

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

March 26, 2008

In the Matter of
NORTH ANDOVER REALTY CORP.

Docket No. DEP-07-904
DEP File No. 090-0933
(Lot 3)
Docket No. DEP-07-905
DEP File No. 090-0934
(Lot 2)
Docket No. DEP-07-906
DEP File No. 090-0935
(Lot 1)
Docket No. DEP-07-907
DEP File No. 090-0936
(Subdivision Roadway and
Drainage Structures)

Andover

FINAL DECISION

Wetlands permit appeals challenging superseding order of conditions allowing construction of portions of a residential subdivision and the subdivision roadway and associated drainage structures dismissed for mootness following petitioners' withdrawal of their appeals.

Jeffrey L. Roelofs, Esq. (Law Office of Jeffrey L. Roelofs, P.C.), Newburyport, for petitioners Anne Symchych, Peter Chermayeff and Andrea Petersen.

Jeffrey B. Renton, Esq. and Edward J. Denn, Esq. (Gilbert & Renton, LLC), Andover, for applicant North Andover Realty Corp.

Thomas J. Urbelis, Esq. (Urbelis & Fiedsteel, LLP), Boston, for the Andover Conservation Commission.

Heidi Zisch, Esq., Wilmington, for the Department of Environmental Protection.

MARK L. SILVERSTEIN, Administrative Magistrate.

Petitioners Anne Symchych, Peter Chermayeff and Andrea Petersen appealed four superseding orders of conditions issued by the Department of Environmental Protection on July 18, 2007 to applicant North Andover Realty Corp. allowing the construction of portions of a residential

subdivision at 169 Highland Road in Andover known as “Sellers Farm Estates”: lot 1 (Docket No. DEP-07-906), lot 2 (Docket No. DEP-07-905), lot 3 (Docket No. DEP-07-904), and the subdivision roadway and associated drainage structures (Docket No. DEP-07-907). In identical cover letters accompanying each of these superseding orders, DEP determined that (1) the applicant had correctly delineated wetlands at the site, (2) the proposed stormwater treatment system met DEP’s Stormwater Management Policy Standards, and (3) the proposed development would not exacerbate flooding problems, and flooding reported by petitioner Chermayeff at his property appeared to be caused by factors unrelated to the proposed development (“drainage from the large wetland system up gradient (sic) from his property and the steep topography existing on his property.”).

The petitioners have filed a notice of voluntary dismissal in all of these appeals. The voluntary dismissal is unopposed. Accordingly, these appeals are dismissed as moot. The dismissal makes the appealed superseding orders of conditions final. See Matter of Munroe, Docket No. DEP-05-1086, Final Decision, 13 DEPR 84 (Mass. Div. of Admin. Law App., Mar. 24, 2006).

Notice of Reconsideration and Appeal Rights

The parties to this proceeding are notified of their right to file a motion for reconsideration of this final decision. The motion must be filed with the DALA Docket Clerk and served on all parties within seven business days of the postmark date of this Decision. Any party may appeal this final decision to the Superior Court pursuant to M.G.L. c. 30A, sec. 14(1). The complaint must be filed in the Court within thirty days of receipt of this final decision.

Mark L. Silverstein
Administrative Magistrate