

# Weston Forest and Trail Association Favored by Court Decisions

By Robert Levite, Esq  
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The Commonwealth's highest court, the Supreme Judicial Court, brought sighs of relief to the state's land protection community recently when it declined to further review a case involving a Weston landowner who had built a barn on a portion of her property subject to a permanent conservation easement.

The case arose in 2004 after the Weston Forest and Trail Association (WFTA) realized that property owner Beth Ellen Fishman had constructed a large horse barn on a portion of her property. The area of construction was delineated conservation land through a permanent conservation restriction (restriction) granted by the previous owners of the property in 1974. WFTA was the recipient and holder of the conservation easement. The stated purpose of the restriction was "to ensure the preservation of [the property] in its present, predominantly natural and undeveloped condition." At that time a plan delineating the boundary between the restricted and unrestricted portions of the Weston property was recorded at the Registry of Deeds.

The Land Court, ruling in favor of the plaintiff, WFTA, concluded that the 1974 restriction did not permit construction of the barn and, further, that the construction of the barn was not the result of an innocent mistake as the defendant had claimed. The Court issued an injunction enjoining Fishman from maintaining the new barn within the restricted area, requiring her to remove the new barn within six months and requiring her to restore the restricted area that was disturbed by the construction.

Subsequently, Fishman appealed to the Massachusetts Appeals Court, which, in affirming the decision of the Land Court, concluded that there was no disputed issue of material facts, the restriction was not ambiguous and the trial judge had ruled correctly on the law. The Court found several arguments of the Defendant unpersuasive. The Court noted that Defendant's argument that the Plaintiff failed to raise a timely objection to the construction, thus causing her substantial economic harm, was incorrect as a matter of law – and noted that the Defendant's reliance on the Plaintiff's conduct was not reasonable.

The Defendant also argued that the Plaintiff is a private entity and, because it did not seek to enforce "public rights", the trial court had erred in its decision. The Appeals Court, noting that the "public or private nature of an entity is not dispositive of whether that entity is enforcing public rights", concluded that a nonprofit entity such as the Plaintiff, created for the purpose of protecting and conserving land and water, should be immune from such a defense where the entity seeks to ensure that a landowner causes no harm to the public interest.

Subsequently, the Defendant appealed to the Supreme Judicial Court, which denied further appellate review, thus establishing the Appeals Court decision as the final word in this case.

The Defendant removed the barn from that portion of the property covered by the restriction in 2007.