



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

August 19, 2013

**In the Matter of
Point Independence Yacht Club**

Docket No. 2012-033
DEP File No. W06-1580
Onset Bay, Wareham, MA

FINAL DECISION

I have reviewed the Settlement Agreement which was fully executed by the Applicant's representative Gene J. Guimond, Esq., on June 21, 2013; Philip Weinberg, Regional Director of the Department of Environmental Protection's Southeast Regional Office ("the Department") on June 25, 2013; and nine of the ten remaining Petitioners in the appeal on various dates from June 21, 2013 to June 24, 2013. The nine Petitioners who executed the Settlement Agreement are: (1) Andrew Heathman Harrington, (2) Elizabeth Harrington, (3) Herbert Reinke; (4) Jackson E. Gillman, (5) Michael O'Brien, (6) Nancy O'Brien, (7) Pamela B. Clark, (8) Frank A. Tramontozzi, and (9) William Gay. The only Petitioner who did not execute the Settlement Agreement is Frank E. O'Brien ("Mr. O'Brien").

As the only party who has not signed the Settlement Agreement, Mr. O'Brien is required by 310 CMR 1.01(8)(c) to demonstrate that the Settlement Agreement "is inconsistent with law" and should not be approved by the Department's Commissioner. I adopt the Recommended

Final Decision of the Presiding Officer, which found that Mr. O'Brien failed to demonstrate that the Settlement Agreement is "inconsistent with law" under 310 CMR 1.01(8)(c), and that he would not have prevailed in the appeal had it proceeded to an Adjudicatory Hearing for resolution. Accordingly, I issue this Final Decision approving and incorporating the Settlement Agreement.

Under the terms of 310 CMR 1.01(8)(c) and the Settlement Agreement, these proceedings are dismissed as to the nine Petitioners named above who have waived whatever rights they may have had to further administrative review before the Department as well as appeal to court of the c. 91 License at issue in the case.

The proceedings are also dismissed as to the remaining Petitioner, Mr. O'Brien, because he failed to demonstrate that the Settlement Agreement is "inconsistent with law" under 310 CMR 1.01(8)(c), and would not have prevailed in the appeal had it proceeded to an Adjudicatory Hearing for resolution. Mr. O'Brien is notified of his 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. Mr. O'Brien is also notified of his 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 Mr. O'Brien's receipt of this Final Decision.


Kenneth Kimmell
Commissioner

SERVICE LIST

Petitioners: Ten individuals:

- (1) Andrew Heathman Harrington;
- (2) Elizabeth Grover Harrington;
- (3) Frank A. Tramontozzi, PE;
- (4) Herbert Reinke;
- (5) Pamela B. Clark;
- (6) Nancy O'Brien;
- (7) Michael O'Brien;
- (8) William Gay;
- (9) Jackson Evan Gillman; and

- (10) Frank E. O'Brien
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