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Recent court decisions further define Mepa appeals

June 25, 2010 - Green Buildings

Soon after the Mass. Environmental Policy Act (MEPA) was enacted in the 1970s, courts began interpreting the statute and resolving conflicts about the procedural and substantive rights and obligations of private parties and government agencies who participate in the MEPA process.

In January 2010, the Mass. Supreme Judicial Court (SJC) issued a decision clarifying a key aspect of MEPA appeals, i.e., the "statute of limitations" in Section 62H of MEPA that requires suits challenging the certification of an Environmental Impact Report (EIR) for a private project to be commenced "no later than thirty days following the first issuance of a permit." *Town of Canton v. Commissioner of the Massachusetts Highway Department*, 455 Mass. 783 (2010). The appeal was filed by the town of Canton after three permits had been issued, including two permits from MassDEP, followed by a permit from the Mass. Highway Department (MHD). The Town filed its appeal after the MHD permit because traffic was its sole concern.

The town argued that MEPA's time limitation should not begin until a permit has been issued that is related to the concern of the party challenging the EIR. The SJC disagreed, ruling that any appeal must commence after the first permit. In addition, the SJC ruled that a party must inquire about the status of state permits for timing, and cannot rely upon failure of public notice to seek an extension of the statute of limitations.

For more information about recent developments in MEPA, an "EBC Breakfast Program with MEPA Director Alicia McDevitt," will be held on Friday, June 25, 2010, from 7:30 AM to 9:30AM in Waltham. The EBC website www.ebcne.org gives details.

Barry Fogel is a partner at Keegan Werlin, LLP, Boston, MA

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540