continued to June 15, 2021. The hearing was closed on June 15, 2021.
27. The ZBA rendered its Decision on June 15, 2021, and filed the Decision with the Richmond Town Clerk on June 17, 2021.
28. In its Decision, the ZBA reversed the Denial of the Building Inspector by a vote of 4 affirmative, 0 negative.
29. The ZBA found that "[t]o the extent that BNRC engages in educational uses of the Hollow Fields Property, the educational uses are secondary and are not primary or predominant." See pages 3 and 5 of the Decision.
30. The ZBA ruled that "a Special Permit is required under Section 4.8 Subsection 8(a) for BNRC's non-educational uses of the Hollow Fields Property." See page 6 of the Decision.
31. The ZBA ordered the Building Commissioner to commence an enforcement action forty-five (45) days after the filing of its Decision and "to delay enforcement while a Special Permit application is being considered by the Board." See page 7 of the Decision.

#### COUNT I

32. BNRC repeats and realleges the facts set forth in paragraphs 1-31 and incorporates same by reference herein.
33. BNRC is a charitable nonprofit corporation.
34. In its amended Articles of Organization, BNRC announces its educational goals: "to take an active interest in local and regional planning and zoning, pollution abatement programs, roadside beautification and the conservation of selected fields and forests for recreational use, for livability, for protection and for beauty; ... [and] to work closely with the many groups concerned with allied issues and to coordinate and supplement the activities of such groups as they relate to the natural resources of Berkshire County."
35. BNRC's use of the Subject Property, and that of its visitors to the Subject Property, as described herein, is educational and recreational, with the educational use constituting the "primary or dominant" use of the land.
36. Item 4.8.4 of the Table of Use Regulations allows an educational use by non-profit educational corporation as of right.

WHEREFORE, the Decision of the ZBA is arbitrary and capricious, an abuse of discretion, and in excess of law.

## COUNT II

37. BNRC repeats and realleges the facts set forth in paragraphs 1-36 and incorporates same by reference herein.

38. The ZBA ruled that BNRC's activities on the Subject Property required a special permit from the ZBA under Item 4.8.3 of the Table of Use Regulations.

39. Item 4.8.3 governs "golf, swimming, tennis or sportsmen's club, or other recreational facility of similar character."

40. Section 2.2 of the Bylaw defines "recreational facility" as "[a] facility for leisure time sport activities that usually require equipment including golf, outdoor skating rinks, tennis, and other court games, baseball and other field sports, track, swimming, and playground activities.

41. The educational and recreational activities on BNRC's Subject Property do not "require equipment."

42. The educational and recreational activities on BNRC's Subject Property do not share a "similar character" with golf, outdoor skating rinks, tennis, and other court games, baseball and other field sports, track, swimming, and playground activities.

43. Item 4.8.3 of the Table of Uses governing "recreational facilities" is inapplicable to BNRC's educational and recreational activities on the Subject Property.

WHEREFORE, the Decision of the ZBA is arbitrary and capricious, an abuse of discretion, and in excess of law.

DATE: July 7, 2021

Plaintiff,

By its attorneys,



Mark Bobrowski, BBO #546639

Christopher J. Alphen, BBO #691813

Blatman, Bobrowski & Havery, LLC

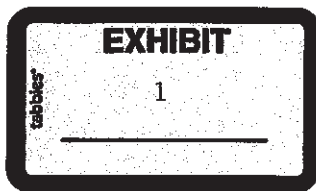
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RECEIVED

JUN 17 2021

TOWN OF RICHMOND  
TOWN CLERK

Received by the Town Clerk on  
June \_\_\_, 2020.

Angela Garrity, Town Clerk



**TOWN OF RICHMOND  
ZONING BOARD OF APPEALS  
DECISION**

**I. BACKGROUND**

The Zoning Board of Appeals conducted a public hearing, pursuant to the provisions of Chapter 40A of the Massachusetts General Laws, and Section 7.2.1 of the Richmond Zoning By-Law, on a petition appealing a Request for Enforcement of the Richmond Zoning By-Law in which Jeffrey and Linda Caligari, and Jeffrey and Jennifer Morse, and Ira and Jami Grossman (together, the "Applicants") requested the Richmond Zoning Enforcement Officer and Building Inspector to enforce Sections 8.3.2 and 8.3.4 of the Richmond Zoning By-Law against the Berkshire Natural Resources, Inc. (the "BNRC"), for its claimed violations of Section 4's Use Regulations by its use of land off of Perry's Peak Road (the "Hollow Fields Property"). The Richmond Zoning Enforcement Officer and Building Inspector declined the Request for Enforcement, and the Applicants appealed that decision.

A site-visit was held at 6:30 PM at the property, and a hearing was held at 7:00PM, on Thursday, April 29, 2021, and the hearing was continued to Tuesday, June 15, 2021, at 7:00PM.

The meetings were properly posted, and a notice of the initial hearing was published in the *Berkshire Eagle* on April 15, 2021, and April 22, 2021. A notice of the initial hearing was also mailed to the abutters on April 15, 2021.



## II. EXHIBITS

The Board considered the presentations of the Applicants and their counsel, and comments from the general public in person and in written submissions. The Board did not receive any comments from any other Boards or the Board of Selectmen. The Board accepted the following documents as a part of the record:

1. Agenda with Consent
2. Notice of Appeal
3. Published Notice
4. Abutters' Notices
5. William E. Martin's Ethics Disclosure
6. BNRC Memo and BNRC May 26, 2021 Letter
7. Appellants' Reply Memo
8. Public Comments
9. Excerpts of Richmond Zoning By-Law
10. M.G.L. Chapter 40A, Section 3

## III. FINDINGS OF FACT

The Board made the following findings of fact:

1. The Hollow Fields Property is in the RA-C District.
2. Applicants, Jeffrey and Linda Caligari and Jeffrey and Jennifer Morse, are abutters.
3. Applicants, Ira and Jami Grossman, are residents of Perry's Peak Road, but are not abutters or abutters to abutters within 300'.
4. The BNRC is a nonprofit Massachusetts corporation.
5. The BNRC's statement of purpose is:

Stock having the right to vote therein.

**Article No. 2, (Statement of Purposes):**

To promote and protect the natural resources of Berkshire County to the end that said County shall be more livable and more attractive; to strive to eliminate pollution of streams and lakes, preserve open spaces for recreation and scenery, and discourage unsightly development in the interest of the County as a whole; to take an active interest in local and regional planning and zoning, pollution abatement programs, roadside beautification and the conservation of selected fields and forests for recreational use, for livability, for protection and for beauty; to acquire, hold, manage and dispose of land and interests in land within and adjacent to Berkshire County in accordance with generally accepted conservation objectives and practices; to work closely with the many groups concerned with allied issues and to coordinate and supplement the activities of such groups as they relate to the natural resources of Berkshire County.

6. The U.S. Internal Revenue Service has recognized BNRC as a 501(c)(3) Charitable-Educational nonprofit corporation since 1968.

7. The BNRC does not charge the public to access the property, which has walking trails through fields and woods of the Hollow Fields Property.
8. The Hollow Fields Property contains no manmade structures, except a gravel parking lot.
9. The Town of Richmond Conservation Commission and the Richmond Land Trust, Inc. hold a Conservation Restriction over 342 acres of the Hollow Fields Property, which represents more than fifty percent of the land.
10. Notwithstanding the Conservation Restriction, the BNRC has the authority to regulate the use of the property for the protection of public health, safety, and compliance with best management practices.
11. The Town of Richmond does not own and is not an operator of the Hollow Fields Property, and it is not a municipal park.
12. The Hollow Fields Property is used by the BNRC primarily for recreational uses.
13. To the extent that the BNRC engages in educational uses of the Hollow Fields Property, the educational uses are secondary and are not primary or predominant.
14. The current use of the Hollow Fields Property by the BNRC has a detrimental impact on the Abutters enjoyment of their properties as a result primarily of the traffic, parking, and hours of use.
15. The current use of the Hollow Fields Property by the BNRC has a positive impact on the Town generally, and there is broad community support for both the preservation of open space and passive recreational use of the preserved open space.
16. The BNRC's use of the Hollow Fields Property is in harmony with the general intent and purpose of the Zoning By-Law.
17. The current use of the Hollow Fields Property by the BNRC is desirable to the community at large, but not to the Applicants.
18. The current unregulated use of the Hollow Fields Property by the BNRC is detrimental to the character of the neighborhood.
19. The current unregulated use of the Hollow Fields Property by the BNRC does create undue traffic congestion.
20. The current unregulated use of the Hollow Fields Property by the BNRC does create an undue burden on the Town's Department of Public Works.

#### IV. DISCUSSION

Section 4.1 of the Richmond Zoning By-Law provides:

##### SECTION 4: USE REGULATIONS

- 4.1 Except as provided by law or in this By-Law, no building or structure shall be erected and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses set forth in the accompanying Table of Use Regulations, Section 4.8, as permitted by right in the district in which such building, structure or land is located, or which may be permitted in said district and so authorized by Special Permit Granting Authority as designated in Section 4.2 herein.

Section 4.8 Subsection 5 of the Richmond Zoning By-Law allows for the issuance of a Special Permit by the Planning Board for "philanthropic institution not exempt by M.G.L. Chapter 40A, s. 3" in the RA-C zone:

profit educational corporation.

- |    |                                                                                                   |     |    |     |
|----|---------------------------------------------------------------------------------------------------|-----|----|-----|
| 5. | Private non-profit library, museum or philanthropic institution not exempt by M.G.L. c. 40A s. 3. | SPP | NO | SPP |
|----|---------------------------------------------------------------------------------------------------|-----|----|-----|

Section 4.8 Subsection 8(a) of the Richmond Zoning By-Law allows for the issuance of a by the Zoning Board of Appeals for recreational uses in the RA-C zone:

neighboring premises.

- |    |                                                                                                     |     |    |     |
|----|-----------------------------------------------------------------------------------------------------|-----|----|-----|
| 8. | a) Golf, swimming, tennis or sportsmen's club, or other recreational facility of similar character; | SPA | NO | SPA |
|----|-----------------------------------------------------------------------------------------------------|-----|----|-----|

The parties acknowledge that, as a minimum, the use of the BNRC of the Hollow Fields Property is subject to regulation of parking, even if the Board accepted its arguments. Massachusetts General Laws Chapter 40A § 3 provides "No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit

educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.”

Section 6.6 of the Richmond Zoning By-Law provides that off street parking shall be allowed in accordance with a Site Plan approved by the Board of Selectmen. The section provides:

6.6 Off-Street Parking and Loading

An off-street parking area in accordance with a Site Plan approved by the Board of Selectmen shall be provided for any public use hereafter established or expanded. The parking area shall be adequate in size for the maximum use of the proposed facility; shall be suitably surfaced, and shall be attractively screened from any abutting residential use or district. The term public in this section shall include any use by a business, professional or private organization.

Furthermore, even if the purpose of the BNRC as stated in its Article of Organization, as amended, included an educational purpose, its use of the Hollow Fields Property is not primarily or predominantly educational. The Board accepts the argument set forth in the Applicants’ Reply Memorandum dated May 6, 2021, at Section 4, Pages 9- 12. In particular, the Board notes that: Any doubt or ambiguity concerning whether the land use is primarily and predominantly educational must be resolved in favor of protecting local zoning.” A narrow interpretation of G.L. c. 40A, § 3 has been mandated by the Supreme Judicial Court with the statement in *Regis College v. Town of Weston*, 462 Mass. 280, 289-290 & n. 12 (2012) as follows:

[T]he Dover Amendment represents a specific exception to the general power of municipalities to adopt and enforce zoning regulations and by-laws. See *Crall v. Leominster*, 362 Mass. 95, 101-102 (1972). "The whole of the Dover Amendment ... seeks to strike a balance between preventing local discrimination against an educational use, ... and honoring legitimate municipal concerns that typically find expression in local zoning laws" (citation omitted). *Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993). As a practical matter, the protection afforded by the Dover

Amendment can be financially advantageous to the landowner. Because the statutory purpose of preventing local discrimination against educational uses is only furthered if the intended use of the land is in fact educational, the term "educational purposes" should be construed so as to minimize the risk that Dover Amendment protection will improperly be extended to situations where form has been elevated over substance.

Considering this authority and because the Board concludes that the BNRC's use of the Hollow Fields Property is primarily recreational, a Special Permit under Section 4.8 Subsection 8(a) is required for the BNRC's non-educational uses of the Hollow Fields Property.

The Special Permit requirements are set forth in Section 6.3.4 as follows:

unereco.

**6.3.4 Findings Required**

Before granting a special permit for any use requiring such permit under the provisions of this By-Law, the Special Permit Granting Authority shall find that the proposed use:

- a) Is in compliance with all provisions and requirements of this By-Law, and in harmony with its general intent and purpose.
- b) Is not undesirable or does not substantially derogate from the public good or convenience at the proposed location;
- c) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- d) Will not create undue traffic congestion, or unduly impair pedestrian safety;
- e) Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting public health, safety or general welfare.

The Special Permit "may be issued subject to such conditions, safeguards or limitations as the Special Permit Granting Authority may impose for the protection of neighboring uses or otherwise serving the purposes of this By-Law, Section 6.3.5. As noted above, the Special Permit shall be accompanied by a Site Plan that will identify parking, which will require approval of the Board of Selectmen under Section 6.6. The Board may impose additional conditions related to parking and other matters as set forth in Section 6.3.5: "Such conditions, safeguards or limitations may include, but are not limited to, the following: a) Front, side, and rear yards greater than the minimum required by this By-Law; screening buffers or planting



strips, fences or walls as specified by the Authority; b) Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities; c) Regulation of number or location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this By-Law. Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the special permit and of the building permit, if any<sup>1</sup>.

## **V. CONCLUSION**

In light of the foregoing, by unanimous vote of its members, William E. Martin, Ina Wilhelm, Peter Killeen and Robert Gniadek (Stevan Patterson participated in the April 29, 2021, hearing but resigned before the June 15, 2021 hearing), the Zoning Board of Appeals found that the Berkshire Natural Resources, Inc.'s use of its land off of Perry's Peak Road is in violation of Section 4.1 of the Richmond Zoning By-Law because its use in a Residential District (RA-C) is subject to a Special Permit. Accordingly, the Zoning Board of Appeals reverses the decision of the Zoning Enforcement Officer. The Board directs the Zoning Enforcement Officer to commence an enforcement action forty-five (45) days after the filing of this decision with the Town Clerk to permit the BNRC an opportunity to apply for a Special Permit and to delay enforcement while a Special Permit application is being considered by this Board.

Any appeal from this decision must be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, as amended, and must be filed within twenty (20) days from the filing of this Decision with the Richmond Town Clerk.

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<sup>1</sup> The Zoning Board of Appeals cannot and will not preemptively rule on a Special Permit application, or even determine which Special Permit is required (the Board makes no determination as to whether a Special Permit is required under Section 4.8 (5) from the Planning Board or Section 4.8(8)(a) from the Zoning Board of Appeals, or both). Nevertheless, the Board's discussion made clear that the consensus of the Board is that a Special Permit of either kind should be granted with conditions imposed to balance the interests of the Applicants and other neighbors and the interests of the BNRC and the community at large. Ideally, the Applicants and the BNRC will reach consensus on which form of Special Permit is required and an appropriate set of conditions that will satisfy the interests all interested parties.

ENTERED as the unanimous decision of the Richmond Zoning Board of Appeals on the 15<sup>th</sup> day of June 2021.

*/s/ William E. Martin*

\_\_\_\_\_  
William E. Martin  
Chairman

*/s/ Ina Wilhelm*

\_\_\_\_\_  
Ina Wilhelm

*/s/ Peter Killeen*

\_\_\_\_\_  
Peter Killeen

*/s/ Robert Gniadek*

\_\_\_\_\_  
Robert Gniadek

#### **CERTIFICATE OF TOWN CLERK**

This is to certify that twenty (20) days has elapsed since the filing of the above decision with this office and no appeal has been filed or an appeal has been filed and denied in this case.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Angelia Garrity  
Richmond Town Clerk