

# **Bond Case Briefs**

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## **ZONING & PLANNING - MASSACHUSETTS**

### **Delapa v. Conservation Commission of Falmouth**

**Appeals Court of Massachusetts, Barnstable - August 15, 2018 - N.E.3d - 93 Mass.App.Ct. 729 - 2018 WL 3863539**

Dock owner brought action in the nature of certiorari to challenge town conservation commission's denial of owner's permit application seeking approval to repair damaged dock by driving four pilings into protected wetlands area.

The Superior Court Department granted commission's motion for judgment on the pleadings and denied owner's motion for judgment on the pleadings. Owner appealed.

The Appeals Court held that:

- Commission acted within its discretion in denying owner's permit application, and
- Commission's reference to affirmative relief, in the form of a requirement that owner remove dock, did not rise to the level of an enforcement order.

Town conservation commission acted within its authority in denying dock owner's permit application seeking approval to repair damaged dock by driving four pilings into protected wetlands area, though owner alleged that commission had policy of summarily approving repairs of existing docks so long as the original construction of the dock was approved and its historic footprint was not expanded; even if commission were bound by policy that summary approval should be granted for the repair of existing approved docks, dock deviated from what was allowed in order of conditions in ways commission could find significant, and there was substantial support in the record that dock was not built prior to expiration of order of conditions.

Town conservation commission's reference to affirmative relief, in the form of a requirement that dock owner remove dock, did not rise to the level of an enforcement order, in commission's denial of owner's permit application seeking approval to repair damaged dock in protected wetland; reference to affirmative relief in commission's decision was markedly casual, commission embedded its statement regarding affirmative relief as a factual finding in what was otherwise a ruling in a permitting proceeding, commission did not spell out the legal basis for such an order, and the fact that the commission denied owner's proposal without prejudice and expressly invited owner to resubmit application to repair dock suggested that commission did not intend to issue final binding order to remove dock.