

**Commonwealth of Massachusetts
County of Middlesex
The Superior Court**

CIVIL DOCKET#: MICV2004-02096-1

**RE: Moot et al v Golledge, Commissioner Of Department Of Environmental Protection
et al**

**TO: Seth Schofield, Assist Atty General, Esquire
Attorney General Office-Environm
One Ashburton Place
Boston, MA 02108**

CLERK'S NOTICE

SEE ATTACHED COPIES.

Dated at Woburn, Massachusetts this 5th day of January,
2009.

Michael A. Sullivan,
Clerk of the Courts

BY: David Barry
Assistant Clerk

Telephone: 781-

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS:

SUPERIOR COURT
CIVIL ACTION NO:
MICV2004-02096-B

JOHN MOOT & others¹

vs.

ROBERT GOLLEDGE, Commissioner of the
Department of Environmental Protection, & others²

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS'
MOTION FOR RELIEF FROM JUDGMENT

I. INTRODUCTION

This case involves an appeal of the Final Decision of Robert Golledge, Commissioner of the Department of Environmental Protection ("DEP"), exempting a multi-use commercial project to be built by defendants, North Point Cambridge Land Company, LLC; East Street, Inc, doing business as Water Street Company; and Boston and Maine Corporation (collectively "North Point"), in Cambridge on filled tidelands, from the licensing requirements of the Waterways Act, G. L. c. 91 ("Chapter 91"). This case has a lengthy procedural history, detailed more fully below; however, the parties are currently before the court seeking entry of a new judgment following the Legislature's enactment of An Act Relative to the Licensing Requirements for Certain Tidelands, St. 2007, c. 168, §§ 1-11 (hereinafter the "Tidelands Act" or the "Act").

II. BACKGROUND

Much of the background pertaining to this matter is taken from *Moot v. Golledge*, 2005 WL 1156884 at *1-4 (Mass. Super. 2005) and *Moot v. Golledge*, 448 Mass. 340, 341-346 (2007).

¹ Stash Horowitz, Elie Yarden, Robert Simha, Sarah Smith, John Pitkin, Shelia Cook, Carole Bellew, Carolyn Mieth, Martha Werman, Michael Brandon, Steve Wayne, Daphne Abeel, Philip Dowds, Richard Clarey; Association of Cambridge Neighborhoods; and Efekta Schools, Inc.

² North Point Cambridge Land Company, LLC; East Street, Inc. d/b/a Water Street Company, and Boston and Maine Corporation.

1. The North Point Project and Chapter 91

North Point is redeveloping approximately forty-eight acres of abandoned rail yards and industrial land, most of which lies in East Cambridge with smaller portions in Boston and Somerville (the "North Point Project"). The North Point Project will create a new system of parks; expand and improve roadways, bicycle paths, and pedestrian access; and provide five million square feet of office, retail, and residential space. In addition, the North Point Project will relocate and reconstruct the Massachusetts Bay Transportation Authority's ("MBTA") Lechmere Station, which will improve track alignments and make it possible for the MBTA to extend the Green Line to Somerville and Medford.

The North Point Project site is roughly triangular in shape. It is bounded by the Monsignor O'Brien Highway on one side, the Gilmore Bridge, over which Charlestown Avenue passes, on a second side; and a MBTA maintenance facility and rail lines on a third side. The site rests, in part, on filled tidelands.

In Massachusetts, the development of all tidelands, filled or flowed, is governed by Chapter 91. The Legislature has charged the DEP with "preserv[ing] and protect[ing] the rights in tidelands of the inhabitants of the Commonwealth by ensuring that the tidelands are utilized only for water-dependent uses or otherwise serve a proper public purpose." G. L. c. 91, § 2. To comply with this statutory directive the DEP has adopted the Waterway Regulations codified at 310 C. M. R. 9.00 *et seq.* ("Waterway Regulations").

Chapter 91 defines "tidelands" as the "present and former submerged lands and tidal flats lying below the mean high water mark." G. L. c. 91, § 1. "Submerged lands" are lands that "lie seaward of the historic low water mark" and are considered Commonwealth tidelands. 310 C. M. R. § 9.02, at 263.³ "Tidal flats" are those lands that "lie landward of the historic low water mark" and are considered private tidelands. *Id.* at 268. "Filled tidelands" are "former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill." *Id.* at 265.

The North Point Project site includes former tidal flats and former submerged lands. Prior to the 1960s, the Millers River flowed through the site and into the Charles River.

³ Commonwealth tidelands are "held by the Commonwealth in trust for the benefit of the public or held by another party by license or grant of the Commonwealth subject to an express or implied condition subsequent that [they] be used for a public purpose." G. L. c. 91, § 1.

Then, in 1962, the Department of Public Works issued a Chapter 91 license to the Boston and Maine Railroad ("B & M Railroad") authorizing it to fill solid the remaining portions of the Millers River ("1962 License"). Under the 1962 License, B & M Railroad was required to construct a system of underground culverts to perform the drainage tasks previously provided by the Millers River⁴ and was also obligated to obtain a new license for any change in use not related to railroad business.

Generally, the Waterway Regulations require uses, structures, or other developments of tidelands to obtain a Chapter 91 license from the DEP. 310 C. M. R. § 9.05, at 272. In order to license a use prior to the Tidelands Act, Chapter 91 required the DEP to make a finding that the use served a water-dependent purpose. See G. L. c. 91, § 14. The DEP was also able to license non-water dependent uses, but only if the use "serve[d] a proper public purpose and that said purpose . . . provide[d] a greater public benefit than public detriment to the rights of the public." G. L. c. 91, § 18.

Landlocked tidelands were administratively exempted from Chapter 91's licensing requirements by the DEP in 1990. 310 C. M. R. § 9.04. "Landlocked tidelands" are filled tidelands which have become separated from the waterfront by distance and/or a public way. 310 C. M. R. § 9.02, at 267.⁵ As the tidelands on the North Point Project site were filled and roads were built between the site and its filled tidelands, they became landlocked. Today there are no flowed tidelands on the site and no part of the site is contiguous with the waterfront.

2. Prior Litigation

In 2003, the plaintiffs requested the DEP determine whether Chapter 91 licensing requirements applied to the filled tidelands on the North Point Project site. The DEP issued a negative determination of applicability. According to the DEP, the filled tidelands at the North Point Project site are separated from flowed tidelands by public ways and

⁴ The Millers River is no longer visible and only flows through the Project site through the underground culverts.

⁵ More specifically, "landlocked tidelands" are "filled tidelands, which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for that portion of such filled tidelands that are presently located: (a) within 250 feet of the high water mark, or (b) within any Designated Port Area. Said public way or ways shall also be defined as landlocked tidelands, except for any portion thereof which is presently within 250 feet of the high water mark." 310 C. M. R. § 9.02, at 267.

thus, constitute landlocked tidelands not subject to Chapter 91 licensing. Ultimately, this decision was adopted as the DEP's "Final Decision."

On May 20, 2004, the plaintiffs filed a complaint in the Superior Court, pursuant to G. L. c. 30A, § 14, challenging the DEP's Final Decision. On cross-motions for judgment on the pleadings, the Superior Court (Hines, J.) held that: (1) the DEP's licensing exemption for landlocked tidelands did not exceed its statutory authority; (2) the DEP correctly determined that the filled tidelands on the North Point Project site qualified as landlocked tidelands; and (3) the 1962 License did not require the DEP to issue a new license for the North Point Project. *Moot*, 2005 WL 1156884 at *13-18.

Plaintiffs appealed from the Superior Court's decision and the case was transferred to the Supreme Judicial Court (the "SJC"). In their appeal, the plaintiffs argued that: (1) the DEP did not have the authority to exempt landlocked tidelands from Chapter 91's licensing requirements; (2) even if the landlocked exemption was valid, the language in Chapter 91, § 18 required a new license; and (3) a condition in the 1962 License required the DEP to issue a new license, even if the exemption for landlocked tidelands was valid. Plaintiffs also, for the first time, argued that an application by the City of Cambridge for a Chapter 91 license to construct a pipe to carry storm water from the North Point Project site to the Lechmiere Canal subjects the entire North Point Project to Chapter 91 licensing requirements.⁶

On February 12, 2007, the SJC ruled that the DEP exceeded its authority by adopting regulations that exempted all landlocked tidelands from Chapter 91 licensing requirements without legislative approval and remanded the matter for further proceedings consistent with its opinion.⁷ *Moot*, 448 Mass. at 353. According to the SJC, § 18 required the DEP to make a written determination that a licensed non-water dependent use of tidelands served a proper public purpose and that the purpose provided a public benefit greater than any public detriment. *Id.* at 350-354. The SJC determined that any power to exempt landlocked tidelands from licensing and § 18's requirements must be delegated by the legislature. *Id.* at 347-348, 352-353. In response, North Point and the DEP filed

⁶ The plaintiffs did not challenge the Superior Court's determination that the filled tidelands on the Project site constituted "landlocked tidelands," and thus they have waived this argument. This Court accepts that the tidelands located on the Project site are "landlocked tidelands."

⁷ The Supreme Judicial Court did not reach plaintiffs' secondary arguments.

petitions for rehearing and North Point requested entry of a stay of the operation of the opinion to give the Legislature a chance to address the consequences of the SJC's decision. The SJC denied the petitions for rehearing, but granted the stay.⁸

As described in more detail below, on November 15, 2007, prior to the expiration of the stay the Legislature amended Chapter 91 to statutorily exempt landlocked tidelands from Chapter 91's licensing requirements. See The Tidelands Act. On November 16, 2007, plaintiffs filed a petition for rehearing, requesting that the SJC find that the Tidelands Act failed to effectively exempt landlocked tidelands because it relinquishes the public's rights in tidelands without making the findings the Court deemed necessary in *Moot*. The SJC denied the plaintiffs' petition for rehearing, but indicated they could raise their claims in the Superior Court through an appropriate motion for relief from the judgment inadvertently entered on March 23, 2007.

3. The Tidelands Act

The consequences of the *Moot* decision extended beyond the North Point Project. Thousands of properties on landlocked tidelands had been developed, occupied, maintained, bought, and sold in reliance on the administrative exemption voided by the SJC. Following the *Moot* decision, compliance with Chapter 91 came into question for all these properties. Thus, in response, the Legislature passed the Tidelands Act.

The stated legislative purpose of the Tidelands Act is to "exempt structures, uses and activities within landlocked tidelands from licensing under chapter 91," while at the same time "ensuring that certain public trust rights to landlocked tidelands are properly evaluated and addressed through state environmental review." The Tidelands Act, § 1. The Legislature determined that the Tidelands Act, exempting landlocked tidelands, "serves proper public purposes, including, but not limited to, maintaining marketable titles, continuing the beneficial redevelopment and revitalization of landlocked tidelands, and encouraging public access to the waterfront." *Id.* The Tidelands Act was enacted as an emergency law because its "deferred operation . . . would tend to defeat its purpose, which is to forthwith authorize a regulatory exemption for certain landlocked tidelands." *Id.*, Preamble.

⁸ Despite the stay, on March 23, 2007, the Superior Court inadvertently entered judgment and remanded the case to the DEP.

The Tidelands Act gives the DEP the statutory authority the SJC found lacking in *Moot*. Section 6 provides that: "No license shall be required under this chapter for fill on landlocked tidelands, or for uses or structures within landlocked tidelands." Section 7 amends section 18 by revising paragraph 6 and stating, "[a] public hearing shall be held . . . on any license application for non-water dependent uses of tidelands, except for landlocked tidelands. No structures or fill for non-water dependent uses of tidelands, except for landlocked tidelands may be licensed" Next, section 10 validated the DEP's regulations "as if [the Tidelands Act] had been in effect when such regulations and determinations of applicability were issued" and makes clear that no person may challenge any prior determination "on the ground that the department . . . lacked the authority to" exempt fill and structures on landlocked tidelands. In addition, this section precludes review under Chapter 91 of any "previously issued determination of applicability in the negative."

III. DISCUSSION

Plaintiffs filed their petition for relief from judgment in the Superior Court and on May 9, 2008, this court (McEvoy, J.) entered an order vacating the March 23, 2007 judgment. The plaintiffs now seek entry of a new judgment finding that the Tidelands Act is in excess of the Legislature's authority and invalid because it exempts all landlocked tidelands from licensure, which effectively relinquishes all public rights in landlocked tidelands without making the explicit findings the SJC deemed necessary. In addition, the plaintiffs request the court address two arguments not reached by the SJC: (1) whether a condition in the 1962 License requires the North Point Project to obtain a new license and (2) whether a Chapter 91 license for a pipe to carry storm water from the site to the Lechmere Canal subjects the entire North Point Project to Chapter 91 licensing.

1. Legislative Authority to Enact the Tidelands Act

In reviewing a statute, "every presumption must be indulged 'in favor of the validity of a legislative enactment.'" *Berriault v. Wareham Fire Dist.*, 365 Mass. 96, 98 (1974), quoting *Marshal House, Inc. v. Rent Control Bd. of Brookline*, 358 Mass. 686, 694 (1971). Enforcement is to be refused only when it is in manifest excess of the Legislature's authority. See *Mobil Oil Corp. v. Attorney Gen.*, 361 Mass. 401, 413 (1972), citing *Commonwealth v. Finnigan*, 326 Mass. 378, 379 (1950). "It is only when a legislative

finding cannot be supported upon any rational basis of fact that reasonably can be conceived to sustain it that a court is empowered to strike it down." *Druzik v. Bd. of Health of Haverhill*, 324 Mass. 129, 138 (1949). If the question is fairly debatable, courts cannot substitute their judgment for that of the Legislature. *Simon v. Needham*, 311 Mass. 560, 564 (1942).

The plaintiffs contend that the Chapter 91 licensing exemption for landlocked tidelands set out in the Tidelands Act is an invalid exercise of legislative authority because the statute does not identify the specific parcels of land affected by the Act; fails to identify what public interest is being surrendered; and does not provide that the land will be used for a significant public purpose. In response, North Point and the DEP assert that the Legislature has the power to categorically relinquish the public's interest in all tidelands and therefore, by extension, it has the authority to relinquish the public's interest in landlocked tidelands.⁹ Further, the defendants contend, to the extent that specific findings were necessary prior to enactment of the exemption for landlocked tidelands, the Tidelands Act sufficiently made those findings. This Court agrees that the Tidelands Act is a valid use of legislative authority that makes the findings necessary to relinquish the public's interest in landlocked tidelands. The plaintiffs' argument against enforcement fails to take into consideration the deference the courts must give to legislative actions.

In Massachusetts, the public trust doctrine requires the government to protect the public's interest in public assets such as the Commonwealth's waterways, which include the state's tidelands. *Trio Algarvio v. Dept. of Envtl. Prot.*, 440 Mass. 94, 97 (2003), citing *Boston Waterfront Dev. Corp. v. Commonwealth*, 378 Mass. 629, 631, 645 (1979). This protection, however, is not boundless and the Legislature has authority to limit protections by transferring, relinquishing, or extinguishing the public's interest in public assets such as tidelands. See *Opinion of the Justices*, 383 Mass. 895, 902 (1981). The Legislature determines "whether any such transfer or relinquishment should occur, and under what conditions" *Id.* It is clear the Legislature has the authority to relinquish or transfer

⁹ The defendants dispute the plaintiffs' characterization of the Tidelands Act as a relinquishment of the public's interest in landlocked tidelands; however, for purposes of this decision, this Court accepts this characterization as it does not change the result. This Court finds that the Legislature has the authority to extinguish the public's interests in all tidelands, including landlocked tidelands, and further, that the Legislature has made the findings necessary to so relinquish the public's interest.

the public's interest in tidelands generally. See *Id.*; see also *Moot*, 448 Mass. at 348-350. Therefore, logically the Legislature must have the authority to take more limited action and extinguish the public's interest *only* with regard to landlocked tidelands. The proper inquiry for the court, then, is what findings and/or guidelines the Legislature must follow prior to relinquishing the public's rights in tidelands, or more specifically landlocked tidelands?

Constitutional concerns mandate that where the Legislature proposes to abandon, release, or extinguish the public's interest in any tidelands it "must be explicit concerning the land involved; it must acknowledge the interest being surrendered; and it must recognize the public use to which the land is to be put as a result of the transfer." *Opinion of the Justices*, 383 Mass. at 905. Additionally, the disposition of the public's interest in any tidelands "must be for a valid public purpose . . . where . . . [any] benefits to private parties [are] not primary, but merely incidental to the achievement of the public purpose." *Id.*

In the case at bar, the inquiry is whether the Tidelands Act: is sufficiently explicit concerning the land impacted by the Act, adequately acknowledges that the Act surrenders the public's interest in landlocked tidelands; and satisfactorily recognizes a public use for the land, i.e., the landlocked tidelands being surrendered. Further, this Court must determine whether the Tidelands Act serves a proper public purpose.

First, the plaintiffs contend that the Tidelands Act does not sufficiently identify the land impacted by the Act because the Legislature is required to identify the particular parcels of land involved with greater specificity. This Court disagrees with plaintiffs' too literal reading of the relevant precedents. There is nothing in the case law to support the assertion that the Legislature is required to individually identify each particular parcel of land affected by the enactment of the Tidelands Act. Moreover, the Tidelands Act plainly states its purpose is to "exempt structures, uses, and activities within *landlocked tidelands*" The Tidelands Act, § 1 (emphasis added). The Tidelands Act is sufficiently explicit regarding the land involved; there can be no doubt that it was enacted to address concerns related to landlocked tidelands.

Next, plaintiffs argue that the Tidelands Act does not adequately acknowledge the interest being relinquished or identify a public use for the surrendered tidelands. Again, this Court disagrees. Though the Tidelands Act does not specifically acknowledge that a

public interest is being totally surrendered, it is clear from a plain reading that the Act involves terminating Chapter 91 licensing requirements for landlocked tidelands. Thus, the interest being surrendered, if any, is the public's interest in landlocked tidelands. Further, the Tidelands Act explicitly recognizes a public use for the surrendered tidelands by stating the land will be used for "the beneficial redevelopment and revitalization of landlocked tidelands, and encouraging public access to the waterfront." *Id.*

Finally, the plaintiffs argue that the public purposes identified in the Tidelands Act do not address the findings deemed necessary by the SJC. This Court disagrees and finds that the plaintiffs have misread the law so as to include requirements more specific than that required by the SJC. The question of whether a particular legislative act serves a public purpose is for the Legislature to determine. *Opinion of the Justices*, 383 Mass. at 902. The Legislature specifically made this determination in the Tidelands Act, which states in relevant part:

exempting existing and future uses, structures, and improvements on landlocked tidelands from the licensing requirements established by [C]hapter 91 of the General Laws, serves proper *public purposes*, including, but not limited to, maintaining marketable titles, continuing the beneficial redevelopment and revitalization of landlocked tidelands, and encouraging public access to the waterfront

The Tidelands Act, § 1 (emphasis added).

In addition, the Tidelands Act makes efforts to ensure that future uses for landlocked tidelands serve a proper public purpose. First, it requires the secretary of the executive office of energy and environmental affairs to determine whether future projects on landlocked tidelands provide a "public benefit" by examining a number of factors including, but not limited to: the impact a project has on abutters and the surrounding community; how a project enhances a property; how a project benefits public trust rights in tidelands; how the development site may be used for community activities; how the project impacts environmental protection and preservation issues; and how a project impacts public health and safety. *Id.*, § 8. Additionally, proponents of projects are required to provide an explanation of how a proposed project will impact the public's rights to access, use and enjoy tidelands, while also identifying measures to minimize any adverse impact on such rights. *Id.*, § 3.

The Legislature's enactment of the Tidelands Act is entitled to great deference. See *Opinion of the Justices*, 383 Mass. at 906. The Legislature made specific findings about how the Tidelands Act would serve public purposes and this court will not second-guess the Legislature's determination. Only where a legislative finding cannot be supported upon any rational basis of fact that reasonably can be conceived is a court empowered to strike it down. *Druzik*, 324 Mass. at 138. The plaintiffs have failed to present evidence sufficient to meet this stringent standard.

2. The 1962 License

The plaintiffs contend that conditions in the 1962 License are still valid and enforceable and further, that because these conditions have not been complied with, title to the tidelands on the North Point Project site should revert to the Commonwealth. In response, North Point and the DEP assert that conditions in the 1962 License are irrelevant. According to the defendants, the DEP's 2003 Final Decision finding the tidelands on the North Point Project site to be landlocked tidelands is not subject to review and the Tidelands Act specifically exempts landlocked tidelands from Chapter 91 licensing requirements. Therefore, the defendants argue, whether conditions in the 1962 License require re-license for a change in use is irrelevant where the Legislature has determined that no license is now necessary for landlocked tidelands.

The 1962 License issued to the B & M Railroad contains two relevant conditions: (1) it required a new license for a change in use, unrelated to railroad purposes; (2) it obliged the B & M Railroad to construct and maintain underground drain pipes to replace the drainage functions previously supplied by the Millers River. This Court finds that these conditions cannot require licensing for landlocked tidelands where the Legislature has exempted landlocked tidelands from licensing requirements. Section 10 of the Tidelands Act states in relevant part:

regulations issued by the [DEP] exempting landlocked tidelands from licensing . . . are hereby validated. . . . Any fill, use or structure developed pursuant to such regulations shall not be subject to challenge . . . and, any fill, use, or structure hereafter developed pursuant to any such previously issued determination of applicability in the negative shall not be subject to review under chapter 91 of the General Laws.

The Tidelands Act, § 10. In 2003, the DEP issued its "determination of applicability in the negative" when it deemed the tidelands on the North Point Project site "landlocked

tidelands" not subject to licensing. According to the plain language of section 10, this determination is "not subject to review under chapter 91 of the General Laws." Thus, this Court lacks the subject matter jurisdiction necessary to review the DEP's determination that the tidelands at issue here are landlocked tidelands.¹⁰ Because this decision is not subject to review, whatever the conditions in the 1962 License, no license is currently required for the tidelands on the North Point Project site because they are landlocked and exempt from licensing requirements. See the Tidelands Act.

3. The Chapter 91 License to Carry Storm Water to the Lechmere Canal

In September of 2005, the City of Cambridge applied for a Chapter 91 license to build a drainage pipe and outfall on the Lechmere Canal, to carry and discharge storm water from properties north and west of the O'Brien Highway, including North Point. The plaintiffs argue that because a license was required for the drainage pipe carrying storm water from the North Point Project, beneath the Lechmere Canal Park, to the Lechmere Canal, the entire North Point Project is subject to Chapter 91 licensing requirements. The plaintiffs contend that by requiring licensure for the storm water pipe and not the North Point Project tidelands, the DEP has impermissibly segmented the North Point Project.

In response, North Point and the DEP assert two main arguments. First, they argue that this is a further attempt by the plaintiffs to circumvent the DEP's determination that the North Point Project's tidelands are landlocked and not subject to licensing requirements—a determination that is not subject to review. Second, they argue that the plaintiffs misconstrue the storm water drainage pipe as part of the North Point Project. It is the defendant's contention that the storm water drainage pipe is not part of the North Point Project, but rather it is a city-owned utility, built on city property under a license obtained by the city, that will serve a number of developments in addition to the North Point Project.

¹⁰ Furthermore, even if subject matter jurisdiction were proper, the plaintiffs have never contested this determination and cannot do so now. On appeal, the plaintiffs challenged the DEP's authority to enforce the regulation exempting all landlocked tidelands from Chapter 91 licensing requirements; however, they did not challenge the DEP's determination that the tidelands on the Project site were "landlocked." *Moot*, 448 Mass. at 345 n.13. The plaintiffs are foreclosed from raising an issue that could have been raised in a prior appeal. See *City of Coal Co. of Springfield, Inc. v. Noonan*, 424 Mass. 693, 695 (1997) (plaintiffs waived right to raise issue by failing to raise it in prior appeal); see also *Gutierrez v. Massachusetts Bay Transp. Authy.*, 442 Mass. 1041, 1042-1043 (2004) (party foreclosed from raising issue that could have been raised in first appeal).

First, as discussed above, the defendants are correct in asserting that the DEP's decision finding the North Point Project's tidelands to be "landlocked" is not subject to review. Next, while it is true that the SJC has determined that "segmentation of a project by a developer into different components in order to evade environmental review" is prohibited, there is no evidence that such segmentation has occurred in the instant case. *Villages Dev. Corp., Inc. v. Sec'y of the Executive Office of Env'tl. Affairs*, 410 Mass. 100, 114 (1991).

The evidence establishes that the City of Cambridge sought a Chapter 91 license to build a storm water drainage pipe under the Lechmere Canal Park, which is a city-owned property and not part of the North Point Project. The fact that the City of Cambridge needed a license to build a pipe to carry storm water from several developments to the Lechmere Canal does not mean that the North Point Project is subject to Chapter 91 licensing requirements. As stated by defendants, two different properties are involved—one landlocked and exempt from Chapter 91 licensing requirements and one not. There is nothing in the record to support a finding that the Chapter 91 license for the storm water drainage pipe obligates North Point to obtain Chapter 91 licensing for the landlocked tidelands on its site.

IV. ORDER

After review of the memoranda submitted by the parties and hearing on this matter, it is hereby ORDERED that judgment enter as follows:

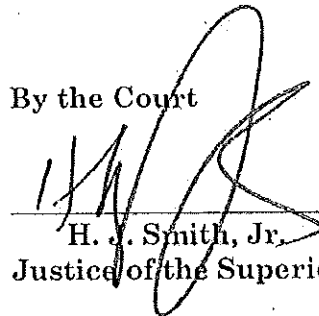
- (1) That the Tidelands Act, chapter 168 of the Acts of 2007, contains the findings necessary in order for the Legislature to relinquish the public's interests in "landlocked" tidelands;
- (2) That the conditions in the 1962 License requiring re-license for a change in use of the filled tidelands at the North Point Project are moot insofar as no license is now required for "landlocked" tidelands; and
- (3) The City of Cambridge's Chapter 91 license to carry storm water to the Lechmere Canal does not subject North Point's landlocked tidelands to licensing requirements.
- (4) The plaintiffs', John Moot, Stash Horowitz, Elie Yarden, Robert Simha, Sarah Smith, John Pitkin, Shelia Cook, Carole Bellew, Carolyn Mieth, Martha Werman,

Michael Brandon, Steve Wayne, Daphne Abeel, Philip Dowds, Richard Clarey; Association of Cambridge Neighborhoods; and Efekta Schools, Inc., Motion for Relief from Judgment is DENIED; and

- (5) That the final decision of the Department of Environmental Protection that determined that the forty-eight acre multi-use commercial project at North Point in Cambridge is exempt from the licensing requirements of Chapter 91 is hereby affirmed and, accordingly, judgment shall enter in favor of defendants, Robert Golledge, Commissioner of The Department of Environmental Protection, North Point Cambridge Land Company, LLC; East Street, Inc. d/b/a Water Street Company, and Boston and Maine Corporation

DATED: January 2, 2009

By the Court


H. J. Smith, Jr.
Justice of the Superior Court

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Entered: 1/5/09