

Commonwealth of Massachusetts
Land Court Department of the Trial Court

TOWN CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant.

No.: 18 MISC 000596 (KCL)

**DEFENDANT'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF
MOTION TO DISMISS UNDER MASS. R. CIV. P. 12(B)(1) FOR LACK OF
SUBJECT MATTER JURISDICTION**

Defendant, the Town of Littleton, submits this Statement of Material Facts pursuant to Land Court Rule 4 in support of its Motion to Dismiss this case with prejudice, under Mass. R. Civ. P. 12(b)(1), 365 Mass. 754 (1974), for lack of subject matter jurisdiction.

1. Nagog Pond is a natural Great Pond. Flagg v. Concord, 222 Mass. 569, 571 (1916).
2. Nagog Pond is located within the boundaries of the Towns of Littleton and Acton. (Compl., unnumbered prefatory paragraph, Appendix ("App.") Tab 1¹)
3. On or about April 30, 1884, the General Court approved "An Act to Authorize the Town of Concord to Increase Its Water Supply," Stat. 1884, c. 201 (the "1884 Act"). (Compl. Ex. A., App. Tab 2.)
4. In 1909, the Town of Concord filed with the Middlesex County Registry of Deeds an instrument purporting to take and hold all of the waters of Nagog Pond. (App. Tab 3.)

¹ The Appendix includes a copy of the Complaint at Tab 1, without appended exhibits. For the Court's convenience, the Complaint exhibits cited in this Statement and relevant to this Motion are set forth in subsequent Tabs, cited in the appropriate paragraphs of this Statement.

5. As of the date of this Statement, Concord has continuously held all of the waters of Nagog Pond pursuant to that 1909 instrument of taking. (Compl. ¶¶ 13-15, 32-35, App. Tab 1.)

6. Littleton provided a notice to Concord, on or about February 20, 2018, of its intent to exercise rights under Section 10 of the 1884 Act (the “Notice”). (Compl. Ex. E., App. Tab 4.)

7. Littleton and Concord met and discussed Littleton’s exercise of its Section 10 rights several times after Littleton provided the Notice. The final session occurred on November 7, 2018. (Compl. ¶¶ 82, 84-86, 88-89, 98, App. Tab 1.)

8. Littleton filed its Complaint giving rise to this action on November 8, 2018. (No. 18 MISC 000596.) (App. Tab 1.)

9. On December 7, 2018, Littleton filed a Complaint in the SJC, under Stat. 1884, c. 202, § 10, to ascertain damages for its imminent taking of part or all of Nagog Pond’s waters and for a corresponding declaratory judgment, under G.L. c. 231A, §§ 1 and 2, concerning the meaning and scope of the term “water damages” for purposes of properly instructing a three-commissioner panel. (App. Tab 5.)²

10. On December 21, 2018, Littleton filed a motion in the SJC requesting that the Court transfer this case to its own docket and consolidate both, pursuant to the SJC’s authority under G.L. c. 211, § 4A. (App. Tab 6.)

² That Complaint is included in the Appendix without its attached exhibits, which are unnecessary to this Court’s decision on this Motion.

Respectfully submitted,

THE LITTLETON WATER DEPARTMENT,

By its attorneys,



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