

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

April 18, 2014

In the Matter of
Lawrence Spellman

OADR Docket No. WET-2013-004
DEP File No. SE-0526
Somerset, MA

FINAL DECISION

The Petitioners Greg Lucini (“Mr. Lucini”), and Roger and Beth Dawe (“Mr. and Mrs. Dawe”), 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 Applicant Lawrence Spellman on January 25, 2013, pursuant to the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00 et seq. (“the Wetlands Regulations”). The Department’s SOC approved the Applicant’s proposed work at 78 Point Street in Berkley, Massachusetts (“the Site”). SOC, at pp. 1-13; SOC Transmittal Letter. Specifically, the SOC authorized the Applicant’s “[c]onstruction of a single family residence with appurtenances” within Land Subject to Coastal Storm Flowage (“LSCSF”) and the Buffer Zone to Bordering Vegetated Wetlands (“BVW”) at the Site (“the proposed Project”). SOC, at p. 8; SOC

Transmittal Letter. LSCSF, BVW, and Buffer Zone are wetlands areas protected by the MWPA and the Wetlands Regulations. 310 CMR 10.02(2)(b); 310 CMR 10.04; 310 CMR 10.55.

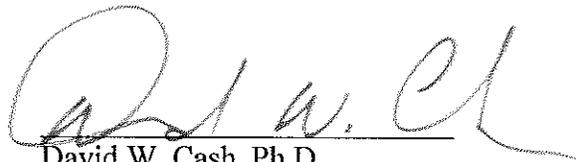
On March 20, 2014, Mr. and Mrs. Dawe filed a Notice with the Office of Appeals and Dispute Resolution (“OADR”) withdrawing their challenge to the SOC. Withdrawal of Notice of Claim for Adjudicatory Hearing by Roger and Beth Dawe (March 20, 2014). Mr. and Mrs. Dawe’s withdrawal from the appeal constitutes their waiver of any further appellate review (administrative and judicial) of the Department’s grant of the SOC at issue, and, consequently, their claims in this appeal are dismissed. In the Matter of J.R. Vinagro Corporation, OADR Docket No. 2013-019, Recommended Final Decision (October 15, 2013), 2013 MA ENV LEXIS 94, at 2-3, adopted as Final Decision (October 28, 2013), 2013 MA ENV LEXIS 93.

Mr. and Mrs. Dawe’s departure from the case left Mr. Lucini as the sole Petitioner challenging the SOC. Recently, on March 31, 2014, Mr. Lucini, the Applicant, and the Department filed a proposed Settlement Agreement for my review and approval pursuant to 310 CMR 1.01(8)(c) to resolve Mr. Lucini’s claims in the appeal. [Joint] Motion of Petitioner Lucini, Applicant, and Department to Accept Settlement Agreement (March 31, 2014); Settlement Agreement. After reviewing their Settlement Agreement, I find that the Agreement is reasonable and consistent with wetlands protection under the MWPA and the Wetlands Regulations in that it authorizes the proposed Project with the following additional work to be performed by the Applicant:

- (1) the planting and maintenance of an approximately 350 foot long row of white pine trees in the Buffer Zone to the BVW and within the 100 year floodplain roughly parallel to the eastern property line, beginning at the northeast corner of the proposed single-family dwelling and continuing approximately 350 feet in a southerly direction; and
- (2) the maintenance of lawn area within the Riverfront Area at the Site.

Settlement Agreement, ¶ 7. The location of the additional work and activity at the Site is set forth on a revised project Plan entitled “Plan to Accompany Notice of Intent Prepared for Lawrence Spellman,” prepared by G.A.F. Engineering, Inc., June 14, 2010, revised through March 14, 2014. Id.; Exhibit A attached to Settlement Agreement. Mr. Lucini, the Applicant, and the Department have agreed that the revised project Plan should be incorporated in the Final Order of Conditions (“FOC”) approving the proposed Project with the additional work described above. Id.

Accordingly, I issue this Final Decision approving and incorporating the Settlement Agreement that Mr. Lucini, the Applicant, and the Department have reached. Within seven (7) business days after the issuance of this Final Decision, the Department shall prepare and provide me for my signature an FOC approving the proposed Project as revised above and incorporating the revised Project Plan. Under the terms of 310 CMR 1.01(8)(c) and the Settlement Agreement, Mr. Lucini’s claims in this appeal are dismissed as he has waived whatever rights he 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, ¶ 6.

A handwritten signature in black ink, appearing to read "D. W. Cash", written over a horizontal line.

David W. Cash, Ph.D.
Commissioner

SERVICE LIST

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Docket No. WET-2013-004 File No. SE 4-0526
Berkley

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