ENVIRONMENTAL - CONNECTICUT

Sams v. Department of Environmental Protection

Supreme Court of Connecticut - April 30, 2013 - A.3d - 308 Conn. 359

Property owners appealed from order of state Department of Environmental Protection (DEP) directing them to remove a gabion seawall that they had constructed on their property along shoreline of Connecticut River within coastal boundary.

The Supreme Court of Connecticut held that:

- On-site observations by DEP of water coming into contact with seawall were sufficient to support a finding that a portion of seawall was located waterward of high tide line, so as to require a permit from DEP for construction or maintenance of that structure;
- If DEP properly exercises jurisdiction over a structure under both the statutory provision relating to structures located waterward of high tide line and the Coastal Management Act (CMA) provisions relating to coastal site plans, the exact location of the high tide line does not need to be established;
- DEP did not engage in rule making subject to requirements of Uniform Administrative Procedure Act (UAPA) when it used one year frequency tidal flood elevation data from Army Corps of Engineers as factor in determining high tide line;
- DEP's use of one year frequency tidal flood elevation data from Army Corps of Engineers as factor in determining high tide line was consistent with statute setting forth means for making that determination;
- Authority of DEP to exercise enforcement remedies under CMA is not predicated on a formal decision by coastal municipality as to whether site plan approval is required for the activity at issue;
- DEP was not bound by finding of a trial court in action by town to enforce an unappealed cease-and-desist order with respect to same seawall that the seawall was not a "shoreline flood and erosion control structure" subject to the CMA;
- Property owners, who failed to appeal the town's cease-and-desist order to zoning board of appeals, could not challenge the merits of that order in town's action to enforce the order, abrogating Costa v. Sams, 2008 WL 4044332;
- Evidence supported DEP's finding that seawall was located on a "coastal bluff or escarpment" within meaning of CMA;
- Seawall would not have been exempt from requirement under CMA of submitting a coastal site plan, even if ultimately it was determined by town that the seawall did not adversely impact a coastal resource; and
- DEP, in ordering removal of seawall, properly exercised jurisdiction over entire seawall, including portions located landward of high tide line.

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