

Acton Survey & Engineering, Inc.

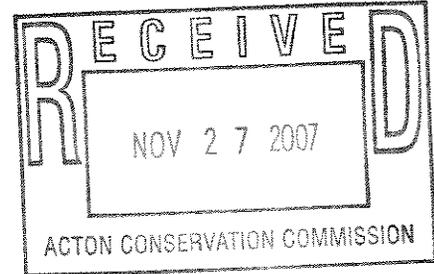
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Email: actonsurvey@verizon.net

November 26, 2007

Acton Conservation Commission
472 Main Street
Acton, MA 01720



Re: Lot 2C & 3 Spring Hill Road
Jeanson Homes, Inc
6562

Dear Commission Members:

This letter is in response to the discussions allowed by the Commission at your hearing last Wednesday.

Please find enclosed DEP's Wetlands Program Policy 89-1, which countermands statements made by Mr. Sawyer and Mr. Appleman that the Commission cannot hold a Hearing pertaining to this matter under the Acton Wetland Protection Bylaw. Our client maintains that the filing of a new Notice of Intent is the best method of diligently pursuing approval of the project and that verification by DEP that the project meets the requirements of 310CMR 10.53(3) was necessary to show compliance with Section F4.5 of the Bylaw.

Our November 8th letter to the Commission requested that we receive comments in a timely manner to allow this office to reply prior to your next regularly schedule Hearing. This request was made to allow this matter to be resolved efficiently. During the November 22 hearing the Commission gave a positive response to my question "should I just leave" and stated that the Commission desires to make a site visit, but will not schedule such a visit until after the next hearing. This suggest that this matter will not be resolved efficiently and will unfairly increase our client's expenditure of money.

It should also be noted that the possibility of snow cover is increasing and it is our opinion that delaying proceedings pertaining to this matter because of snow cover is unnecessary as the Commission has verified the accuracy of the wetland delineation and has visited the site previously.

Very truly yours,
Mark T. Donohoe, PE


for:

Acton Survey & Engineering, Inc.

cc: Jeanson Homes, Inc.
William & Deanne Angel

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November 8, 2007

CERTIFIED MAIL 7005 0390 0001 8489 9937

Conservation Commission
Acton Town hall
472 Main Street
Acton, MA 01720

Re: Notice of Intent
Lots 2C & 3 Spring Hill Road
Jeanson Homes, Inc.
6562

Dear Commission Members:

This letter is in response to a request made earlier today on behalf of the Commission by Thomas Tidman. Our clients grant permission to the Commission to open the scheduled hearing of November 21, 2007 and reopen it on December 5, 2007.

Under Section F7.2 of the Bylaw the Commission does not need an extension from the applicant as the reopened hearing is to be held within the 21 day period in which the Commission is to take final action on the Notice. Section F7.2 provides an apparent 20 day additional time period in which the Commission can take final action.

Noting that the November 21, 2007 hearing is to be held on the eve of a major national holiday, the applicant is "requesting" that the Commission continue the Public Hearing to its regularly scheduled hearing on December 5, 2007 for the convenience of its members and the public.

In "requesting" this extension the applicant is requesting that the Commission and the public extend the courtesy of submitting written comments pertaining specifically to the proposed project to this office in a timely manner so that we may prepare written responses to the Commission as required by Regulation 2.1(1). In this regard this office is reserving November 26 & 27th for the preparation of responses and we request that we receive comments prior to this time period.

The courtesy of allowing a sufficient time period to reply is emphasized for comments made by professionals retained by persons of interest as such comments would normally be required to be submitted to the Commission by November 14th.

We do not believe that our request is unreasonable given the time spent by the applicant and the Commission during the proceedings resulting in a Superseding Order of Conditions for the project being issued by DEP regulating the project as allowed by 310 CMR 15.53(3)(e) and the knowledge of the project obtained by the public during those proceedings.

A representative of this office will be at the hearing scheduled for November 21, 2007 and will deliver the Certified Mail receipts returned up to that time. It is assumed that no further abutter notification by this office will be required.

Very truly yours,
Mark T. Donohoe, PE

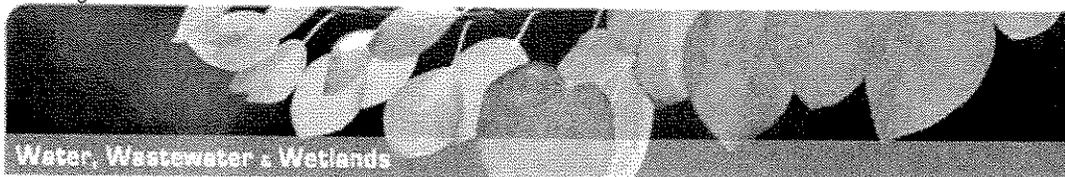
For:
Acton Survey & Engineering, Inc.

Jeanson Homes, Inc,
William & Deanne Angel
Acton Conservation Commission – Via certified mail

dep home > water > laws and rules > policies & guidance



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Wetlands Program Policy 89-1

Appeal Stays: Stay of Requests for Adjudicatory Hearings in Wetlands Permit Cases when an Order of Conditions has been Denied under a Local Wetlands Bylaw (Zoning or Non- Zoning) (DWW Policy 89-1)

Issued: June 16, 1989
Revised: March 1, 1995

The Department currently has many requests for adjudicatory hearings involving wetland permit cases.

Many Massachusetts municipalities (more than 100) have adopted and implement their own wetland bylaws, both zoning and non- zoning. Review of these permits is outside MassDEP's Chapter 131, s.40 jurisdiction. Some bylaws afford protection to interests not mentioned in the state law; some bylaws protect the same interests more stringently. A number of the requests for adjudicatory hearing are filed for projects which have been denied under a local bylaw. Even if the Department were to go forward, complete the adjudicatory process and issue Final Orders approving each of the projects, none of these projects can go forward until each independently receives approval under the municipality's bylaw. Therefore, until there is a resolution of the bylaw denial, further proceedings by the Department are futile.

In order to conserve and better utilize administrative resources, the Department will stay administrative action on any Request for an Adjudicatory Hearing in a wetlands permit case when the project has been denied under a local wetlands bylaw, whether that bylaw is a wetlands zoning bylaw or a wetlands non-zoning bylaw. (Note that the stay will be implemented only at the adjudicatory hearing level; this policy will not apply to requests for Superseding Orders of Conditions.) Action by the Office of Administrative Appeals will be stayed on an appeal of an agency action involving either a Superseding Order of Conditions or a Superseding Determination of Applicability.

Should the denial under the town bylaw be appealed to Superior Court, the Department's technical review of the project is embodied in the Superseding Order of Conditions. If the denial under the bylaw is not appealed within the appropriate time frame that denial is final. No work can take place under such a denial. If an applicant fails to diligently pursue approval of the project under the local bylaw, the Notice of Intent shall expire as provided in 310 CMR 10.05(4)(g).

Upon proof of the project's approval under the local bylaw, the Department will go forward with the adjudicatory proceeding. All Requests for Adjudicatory Hearings will remain stayed in the chronological order in which they were filed.