

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

August 13, 2019

In the Matter of John R. Zizza

OADR Docket No. WET-2019-008
DEP File No. SE 25-4262
Falmouth, MA

FINAL DECISION

Martin Suuberg, the Commissioner of the Massachusetts Department of Environmental Protection ("MassDEP" or "the Department"), has designated me as the Final Decision Maker in this appeal.

On March 22, 2019, the Petitioner John R. Zizza filed 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 March 7, 2019, 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 SOC denied the Petitioner's proposed Project at 82 Waterside Drive in Falmouth, Massachusetts ("the Property"). Specifically, the SOC denied the Petitioner's proposed relocation of six boulders situated offshore of the Property, in the waters of

Buzzards Bay, in order to open three channels for small craft navigation. Petitioner's Appeal Notice, at p. 1; Department's SOC Transmittal Letter, at p. 1. The protected wetlands resource areas that would purportedly be impacted by the proposed Project are: (1) Land Under the Ocean (310 CMR 10.25); (2) Land Containing Shellfish (310 CMR 10.34); and (3) Estimated Habitat of Rare Wildlife for Coastal Wetlands (310 CMR 10.37). Department's SOC Transmittal Letter, at p. 1. According to the Department, the boulders to be relocated comprise approximately 800 square feet or about 25% of a loosely assembled rock breakwater. *Id.* The Town of Falmouth Conservation Commission ("the Commission") previously denied the proposed Project pursuant to both the MWPA and the local Town of Falmouth's Wetlands Bylaw ("Local Bylaw Denial").

310 CMR 1.01(6)(h) provides that "the Presiding Officer shall stay administratively any appeal of a superseding determination or order of conditions issued under M.G.L. c. 131, § 40 when the determination or order is denied under a local wetlands bylaw and the denial is appealed to court."¹ On April 9, 2019, I issued an Order granting the Petitioner's Motion to Stay the proceedings in this appeal pursuant to 310 CMR 1.01(6)(h) because the Petitioner had appealed the Commission's Local Bylaw Denial of the proposed Project to Barnstable Superior Court.² My Stay Order stated that the proceedings in the appeal would be stayed until the Petitioner, in accordance with 310 CMR 1.01(6)(h), presented evidence that its proposed Project had been approved under the Town of Falmouth's Wetlands Bylaw, or some other ruling providing a basis for me to vacate the Stay Order.

My Stay Order also directed the Petitioner to file by June 10, 2019, and every 60 days

¹ Under 310 CMR 1.01(5)(a)3 and 310 CMR 1.01(5)(a)15.d, a Presiding Officer may also stay the proceedings in a wetlands permit appeal "where the failure to previously obtain a final decision required under another law would result in an unnecessary expenditure of the Department's administrative resources, or for other good cause."

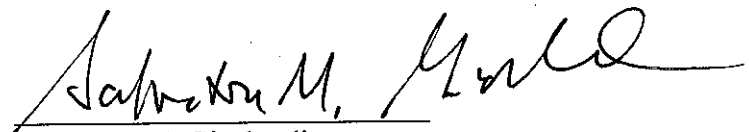
² See John A. Zizza v. Falmouth Conservation Commission, Barnstable Superior Court C.A. No. 1772CV000465.

thereafter, a Status Report reporting on the status of the Petitioner's Barnstable Superior Court appeal challenging the Commission's Local Bylaw Denial of the proposed Project. As of August 2, 2019, nearly two months after expiration of the June 10, 2019 deadline for the Petitioner to file its first Status Report, the Petitioner had not yet filed a Status Report. As a result, I issued an Order on August 2, 2019 directing the Petitioner to file a Status Report by August 16, 2019 reporting on the status of the Petitioner's Barnstable Superior Court appeal challenging the Commission's Local Bylaw Denial of the proposed Project.

In response to my August 2, 2019 Order, the Petitioner filed a timely Status Report on August 12, 2019, in which he reported that the Superior Court issued judgment in his favor on May 30, 2019 overturning the Commission's Local Bylaw Denial of the proposed Project, but "for personal reasons [] [he had] decided to not to pursue the proposed [P]roject any further," and, as such, he was withdrawing this appeal of the SOC.

The Petitioner's voluntary withdrawal of his appeal of the SOC constitutes a waiver by the Petitioner to any further administrative review before the Department as well as appeal to Court of the SOC. Accordingly, the Department issues this Final Decision incorporating the Petitioner's voluntary withdrawal, and dismisses this appeal.

Date: 08/13/19


Salvatore M. Giorlandino
Chief Presiding Officer

SERVICE LIST

Applicant/Petitioner: John R. Zizza;

Legal representative: Brian J. Wall, Esq.
Troy Wall Associates
90 Route 6A
Sandwich, MA 02563
e-mail: bjw@troywallassociates.com;

Local Conservation Commission:

Falmouth Conservation Commission
c/o: Jennifer L. McKay, Conservation Commission Administrator
Brendan Lynch, Conservation Agent
Falmouth Town Hall
59 Town Hall Square
Falmouth, MA 02540;
e-mail: jennifer.mckay@falmouthma.gov;
brendan.lynch@falmouthma.gov;

Legal representative: None listed in Applicant/Petitioner's
Appeal Notice;

The Department: Jim Mahala, Section Chief, Wetlands Program
MassDEP/Southeast Regional Office
Bureau of Water Resources
20 Riverside Drive
Lakeville, MA 02347
e-mail: Jim.Mahala@state.ma.us;

Greg DeCesare, Wetlands Analyst
MassDEP/Southeast Regional Office
Bureau of Water Resources
20 Riverside Drive
Lakeville, MA 02347;
e-mail: Greg.DeCesare@state.ma.us;

Legal representative: David Bragg, Counsel
MassDEP/Office of General Counsel
One Winter Street, 3rd Floor
Boston, MA 02108
e-mail: David.Bragg@state.ma.us;

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cc: Shaun Walsh, Chief Regional Counsel
MassDEP/Southeast Regional Office
Office of General Counsel
20 Riverside Drive
Lakeville, MA 02347
e-mail: Shaun.Walsh@state.ma.us;

Leslie DeFilippis, Paralegal
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108.