

# Legal tangle over scenic land going to court — maybe



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Richmond dispute could go to judge, but settlement still an option

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**RICHMOND** — A legal tangle involving scenic land in Richmond is headed for Massachusetts Land Court, unless there's

a pre-trial settlement or other agreement.

The dispute stems from the Berkshire Natural Resource Council's July 2019 acquisition of additional land at the Hollow Fields preserve, doubling its

size to 660 acres. The nonprofit created a two-mile hiking trail that's increasingly popular with residents of Richmond, nearby communities and visitors.

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Hikers gather at the entrance to Hollow Fields in Richmond in July 2019.

## Land

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Not with all neighbors, however. Aggrieved residents of Perry's Peak Road have complained of seasonal traffic and parking congestion. They claim use of the trail has brought nighttime disturbances that frightened several residents, according to letters the neighborhood group filed with the Richmond Zoning Board of Appeals.

The dispute sets up a contest between what neighbors want and what the council says it has the right to allow. While neighbors say use of the Hollow Fields preserve requires a special permit, a position recently backed by a town board, the council rejects that — and is fighting back.

Neighbors Jeffrey and Linda Caligari, Jeffrey and Jennifer Morse, and Ira and Jami Grossman petitioned the ZBA last January to enforce the town's zoning bylaw. They argued that BNRC is using its land in a residential zoning district illegally for a non-residential use — hiking, recreation and hunting — without a special permit.

"BNRC's presence has forced us into a state of hyper-awareness," wrote Jeffrey Morse, owner of a horse-training stable near the Hollow Fields parking area. "We are often distracted by conversations of hikers between themselves and their calls for their dogs ... Although it is not our job to police the activity of BNRC hikers, we still feel obligated as human beings to stop what we are doing and pay attention to these disturbances in case something has gone awry. It is not why we chose to live at the end of a peaceful dead-end road."

The legal filing by their attorney, Matthew Mozian of Campoli, Monteleone and Mozian, followed a ruling by Paul Greene, the town's zoning enforcement officer and building inspector. Greene stated that a special permit was not required for the BNRC's activities on the land.

After visiting the site, Greene wrote: "Richmond



The Berkshire Natural Resources Council has purchased land abutting their existing Hollow Fields property in Richmond, nearly doubling the amount of protected land.

is a rural town that lends itself to outdoor recreation and the fact that for the most part the services [BNRC] provides does not require payment, furthers my decision that the use fits in with the town bylaws as an enhancement to the residential zoning."

The area is popular with school groups and senior citizens, drawn to its vista, bird-watching and nature. The area is reachable by an easy-to-moderate walk through open fields adjoining private properties in the residentially zoned area.

The land near the New York state line is preserved and protected forever by BNRC through an agreement with the Richmond Land Trust and the town's Conservation Commission. The wildlife habitat originally was held by the United Society of Shakers and then by the Berkshire Farm Center in Canaan, N.Y., starting around 1900.

"Hollow Fields is a gem in town and is enjoyed by people of all ages," wrote Becky Augur in a message to the ZBA. "Allowing abutters to restrict its use is not a precedent to set."

One problem for nearby residents is the limited parking available at the trailhead, which adjoins a farm on the dead-end road. The property is 1.3 miles north of Richmond Town Hall and 2.4 miles south of Hancock Shaker Village on

the Pittsfield-Hancock line.

Greene, the zoning enforcement officer, acknowledges that there may not be enough parking. He has suggested that BNRC increase the size of its six-vehicle parking area and that the town post no-parking signs on Perry's Peak Road "and perhaps enforce illegal on-road parking with ticketing."

Mozian, the attorney representing neighbors, contends his clients "are frequently faced with BNRC's invitees trespassing on their land and/or parking on Perry's Peak Road when BNRC's parking lot fills up." He noted that the neighbors have brought up the problems to the Select Board and the BNRC to no avail.

He asked the ZBA to issue a "cease and desist order" directing BNRC to "immediately stop their unpermitted use of land" until they obtain permits.

He told The Eagle that his clients are not seeking to bar public access to the council's preserve. They seek only to prohibit use of the trailhead on Perry's Peak Road — unless a special permit is issued.

A series of legal salvos followed, beginning with a response by the council's local attorneys, Jeffrey Lynch and Jeffrey Scrimo of Lenox.

They argued that because the BNRC offers educational programming at the

Hollow Fields preserve, a state law provision known as the "Dover Amendment" prohibits the ZBA from regulating or restricting the council's use of the land. Nor does Richmond's zoning bylaw prohibit or require a special permit for BNRC to use the property for educational purposes, the attorneys stated.

"There can be no dispute that the BNRC is a 'nonprofit educational corporation' under state law. Accordingly, no zoning ordinance or bylaw shall 'prohibit, regulate or restrict the use of' Hollow Fields," the council's attorneys wrote in a case filing.

Following several meetings, a site visit, and a review of 200 pages of documents and exhibits, the Zoning Board ruled unanimously June 15 in favor of the neighbors, overturning enforcement officer Greene's earlier decision that the BNRC did not need a special permit for its use of the land.

The ZBA — chaired by Pittsfield attorney William E. Martin, a Richmond resident and appointed town moderator — based its ruling on a finding that the BNRC uses Hollow Fields primarily for recreational uses, and that educational uses are "secondary, not primary or predominant."

The zoning board's decision said the council's use of the land has a "detrimental

effect" on the adjoining residents' enjoyment of their properties "as a result primarily of the traffic, parking and hours of use" and is therefore detrimental to the character of the neighborhood.

The ZBA did acknowledge that the BNRC's ownership of the property "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 that space.

Furthermore, the zoning board conceded, the BNRC's activities are "in harmony with the general intent and purpose of the zoning bylaw."

But, because of the traffic and parking issues, the ZBA said the council should seek to obtain a special permit for its "non-educational uses of the Hollow Fields Property."

The board members — Martin, Ina Wilhelm, Peter Killeen and Robert Gniadek — voted 4-0 that the council is violating the Richmond zoning bylaw. The ZBA directed the zoning enforcement officer to begin an "enforcement action" in six weeks, giving the council time to apply for a special permit, but to delay enforcement while the ZBA considers an application.

Martin said by email that his board set out to determine whether the council needed a special permit.

"The ZBA decided that it did — nothing more. The BNRC's position is that it is simply exempt from Richmond Zoning. For the reasons set forth in the decision, the Board concluded that is not true."

Martin said the question was never whether to close the trails. "The decision just makes it clear that the BNRC is subject to the Zoning By-Law. The ZBA believes that the Town has a role in regulating use of property in Town and has the authority to impose reasonable conditions. The BNRC disagrees. That is the bottom line."

The council has filed an appeal of the ZBA's decision. The appeal stresses the group's educational mission and activities, including those at the Hollow Fields property.

The council's attorneys, Mark Bobrowski and Christopher J. Alphen of Blatman, Bobrowski & Havesty in Concord, contend that use of the property is "educational and recreational, with the educational use constituting the 'primary or dominant' use of the land" and thus complies with the town's zoning bylaws.

Bylaws requiring a special permit, the lawyers argue, apply to a "golf, swimming, tennis or sportsmen's club, or other recreational facility of similar character" that typically require equipment. They say that's not the case at Hollow Fields and term the ZBA ruling "arbitrary and capricious, an abuse of discretion and in excess of law."

Or, in lay people's language, "see you in court."

Jenny Hansell, BNRC's president, said the council does not see itself as "simply exempt" from Richmond zoning. "Of course we are not above the law. The town may regulate our parking and signage, and quite reasonably requires a special permit for expanding the parking lot," she said. "What we believe they cannot regulate is the use of the property as an open Reserve."

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