

Motion denied. Further, the Defendant's cross-motion is allowed for the reasons set forth in its supporting memo. and more particularly for the reasons described in the memo. filed by P.E.P. - Finally, on June 11, 2010, G.C. 251 g 6F

junctions, this is a close question and this Court certainly questions the
COMMONWEALTH OF MASSACHUSETTS
3-1 *help*
1072
11

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2010-2740F

LANCE DAVIS and CAROL GRAY,

Plaintiffs

v.

THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND
ENVIRONMENTAL AFFAIRS

and

SCOTT NIELSEN and THE LEVI-NIELSEN
COMPANY, INC.,

Defendants

Notice sent

10/28/2011

J. D. W.

B. H.

D. & W.

A. B.

B. T.

M. P.

G., M., L.,

W. & F-G.

(sc)

OCT 31 2011

MICHAEL J. CONWAY
CLERK/MAGISTRATE

2011 FEB 25 PM 1:17

PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

On June 11, 2010, a Commissioner of the Department of Environmental Protection (DEP) issued a Final Decision on Reconsideration in a wetlands appeal under G.L. c. 141, s. 40 and 310 CMR 10.00 et seq., approving a Final Order of Conditions that allows construction of a residential development in Amherst, Massachusetts.¹ In doing so, the DEP acted erroneously, arbitrarily, capriciously, and in excess of its statutory authority, and thus prejudiced the rights of the Plaintiff. Pursuant to G.L. c. 30A, s. 14, Mass.R. Civ. P. 12(c) and Superior Court Standing Order No. 1-96, the Plaintiffs move

¹ The Plaintiffs have appealed both the Final Decision of the DEP Commissioner (dated May 11, 2010, adopting the Presiding Officer's Recommended Final Decision), and her final Decision on Reconsideration (dated June 11, 2010, adopting the Presiding Officer's Recommended Decision on Reconsideration).

of the plaintiff - we must have. However, we cannot will exercise its discretion and decline to issue an order against the plaintiff's motion. J. 10/11/11

COMMONWEALTH OF MASSACHUSETTS

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MICHAEL J. JOHNSON
CLERK/MAGISTRATE

2011 FEB 25 PM 1:19

MASSACHUSETTS
SUPERIOR COURT

allowed. Nolety 10, 9/23/11 KATJ

**PLAINTIFF'S MOTION TO STRIKE AFFIDAVIT OF SCOTT NIELSEN
IN SUPPORT OF DEFENDANT LEVI-NIELSEN CO. INC.'S
MOTION TO DISMISS FOR LACK OF STANDING**

The Plaintiffs respectfully request that the Court strike the Affidavit of Scott Nielsen in Support of Defendant Levi-Nielsen Co., Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction Based on Lack of Standing. As grounds, the Plaintiffs state that this Affidavit is rife with hearsay; is inflammatory in nature; and is irrelevant to the merits of the Defendant's Motion to Dismiss. Even with respect to the Defendant's premature request that the Court entertain a motion for attorneys fees, the Affidavit is improper as containing both hearsay and misleading statements. The Affidavit was improvidently filed and should be struck.