

ORIGINAL

Form #42

COMMONWEALTH OF MASSACHUSETTS



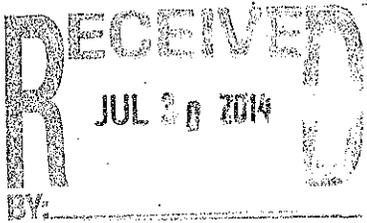
BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

No. 1473CV00777B

[SEAL]



Jennifer Cusson, Plaintiff (s)

v.

Conservation Commission of New Bedford, Defendant(s)

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED :— TORT — MOTOR VEHICLE TORT — CONTRACT — EQUITABLE RELIEF — OTHER.)

CITY CLERKS OFFICE NEW BEDFORD, MA 2014 JUL 30 P 2:20 CITY CLERK

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon

David A. Carey plaintiff's attorney, whose address is 67 Main Street, Kingston, MA 02364 ;

an answer to the complaint which is herewith served upon you, within (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at Taunton either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Hon. Barbara J. Rouse, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 22nd day of July, in the year of our Lord two thousand and fourteen.

A TRUE ATTESTED COPY

BRISTOL COUNTY DEPUTY SHERIFF

Magistrate

NOTES.

- 1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

RECEIVED

Date: July 23 2014
BRISTOL SUPERIOR COURT (100)

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

BRISTOL SUPERIOR COURT

C.A. NO. 14730VD0777B

JENNIFER CUSSON,)
Plaintiff)
)
VS.)
)
CONSERVATION COMMISSION)
OF NEW BEDFORD,)
Defendant)

COMPLAINT

Now comes the plaintiff in the above-captioned matter and declares as follows:

PARTIES

1. The plaintiff, Jennifer Cusson ("Cusson") is an individual and at all times material hereto has been residing at 46 Eliza Lane, Dartmouth, Bristol County, Massachusetts 02714.
2. The defendant, Conservation Commission of New Bedford (the "NBCC") is and at all times material hereto has been a commission appointed by the Mayor and City Council for the City of New Bedford with a usual place of business located at 133 William Street, Room 304, New Bedford, Bristol County, Massachusetts 02740.

FACTS AND JURISDICTION

3. At all times material hereto, Cusson has been the owner of Lot 4A of the Colby Village subdivision located in New Bedford, Bristol County, Massachusetts.
4. At all times material hereto, the NBCC was empowered by the City of New Bedford to administer the Wetlands Protection Act and wetlands regulations with respect to property located within the City of New Bedford.
5. The Colby Village subdivision has been reviewed by the NBCC at least three times since 2005. In 2005, the Bordering Vegetated Wetlands ("BVW") line was approved under Department of Environmental Protection ("DEP") File No. SE49-0548 and an Order of Conditions was issued on October 3, 2005.

Complaint
Page 2

6. Subsequently, the NBCC issued enforcement orders on June 3, 2009 due to alleged drainage problems caused by the partially constructed subdivision. A Notice of Intent ("NOI") was filed to address the concerns of the NBCC and to allow for the completion of the subdivision road and drainage system. The NBCC again reviewed the project including the BVW line. The NBCC made a recommendation regarding the subdivision plan. The recommended revision was made and the BVW was revised. The NBCC accepted the changes and an Order of Conditions was issued on July 14, 2010 under DEP File No. SE49-0648.
7. The Order of Conditions for DEP File No. SE49-0648 is still valid pursuant to the Permit Extension Act.
8. Recently, a new NOI was filed by applicants Phil and Debbie Rose for the construction of a single family house and related activities for Lot 4A in the Colby Village Subdivision. The owner of Lot 4A is the plaintiff, Cusson. The site plan for Lot 4A was submitted with the NOI and said site plan incorporated the same wetland delineation as reviewed and approved by the NBCC on July 14, 2010 under DEP File No. SE49-0648.
9. On May 30, 2014, the project was denied by the NBCC. A denial Order of Conditions was issued on May 30, 2014 stating that the NBCC "is not in agreement with the 2010 wetland boundary... The Conservation Commission feels the wetland boundary has expanded and that this is not reflected on the Notice of Intent plans such that site information is lacking in the application."
10. The denial Order of Conditions issued by the NBCC on May 30, 2014 was made in error and is in violation of the Order of Conditions issued on July 14, 2010 which reviewed and approved the wetlands delineation for the subdivision including Lot 4A.
11. The project should not have been denied and an Order of Conditions should have been issued utilizing the approved wetland line and the proposed work shown on the site plan for Lot 4A.
12. The issuance of the denial Order of Conditions by the NBCC is unjust and has resulted directly in substantial injury to the plaintiff, Cusson, because she is now prevented and/or restricted from building a single family house on Lot 4A.

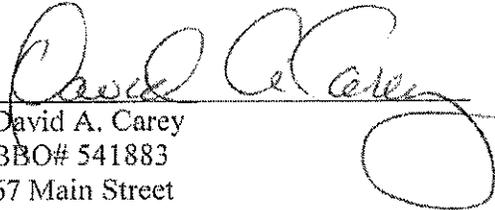
Complaint
Page 3

13. The plaintiff, Cusson, as the property owner, has the right to appeal the denial of the Order of Conditions by the NBCC.

14. Article VII, Section 15-110 of the City of New Bedford Code of Ordinances provides that a decision of the conservation commission shall be reviewable in the superior court in accordance with M.G.L. Chapter 249, Section 4.

Wherefore, the plaintiff respectfully requests that this honorable Court: (a) enter judgment quashing the Denial of the Order of Conditions issued by the NBCC on May 30, 2014; (b) issue a judgment with a Superseding Order of Conditions allowing the construction of a single family house and related activities as set forth in the NOI filed by Phil and Debbie Rose; and (c) provide such other relief as this Court deems appropriate and as justice may require.

The Plaintiff,
Jennifer Cusson
By her attorney



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