

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Application for a Freshwater Wetlands
Permit To Construct a Single Family Dwelling,
Driveway and Sanitary System Pursuant to
Article 24 of the Environmental Conservation
Law and Part 663 of Title 6 of the Official
Compilation of Codes, Rules and Regulations
of the State of New York,

- by -

FRANK NORBERTO,

Applicant.

DEC Application No. 1-4722-00366/00003

DECISION OF THE COMMISSIONER

December 21, 2005

DECISION OF THE COMMISSIONER

Applicant Frank Norberto ("applicant") filed an application with the Department of Environmental Conservation ("Department") seeking a freshwater wetlands permit to construct a single family dwelling, pervious driveway and sanitary system on a parcel of property located on Forest Avenue, Mastic Beach, Town of Brookhaven, Suffolk County. The project if approved would be located entirely within a Class I freshwater wetland regulated by the State of New York. The wetland is identified as Freshwater Wetland M-20, Moriches Quadrangle (New York State Freshwater Wetlands Map, Suffolk County Map 29 of 39 [1991]).

Department staff denied the permit application, and applicant requested a hearing pursuant to part 624 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). The matter was assigned to Administrative Law Judge ("ALJ") P. Nicholas Garlick.

At the hearing conducted on August 30, 2005, applicant and Department staff submitted a five-page stipulation that resolved all factual issues in the matter (see Exhibit 5; see also 6 NYCRR 624.13[d]). The stipulation included a list of exhibits, proposed findings of fact, and proposed conclusions of law.

Based upon the stipulation, the ALJ prepared the attached hearing report. I adopt the hearing report as my

decision in this matter.

Based upon the hearing report and the stipulation upon which it is based, I conclude that the proposed project does not meet the standards for permit issuance contained in 6 NYCRR 663.5(e). Accordingly, applicant's permit application is denied.

For the New York State Department
of Environmental Conservation

/s/

By: Denise M. Sheehan
Commissioner

Dated: Albany, New York
December 21, 2005

TO: Frank Norberto (via Certified Mail)
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STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

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Sanitary System Pursuant to Article 24 of the
Environmental Conservation Law and Part 663 of Title 6
of the Official Compilation of York Codes, Rules and
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- by -

Frank Norberto,

Applicant.

Permit Application No. 1-4722-00366/00003

HEARING REPORT

- by -

/s/

P. Nicholas Garlick
Administrative Law Judge

SUMMARY

This matter involves the application for a freshwater wetlands permit by Frank Norberto to construct a single family dwelling, a sanitary system and pervious driveway on a lot located on Forest Avenue, 60 feet west of Riviera Drive in Mastic Beach, Town of Brookhaven in Suffolk County. Following permit denial by the Staff of the Department of Environmental Conservation (DEC Staff), the applicant requested an administrative hearing. Since there were no facts in dispute and the applicant conceded it did not meet permit issuance standards, the parties entered a stipulation which included a listing of exhibits, proposed findings of fact, and conclusions of law. Based on this stipulation and its accompanying exhibits, this hearing report recommends the Commissioner deny the permit.

PROCEEDINGS

By materials dated November 4, 2004, the applicant submitted an application for a freshwater wetlands permit to construct a single family dwelling, pervious driveway and sanitary system and requested DEC Staff flag the wetland to determine if property is usable for residential development. By letter dated December 1, 2004, DEC Staff informed the applicant that, following a site inspection, DEC Staff had determined that the entire parcel was located within NYS regulated freshwater wetland M-20 of the Moriches Quadrant map. Additional information, including a revised site plan dated January 11, 2005, was submitted by the applicant.

By notice dated March 24, 2005, DEC Staff informed the applicant that its request for a permit was denied because the application failed to meet the permit issuance standards in 6 NYCRR 663.5 and there were no viable alternatives. By letter dated March 31, 2005, applicant requested an administrative hearing. Notice of the hearing was duly published in the *Environmental Notice Bulletin* on August 3, 2005 and in the *Long Island Advance* on July 28, 2005.

The hearing occurred on August 30, 2005 at the Patchogue Village Hall. The applicant was represented by Alicia M. Gryn, Esq. DEC Staff appeared through Craig Elgut, Esq.

At the legislative hearing no one made a statement. At the issues conference, the parties agreed that the issue for adjudication was "did the applicant meet the permit issuance standards for a freshwater wetland permit set forth in 6 NYCRR

663.5"?

At the adjudicatory hearing, the parties entered a five page stipulation which resolved all factual issues in this matter. The parties identified 23 documents to be included as exhibits in the record, including the permit application, denial letter and supporting documents. The parties also agreed to the below findings of fact as well as the conclusions that the proposed project would not meet the standards for permit issuance.

FINDINGS OF FACT

1. The project site consists of 4,000 square feet of undeveloped land located on Forest Avenue, 60 feet west of Riviera Drive in Mastic Beach, Town of Brookhaven in Suffolk County (Suffolk Tax Map identification District 200, Section 981.7, Block 3, Lot 49).
2. The entire project is comprised of a two-story, single family dwelling with a footprint of 688 square feet, a sanitary system and pervious driveway. The construction of the home, driveway and sanitary system would all take place within a Class I freshwater wetland, #M-20, on Moriches Quadrangle, Suffolk County Map 29 of 39.
3. The subject parcel is in a natural and undisturbed condition, completely covered by freshwater vegetation. Freshwater wetland flora on the parcel includes the following: Shrubs - Baccharis, Myrica pennsylvanica, Rosa palustris, Spiraea and Iva frutescens; Vines - Rhus toxicodendron; Grasses, Sedges and Rushes - Phragmites communis.
4. Hydrologic indicators on the site include inundation, saturation and hydric soils. Groundwater is expressed at the surface upon the parcel and adjoining areas, as evidenced by standing water. The site is inhabited by wildlife common to the area including various species of birds, amphibians and small/large mammals.
5. The Class I freshwater wetland serves a number of functions and provides the following benefits: flood and storm control by the hydrologic absorption and storage capacity of freshwater wetlands; wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds; protection of

subsurface water resources; recreation by providing opportunities for wildlife watching and photographing; pollution treatment; erosion control from storm events; education and scientific research by providing readily accessible outdoor laboratories; and open space and aesthetic appreciation.

6. A minimum of 75% of the parcel would be filled, graded and/or excavated to complete the proposed project, a dry well would have to be installed, and much of the vegetation would have to be clear cut.

DISCUSSION

I concur with the parties that the proposed project does not meet permit issuance standards and the record is sufficient to allow the Commissioner to deny this application.

The six specific standards relevant to this decision are listed below.

1. 6 NYCRR 663.4(d) - use 20 - filling in a freshwater wetland is designated as a P(X), or an incompatible activity.
2. 6 NYCRR 663.4(d) - use 23 - clear-cutting vegetation in a freshwater wetland is designated as a P(X), or an incompatible activity.
3. 6 NYCRR 663.4(d) - use 25 - grading in a freshwater wetland is designated as a P(X), or an incompatible activity.
4. 6 NYCRR 663.4(d) - use 21 - installation of a dry well in a freshwater wetland is designated as a P(N), or usually incompatible activity.
5. 6 NYCRR 663.4(d) - use 38 - introduction of a sanitary discharge in a freshwater wetland is designated as a P(X), or an incompatible activity.
6. 6 NYCRR 663.4(d) - use 42 - construction of a residence in a freshwater wetland is designated as a P(X), or an incompatible activity.

The parties agree that the application does not demonstrate that the proposed project has a compelling economic or social need that clearly and substantially outweighs the loss of or detriment to the benefits of the involved Class I freshwater wetland. Accordingly, pursuant to 6 NYCRR 663.5(e) a permit

should not be issued. Further, the parties agree that there appears to be no viable alternative project design which would meet the standards for permit issuance.