



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

BERNARD AND KARA VAUGHAN,)	<u>ADMINISTRATIVE ACTION</u>
)	FINAL DECISION
Petitioners,)	
)	OAL DKT. NO. ELU-CA 12688-08
v.)	AGENCY DKT. NO. 13310-07-
)	0032.1
NEW JERSEY DEPARTMENT OF)	
ENVIRONMENTAL PROTECTION,)	
LAND USE REGULATION,)	
)	
Respondent.)	

This Order addresses a challenge by Bernard and Kara Vaughan (Petitioners) of the July 3, 2008, denial by the Department of Environmental Protection (Department) of the Vaughans' application for a Coastal General Permit No. 9 (GP9) to construct a new single-family dwelling, riprap revetment, retaining wall, and in-ground swimming pool at their property at 211 Locust Avenue, Block 841, Lot 3, Middletown Township, Monmouth County, pursuant to the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and implementing rules.¹ Under the then-applicable rules, a GP9 governed the expansion or reconstruction of a single-family home or duplex. The Department denied the permit

¹ The Vaughans also applied for a Waterfront Development permit and a Coastal Wetlands permit to construct a 4-foot by 67-foot dock crossing over wetlands and leading to a ramp, an 8-foot by 20-foot floating dock and a 10.5-foot by 10.5-foot boat lift. These permit applications were addressed separately by the Department and approved, and were not part of this contested case.

because the proposed project did not meet the Wetlands Buffer Rule and the Coastal Bluff Rule.

The Department granted Petitioners' hearing request and the matter was transferred to the Office of Administrative Law (OAL) where it was assigned to Administrative Law Judge (ALJ) Leslie Z. Celentano. The matter was postponed numerous times, including for the purpose of settlement discussions. The parties were unable to settle the matter and the ALJ conducted a hearing spanning five dates in 2011 – August 24, August 26, October 20, November 3 and December 2, 2011. Although the hearing was completed, the parties did not agree upon the exhibits that would be entered into evidence and no post-hearing briefs were submitted by either side. Following the completion of testimony, the parties again engaged in settlement discussions and counsel for the Department provided numerous updates to the ALJ concerning the Department's proposed resolution by which Petitioners would be required to submit new permit applications for a revised project, including an individual waterfront development permit for a bulkhead, and a Coastal General Permit No. 11 for a riprap revetment. Sometime between September 2013 and April 2014, Petitioners orally advised the Department's counsel that the proposal was acceptable and they would take the steps necessary to move the matter forward. However, Petitioners did not follow through on the submission of an application despite numerous communications from both counsel for the Department and the ALJ. In August 2016, Petitioners indicated that personal difficulties prevented them from submitting new development plans for review.

On February 28, 2017, the Department moved to dismiss the Petitioners' hearing request for failure to prosecute. Petitioners did not respond to the motion, even though the ALJ sent them a letter on May 10, 2017 establishing a final May 26, 2017 deadline to do so.

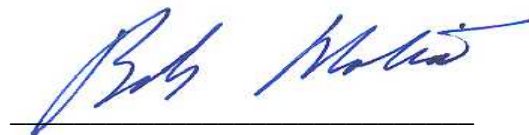
As a result, the ALJ issued an Initial Decision on July 7, 2017, dismissing Petitioners' permit appeal without prejudice.

I ADOPT the ALJ's Initial Decision dismissing the case, and note the following. While counsel for the Department indicates that the parties reached an understanding as to resolution of the matters in dispute, there is no formal settlement agreement nor any writing from Petitioners acknowledging settlement. Petitioners participated in a hearing on the permit denial but did not cooperate with the Department to complete the record before the ALJ. Over the next six years, Petitioners abandoned their appeal and I find that they failed to prosecute their case to the end. Thus, while the motion for dismissal was made at a very late stage in the administrative process, I find that Petitioners are not prejudiced by the ALJ's Initial Decision granting dismissal without prejudice without having required the parties to complete the record by either stipulating to or moving the exhibits into evidence. Petitioners continue to have the option to file new permit applications for a revised project as set forth in the letters from the Department's counsel dated September 23, 2013 and April 3, 2014.

IT IS SO ORDERED.

August 14, 2017

DATE

A handwritten signature in blue ink, appearing to read "Bob Martin", is written over a horizontal line.

Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

BERNARD AND KARA VAUGHAN v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,
LAND USE REGULATION

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