**A Ray of Hope for the Belmont Uplands' Silver Maple Forest**

A Superior Court ruling this month provides hope for activists seeking to preserve forest.

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The Belmont Uplands is the home of the Silver Maple Forest, the core of the 120-acre Alewife Reservation described as an “urban wild.”

The Uplands is also the proposed site for a sprawling housing complex sitting containing nearly 300 housing units and 600 parking space.

The project would be developed under the State's Chapter 40B affordable housing law where, in exchange for 20 percent affordable units and adding 0.6 percent to Belmont's housing number, the developer can override any local zoning which makes a project uneconomic – including Belmont's 25 percent affordable housing by-law – and ask the State Department of Environmental Protection to overrule the local Conservation Commission.

In 2007 the [Belmont Zoning Board of Appeals](http://belmont.patch.com/articles/belmont-uplands-building-permit-a-signature-away) approved the project with conditions, but the Belmont Conservation Commission rejected the project base on 20 violations of the Wetlands Protection Act and Stormwater Management Standards.

In stark contrast, when the developer went to the State's Department of Environmental Protection, it allowed the project in 2010.

Both the Commission and the Coalition to Preserve the Belmont Uplands appealed this decision citing errors of law and unlawful procedures in their appeal to Middlesex Superior Court.

On Dec 12, Superior Court Judge S. Jane Haggerty found that the DEP failed to consider unchallenged testimony by the Belmont Conservation Commission’s expert concerning violations of a State stormwater management standard which stipulates that a project cannot make significant changes to the local water table.

Dr. Scott Horsley, a noted wetlands consultant, testified before the DEP that the project’s proposed infiltration system would likely “become inundated during larger stormwater design events” due to the existing high water table at the location.

The judge remanded the case back to the DEP for more complete findings.

The Coalition is grateful to Belmont Conservation Commissioner Faustino Lichauco, an engineer and attorney who volunteered to represent the Commission.

Veteran Winn Brook residents living on the other side of Little Pond from the proposed development know very well about the high water table which leaves them susceptible to flooding during rain events like the March 2010 floods which caused an estimated $50,000 in damages.

Judge Haggerty denied the claims the co-Plaintiffs: the Coalition to Preserve the Belmont Uplands, Friends of Alewife Reservation and 10 local residents – the Coalition for short – and the two remaining Commission claims.

The Coalition's appeals case cited flawed DEP rulings on the proposed project's violations of the Wetlands' Protection Act and serious procedural irregularities.   The Coalition's attorney, Thomas Bracken, presented ample evidence that the DEP officer did not consider any of the oral testimony, including cross-examination testimony, given over four days of hearings, one example being the DEP officer's statement in her first issued decision that she considered only the pre-filed written testimony.

This procedural error was compounded when the Plaintiffs were not offered complete and reliable transcripts of the tapes of the hearings by the DEP.

The Superior Court judge did not consider this evidence in her decision. Instead, she used the lack of supplied transcripts to assert that the Plaintiffs had waived their substantial rights to support their claims that the DEP Presiding Officer ignored evidence in their favor.

The Coalition also alleged that the proposed development's plans for replacing lost wildlife habitat were lacking in quantity and quality and that the DEP made errors of law in reaching its conclusions, but the Superior Court Judge appears to have made the same errors in upholding the DEP's decision.

The Plaintiffs' evidence and reports dismissed by the DEP Presiding Officer and now the Superior Court Judge will be included in an impact study to be publicly presented by the firm Horsley and Witten in February.

The Coalition's goal is to preserve its Silver Maple Forest in its natural state so it can provide flood-control for local residents and wildlife habitat for the surrounding 120-acre Alewife Reservation.

Coalition attorney Thomas Bracken has advised us of strong bases for an appeal and that the DEP case is not our only legal recourse against the proposed development since a building permit has not been issued.

We will appeal and continue on our mission with deep gratitude for the time and  resources invested by members of our volunteer-only organization, the Friends of Alewife Reservation and all the local environmental groups who support us, and the Coalition's more than 400 supporters in Belmont, Cambridge, Arlington, and surrounding communities.

Please follow our progess on our [web pages](http://belmontcoaltion.org) and Facebook page, “Save the Silver Maple Forest.”

Idith Haber

Belmont resident and co-chairman of the Coalition to Preserve the Belmont Uplands