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MADISON

Land trust sues property owner over clear-cutting

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MADISON » After 30 years of working as Madison's inland wetlands enforcement officer, Robert Kuchta immediately recognized the swath of missing trees as he drove by Creamery Lane to inspect a nearby subdivision.

"If you see somebody everyday and you see their smile, and then the next day they have a tooth missing, that's kind of what the effect was," Kuchta said.

He made the observation in late spring 2016. A resulting disagreement between property owner Antonio Suppa and the Madison Land Conservation Trust is pending a verdict, after the post trial briefings ended July 5.

The Hammonasset River's proximity to the felled tress required Kuchta to write an enforcement order from the town to Suppa. Later, it was discovered that the clear-cutting had in-

involved a strip of land, between Suppa's property and the river, owned by the land trust. The land trust claims Suppa had "encroached" on the River and wetlands.

This lawsuit could be illustrative of the sometimes delicate relationship that land trusts have with the general public — whether they own neighboring lands, use the land, or are potential donors.

The Madison Land Conservation Trust, founded in 1964, is a nonprofit, private organization that protects 1,700 acres of woodlands, wetlands and marshes within the town's borders, said Land Trust President Michael Maloney.

"The lands are privately held, and I mention that because some people actually think that we're part of the town," Maloney said. "Our mission statement says that we will maintain those lands for the benefit, enjoyment and education of others."

He said when an en-

croachment occurs, they have a responsibility to act.

Suppa, according to the post trial brief, said he cleared the vegetation to eliminate poison ivy and prevent any danger from limbs falling off dead trees, in the interest of the neighborhood. At the time, he also believed his property stretched all the way to the river.

However, the land trust attorney, Keith Ainsworth, a New Haven environmental litigator and Madison resident, took issue with this.

"Unfortunately, homeowners frequently see trees and habitat as getting in the way of their water views or water access. What they don't realize is that sometimes those trees and habitat are protected open space," he said in a press release after the court briefs were filed.

Encroachments with the land trust are not rare due to the acreage and number of shared borders with res-

idential areas. Maloney said they try to be good neighbors and agreements were made with other property owners with none reaching court. That is what made the current case unusual, he said.

The two parties disagreed on how to remediate the area, according to Suppa's lawyer, James Perito.

"We submitted a restoration plan that our consultants believed would be restorative of the area that was accidentally cut," Perito said. "And the wetlands agency approved that plan, I believe in October of 2016."

The land trust proposed its own plan, which Perito said they had concerns with and voiced to the inland wetlands agency. The differing plans centered on the number and size of replacement trees.

Suppa's consultant recommended planting five trees, the same number cut down, of 1.5 to 2 inches diameter. The total mitigation cost was estimated to

be \$10,340.

The plan by the land trust consultant called for 20 trees to restore the damage. The cost, revised in April 2017, was \$28,198 for remediation.

Ainsworth noted the removed trees were 80 to 110 years old, with trunk diameters from 22 to 32 inches. It would entail several smaller trees, "immature nursery stock," to make up for one large specimen, he said in the release.

"The offer that they made was really just so far off of reasonable that we had no choice but to continue going forward," Ainsworth said. "Because we didn't want the word to get out that if you clear land trust property to get access to water or access to a river you can get away with a \$13 tree."

He elaborated that the \$28,188 cost for remediation and damages was compiled from a guide on plant appraisal by the International Society of Arboriculture. The guide's worksheet

helped them determine what the "ecological service value" of each tree was. Additionally, the offender can be held liable for attorneys' fees and costs, plus up to five times the restoration cost as damages, according to Ainsworth. And these fines are meant to be strong deterrents.

Both parties also disagree on the responsibility of the boundary. Suppa attorney Perito said there were no visible signs or markings at the time, while land trust president Maloney said the burden is on the homeowner to be aware of who owns what.

But more than having to coexist as neighbors, the land trust said they must be protective of their lands because of what the public contributes.

"People donate their land to the land trust to have it protected," Ainsworth said. "But if they think that the land trust is going to turn a blind eye, they may not donate to the land trust."