

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

September 12, 2017

In the Matter of
Annette Norton

OADR Docket No. WET-2017-004
Framingham, MA

RECOMMENDED FINAL DECISION

Annette Norton ("Petitioner" or "Norton") filed this appeal concerning the real property at 19 Parmenter Road, Framingham, Massachusetts ("the Property"). The Petitioner challenges the Superseding Order of Resource Area Delineation ("SORAD") that the Massachusetts Department of Environmental Protection's Northeast Regional Office ("DEP") issued pursuant to the Wetlands Regulations, 310 CMR 10.00, and Wetlands Protection Act, G.L. c. 131 § 40.

On April 27, 2017, I held a Pre-Hearing Conference in this appeal and subsequently issued a Pre-Hearing Conference Report and Order. The Adjudicatory Hearing was scheduled to occur on July 27, 2017. The parties submitted pre-filed testimony and exhibits with the Office of Appeals and Dispute Resolution. On July 26, 2017, Norton filed an Emergency Motion to Continue Hearing, which was not opposed by any party and allowed by me.

On July 27, 2017, I issued a Ruling and Order for Briefing Regarding Testimony ("Briefing Order"). In that order I discussed issues of potential regulatory noncompliance that I had discovered in the administrative record. It was necessary to resolve those issues before proceeding to the Adjudicatory Hearing. The Briefing Order therefore required the parties to

brief the consequences of the possible noncompliance on certain pieces of evidence in the administrative record.

Instead of briefing the issues required in the Briefing Order, the parties filed a Joint Motion to Stay Proceedings on August 4, 2017 (“Motion to Stay”). Even though the motion was filed as a “joint” motion there was no indication that the Framingham Conservation Commission had joined the motion or had been consulted on the issue. The Motion to Stay was based upon Norton’s intent to submit a new Abbreviated Notice of Resource Area Determination (“ANRAD”) to the Commission.

On August 15, 2017, I issued an Order to Show Cause Why Appeal Should Not Be Dismissed. That order was based upon a number of irregularities in the administrative record and the practical need for the parties to show cause “why this appeal should not be dismissed as moot or simply withdrawn by Norton based upon Norton’s expressed intention to attempt to file a new ANRAD and forgo the filings on which the current appeal is based.”

On August 24, 2017, the parties filed a Joint Response to Show Cause. In the Joint Response the parties requested that Norton be “permitted to withdraw her previously submitted and pending ANRAD without prejudice, and that [Norton] be permitted to submit a new ANRAD to the Commission following this withdrawal.” The parties provided no legal authority supporting their request and the extent to which it was in compliance with the Wetlands Regulations, 310 CMR 10.00, and Wetlands Protection Act, G.L. c. 131 § 40. In the absence of such authority, I am unwilling to allow the request. In fact, it is seriously questionable whether I have jurisdiction to allow withdrawal of the ANRAD and allow the filing of a new ANRAD.¹ I do, however, have jurisdiction to allow withdrawal of the appeal without prejudice. Therefore,

¹See e.g. Matter of Tompkins-Desjardins Trust, Docket No. WET-2010-035, Recommended Final Decision (April 1, 2011), adopted by Final Decision (April 7, 2011)(ORADs generally entitled to preclusive effect for a period of three years, or longer if they are extended).

given the current procedural posture, I have construed the request to withdraw the ANRAD without prejudice as a request to withdraw the appeal without prejudice. As a consequence, I recommend that a Final Decision be issued allowing the withdrawal of the appeal *without prejudice*.

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 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.

Date: 9/12/17



Timothy M. Jones
Presiding Officer

SERVICE LIST

In The Matter Of:

Annette Norton

Docket No. WET-2017-004

File No. 158-1299
Framingham

Representative

Party

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