

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

March 19, 2014

In the Matter of Katrina Park

OADR Docket No. WET-2013-025
DEP File No. SE 84-462
Abington, MA

FINAL DECISION

The Petitioner Katrina Park brought this appeal challenging a Superseding Order of Conditions (“SOC”) that the Southeast Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on October 21, 2013, under the Massachusetts Wetlands Protection Act (“MWPA”), G.L. c. 131, § 40, and the Wetlands Regulations at 310 CMR 10.00, et seq. The SOC approved in part, and rejected in part the Petitioner’s landscaping work (“the proposed Project”) at her real property at 237 Wyman Road in Abington, Massachusetts (“the Property”). The Respondents Rodney C. and Ellen T. Powers (“the Powers”) are the owners of an adjacent real property at 227 Wyman Road in Abington who have been involved in a longstanding dispute with the Petitioner concerning the proposed Project and work that the Petitioner previously performed at the Property purportedly

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in violation of the MWPA and the Wetlands Regulations. See Respondents Powers Pre-Hearing Statement (November 26, 2013).

Currently before me for review and approval pursuant to 310 CMR 1.01(8)(c), is the Petitioner and the Department's joint proposal to settle the appeal through a Settlement Agreement and a Final Order of Conditions ("FOC") which "[will] permit the [proposed] Project [by] [1] incorporating changes from the original project as shown on the Drainage & Wetland Mitigation Plan, rev. 1/31/14 [and] [2] chang[ing] and clarify[ing] several Special Conditions from the [SOC]." Settlement Agreement, ¶ 5. According to the Petitioner and the Department, the Settlement Agreement and FOC "serve the public interest and the interests of the [MWPA and the Wetlands Regulations] by minimizing impacts to wetland resource areas." [Petitioner and Department's] Joint Motion for Settlement (February 14, 2014), at p. 1.

The Petitioner and Department are the only signatories on the Settlement Agreement, which was executed by their respective counsel on February 14, 2014. They are also the only signatories on the "Joint Motion for Settlement" of the same date which urges my approval of the Settlement Agreement and FOC pursuant to 310 CMR 1.01(8)(c).

Under 310 CMR 1.01(11)(a)1, the Respondents Powers had seven business days from February 14, 2014: until Wednesday, February 26, 2014, to respond to the Petitioner and the Department's Joint Motion to approve the Settlement Agreement and the FOC. On February 19, 2014, one week prior to expiration of the February 26th deadline, the Chief Presiding Officer requested that the Respondents Powers "[state] their position on the proposed settlement [by] indicat[ing] whether [they] oppose[d] or support[ed] the settlement." Electronic Mail Message of Bridget Munster, Case Administrator for the Office of Appeals and Dispute Resolution (February 19, 2014). The Chief Presiding Officer's request was consistent with the requirement

in 310 CMR 1.01(8)(c) that “[i]f a party will not sign a . . . settlement [agreement] . . . that the Department agrees to sign, the burden of going forward [with competent evidence] to establish why the agreement is inconsistent with law may be placed upon that party by the Presiding Officer”

The Respondents Powers have not responded to both the Chief Presiding Officer’s request and the Petitioner’s and the Department’s Joint Motion to approve the settlement. The seven business day deadline under 310 CMR 1.01(11)(a)1 for the Respondents Powers to respond to the Joint Motion has expired.

Accordingly, I issue this Final Decision approving and incorporating the Settlement Agreement and FOC, because the Respondents Powers: (1) did not file any response to the Petitioner and the Department’s Joint Motion to approve the Settlement Agreement and SOC, and (2) failed to demonstrate that the Settlement Agreement is “inconsistent with law” under 310 CMR 1.01(8)(c). I also approve the Settlement Agreement and FOC because I agree with the Petitioner and the Department that the settlement “serve[s] the public interest and the interests of the [MWPA and the Wetlands Regulations] by minimizing impacts to wetland resource areas.” [Petitioner and Department’s] Joint Motion for Settlement (February 14, 2014), at p. 1.

Under the terms of 310 CMR 1.01(8)(c) and the Settlement Agreement, these proceedings are dismissed as to the Petitioner who has waived whatever rights she may have had to further administrative review before the Department as well as appeal to court of the SOC that was at issue in the case. Settlement Agreement, ¶ 4.

The proceedings are also dismissed as to the Respondents Powers for the reasons I provided above in approving the Settlement Agreement and the FOC. The Respondents Powers

are notified of their right to file a motion for reconsideration of this Final Decision, pursuant to 310 CMR 1.01(14)(d). The motion must be filed with the Case Administrator and served on all parties within seven business days of the postmark date of this Final Decision. The Respondents Powers are also notified of their right to seek judicial review of this Final Decision by appealing to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint for judicial review must be filed in the Court within thirty days of the Respondents Powers' receipt of this Final Decision.



Kenneth Kimmell
Commissioner

SERVICE LIST

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