

**From:** [Kablack, Jody](#)  
**To:** [Kupfer, James](#)  
**Subject:** FW: Abrams, et al. v. Sudbury Conservation Commission, et al.  
**Date:** Tuesday, August 11, 2015 11:09:40 AM

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FYI. I don't think we will proceed, but I wanted to know if we could. Debbie has also said that we still have the local bylaw resources that we need to avoid.

Jody Kablack  
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**From:** Peter Mello [mailto:pmello@petrinilaw.com]  
**Sent:** Friday, August 07, 2015 1:41 PM  
**To:** Kablack, Jody <KablackJ@sudbury.ma.us>  
**Cc:** Bilodeau, Maryanne <BilodeauM@sudbury.ma.us>; Dineen, Deborah <dineend@sudbury.ma.us>; Barbara Saint Andre <bsaintandre@petrinilaw.com>  
**Subject:** Abrams, et al. v. Sudbury Conservation Commission, et al.

**Privileged Attorney Client Communication/  
Proper Subject for Executive Session/  
Not for Disclosure to Third Parties/ Pertains to Pending Litigation**

Jody, I have evaluated your question regarding whether the Town lawfully may at its own risk proceed with the work allowed under the Superseding Order of Conditions issued July 15, 2015 (SOC). In my opinion, the Town may proceed at its own risk with such work, assuming that the SOC was not appealed (as we suspect given that to date we have received no copy of any such appeal filing). The language prohibiting work prior to final resolution of "administrative appeals" – which language appears in the state regulations and the general conditions enumerated in the DEP's WPA Form 5 OOC and SOC (and in this case, in the special conditions of the Commission's OOC) – refers to administrative appeals to, and final resolution by, the DEP, as opposed to a Superior Court appeal under G.L. c. 249, § 4 (e.g., the OOC states that "No work shall be undertaken until all administrative appeal periods from the date of issuance of this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department of Environmental Protection have been completed."). Although Special Condition No. 29 of the SOC omits the word "administrative" in stating that "No work shall commence on-site until all appeal periods have elapsed," in my opinion the SOC governs work only under the SOC itself, and thus the existence of any court appeal of the OOC is not a matter within the scope of the SOC or the DEP's jurisdiction.

In addition, I assume that the SOC does not allow the Town to undertake any work that is not already allowed under the Commission's OOC, such that the Town would need the Conservation Commission's prospective approval under the Bylaw to perform work allowed under the SOC (if otherwise, please advise, as it could impact the analysis).

For these reasons, assuming that there is no appeal of the SOC, the Town can record the OOC & SOC and proceed at its own risk with work under the SOC, notwithstanding Ms. Abrams' pending appeal to the Superior Court. Note, however, that notwithstanding the Town's ability to proceed at its own risk with the underlying survey work allowed under the SOC, Ms. Abrams may file a motion to enjoin the Town from completing such work pending the outcome of the Superior Court action. If the Court were to allow such a motion and issue an injunction, the Town would be prohibited from performing the underlying work.

Please do not hesitate to contact me with any questions regarding this matter.

Thank you,

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