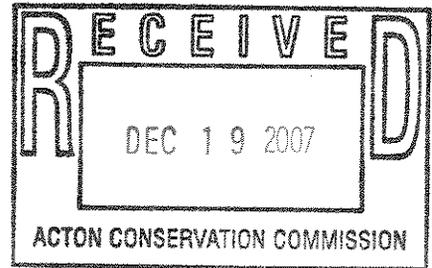


# ANDERSON & KREIGER LLP

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December 17, 2007

Anne Hartley, Case Administrator  
Office of Appeals and Dispute Resolution  
Department of Environmental Protection  
One Winter Street, 2nd. Floor  
Boston, MA 02108

Re: In the Matter of Michael Jeanson, Jeanson Homes, Inc.;  
Docket No. WET 2007-005; File No. 85-971; Acton

Dear Ms. Hartley:

Enclosed is the confirmation copy of the Acton Conservation Commission's Prehearing Conference Statement, which was circulated electronically on Friday.

Thank you for your attention to this matter.

Sincerely,

George A. Hall, Jr.

Enclosures

cc: Tom Tidman, Conservation Administrator  
Service List

{A0049171.1}

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
In the matter of Michael Jeanson &  
Jeanson Homes, Inc.

)  
) OADR Docket No. WET-2007-005  
) DEP File No. 85-971  
) Acton, MA  
)

**ACTON CONSERVATION COMMISSION'S**  
**PRE-HEARING STATEMENT**

The Acton Conservation Commission hereby submits this Pre-Hearing Statement in accordance with the November 26, 2007 Scheduling Order issued by the Acting Chief Presiding Officer, and an email sent to the parties by the Acting Chief Presiding Officer at 10:37 AM on this date.

The Commission does not intend to participate as a party to this appeal. The Commission is appearing in this proceeding for the limited purpose of responding to a direct order from the Presiding Officer, and for no other purpose. A summary of the Commission's position in this matter is as follows:

1. The work that is the subject of this appeal requires both an Order of Conditions under the Wetlands Protection Act, G.L. c. 131, § 40 (hereinafter the "Act"), and the Town of Acton's Wetland Protection Bylaw (Chapter F of the Town of Acton Bylaws) (hereinafter the "Bylaw").

2. The Bylaw is stricter than the Act in several material respects. In particular, Section F3.18 of the Bylaw expressly regulates the buffer zone as a resource area. In furtherance of this provision, the Commission has adopted regulations imposing limitations on the amount and location of buffer zone alteration that may be permitted on any project.

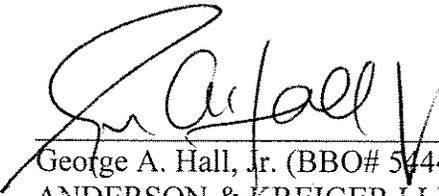
3. On August 8, 2007 the Commission denied the Applicant's request for an Order of Conditions under both the Act and the Bylaw. The Commission's decision included separate, independent reasons for denying the project under the Bylaw, including, without limitation, (a) the failure of the project to comply with the activity setback regulations in the Commission's regulations; (b) the Applicant's failure to request a waiver from those setback regulations, (c) the project's lack of eligibility for a waiver from those setback regulations; and (d) the project's lack of eligibility for "limited project" approval under the Act *and* the Bylaw. It is the Commission's position that the Bylaw gives it the independent authority evaluate "limited project" eligibility under the Bylaw, and that these grounds are independently enforceable even if the Department approves the project under the Act. See, e.g., Hobbs Brook Farm Property Co. Ltd. Partnership v. Conservation Commission of Lincoln, 65 Mass. App. Ct. 142, 150-152 (2005).

4. The Applicant filed a second Notice of Intent under the Bylaw only after a Superseding Order of Conditions was issued by the Department. On December 5, 2007, the Commission again voted to deny the requested permit.

5. The Department lacks jurisdiction to determine whether the Bylaw is stricter than the Act except for the limited purpose of exercising its discretion to apply, or refrain from applying, the so-called "bylaw stay policy" (Wetlands Program Policy No. 89-1). The Commission takes no position on the latter issue (whether the matter should be stayed), and declines to litigate the former issue, or any other issue, in this forum.

5. For the foregoing reasons, the Commission declines to address the requests for information in paragraph 8(1)-(4) of the Scheduling Order.

Respectfully submitted,  
ACTON CONSERVATION COMMISSION  
By its attorney,



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## SERVICE LIST

In the Matter of:  
Michael Jeanson &  
Jeanson Homes, Inc.

OADR Docket No. WET-2007-005  
DEP File No. 85-971

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The Department: Philip Nadeau, Section Chief  
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**OADR Alternative Dispute  
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