



***Environmental
Law Round-Up***
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Appeals Court Criticizes Fact-Finding by Local Environmental Review Boards

In two decisions released this week, the state Appeals Court annulled rulings by the Norfolk Conservation Commission and the Falmouth Board of Health, finding that they lacked sufficient findings or explanations for their decisions.

In Macero v. MacDonald, issued today, the Appeals Court rejected a Superior Court judge's conclusion that the Falmouth Board of Health was not required to specify any reasons or make any findings in its decision granting variances under Title V and local septic regulations. The Court noted that the absence of such reasoning renders competent judicial review "difficult, if not impossible." Similarly, in Pollard v. Norfolk Conservation Commission, released yesterday, the Court admonished the Norfolk Conservation Commission for not including within its decision any explanation for its rejection of the landowner's expert analysis and testimony, which concluded that the landowner's proposed construction within a wetland buffer zone would have no impacts on the environmental interests protected by the local wetland bylaw. The Commission denied a requested construction permit, summarily finding that the landowner's evidence was "not credible."

It is unusual for courts to overturn municipal decisions that deny discretionary permits. These cases serve as a reminder to all local boards and commissions that written decisions should always contain factual findings and explanations.

The Law Offices of Daniel C. Hill
wishes everyone a Happy Holidays!