

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

August 10, 2021

In the Matter of
Nicholas Yebba, NY Ventures, LLC.

OADR Docket No. WET-2020-014
DEP File No. 245-1613
North Reading, MA

RECOMMENDED FINAL DECISION

INTRODUCTION

A purported residents group (“Petitioners”) filed this appeal concerning the real property at 20 Elm Street, North Reading, Massachusetts (“the Property”). The Petitioners challenge a Superseding Order of Resource Area Delineation (“SORAD”) that the Massachusetts Department of Environmental Protection’s Northeast Regional Office (“MassDEP”) issued to the Applicant, Nicholas Yebba, NY Ventures, LLC, pursuant to the Wetlands Protection Act, G.L. c. 131 § 40, and the Wetlands Regulations, 310 CMR 10.00.

Immediately after the appeal was filed, the Applicant filed a motion to dismiss for the Petitioners’ failure to comply with several provisions in 310 CMR 10.05(7)(j)(2) by, including by not limited to, failing to: (1) specifically identify the appellant(s), i.e. members of the purported residents group; (2) attach required documentation; (3) show prior participation for

standing; (4) allege with required specificity the bases for the purported claims; and (5) state a claim on which relief can be granted.¹ All the Applicant's assertions have considerable merit.

Consequently, I issued an order that was emailed to the apparent group representative for the appellants at John_Felix@ksg07.harvard.edu, requiring a response to the Motion to Dismiss within two weeks, considerably more time than allotted under 310 CMR 1.01. The Petitioners did not respond to that order.

On May 18, 2021, I issued an Order for Petitioners to Show Cause Why Appeal Should Not Be Dismissed for all the above reasons and for failing to prosecute the appeal and comply with an order. I gave the Petitioners a deadline of May 28, 2021. To date, the Petitioners have not responded to the Order to Show Cause.

Given the above, I recommend that MassDEP's Commissioner issue a Final Decision dismissing this appeal for all the above pleading defects raised in the Motion to Dismiss and for the failure to comply with orders and prosecute the appeal. See 310 CMR 10.05(7)(j)2; 310 CMR 1.01(5), 1.01(6), 1.01(10), 1.01(11)(a) and (d).

NOTICE- RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a

¹ To the extent the Petitioners purported to file the appeal on behalf of a group referred to as Defend Ipswich River Communities ("DIRC"), which is vaguely alluded to in the Notice of Claim, the appeal should be dismissed for all the same reasons (with the exception of failing to specify the individual petitioners) in addition to the failure to show aggrievement.

motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

A handwritten signature in black ink, appearing to be 'T. Jones', written over a horizontal line.

Timothy M. Jones
Presiding Officer

SERVICE LIST

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Representative

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