

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

COUNTY OF DUKES, ss.

MISCELLANEOUS CASE
No. 13 MISC 478175 (GHP)

CHARLES PARKER; VIRGINIA P. DAWSON;
RICHARD W. REGEN, Manager of the Regen
Family Storks Nest LLC; DOUGLAS LIMAN;
ELIZABETH LIMAN; BARBARA GOLDMUNTZ
(Life Estate); and BARBARA HUNTER FOSTER,
Trustee of Pacer II Nominee Trust,

Plaintiffs,

v.

CHRIS MURPHY, FRANK LORUSSO, WENDY
WELDON, RUSSELL MALONEY, ALLISON
BURGER, TODD CHRISTY, and ALLEN
HEALY, as They Are Members of the TOWN OF
CHILMARK ZONING BOARD OF APPEALS;
and TOWN OF CHILMARK acting by and
through its Board of Selectmen,

Defendants.

J U D G M E N T

On June 11, 2013 plaintiffs commenced this action in this court as an appeal, pursuant to G. L. 40A, §17, of the decision ("Decision") of the Chilmark Zoning Board of Appeals ("Board"), whose members are defendants. The challenged Decision, dated May 22, 2013 and filed with the Clerk of the Town of Chilmark ("Town") on May 24, 2013, denied the plaintiffs' administrative appeal, upholding a cease and desist order barring the plaintiffs from using the herbicide "Rodeo," a brand name product that is glyphosate-based, in the Town's Squibnocket Pond District, as defined in Article 12, Section 12.6.H.1 of the Chilmark Zoning Bylaw. The Decision also denied the plaintiffs' alternative request for a variance. The plaintiffs in this action seek as well declaration under G.L. c. 240, §14A that Section 12.6.H.1 of the Chilmark Zoning Bylaw is invalid.


This case came on to be heard December 9, 2013 on plaintiffs' motion for summary judgment. After hearing, the court (Piper, J.), from the bench, ALLOWED the motion for summary judgment of the plaintiffs, for substantially the reasons set forth in the moving papers, and for the reasons that were laid upon the record from the bench and given by the court in a docket entry of that date.

Following the court's ruling, the parties by counsel were given the opportunity to propose forms of judgment for the court to enter in this case. In accordance with the court's rulings, and taking into account the proposed forms of judgment submitted, it is

ORDERED, ADJUDGED, and DECLARED that Section 12.6.H.1 of the Chilmark Zoning Bylaw is INVALID and UNENFORCEABLE insofar as Section 12.6.H.1 prohibits, controls, limits, and regulates the use of glyphosate-based herbicides, such as Rodeo, which are controlled and regulated exclusively under the Massachusetts Pesticide Control Act, G.L. c. 132B and the state-level regulatory regime established pursuant to that Act. It is further

ORDERED and ADJUDGED that so much of the challenged Decision of the Board as upheld the Chilmark Zoning Officer's April 12, 2103 cease and desist order is hereby ANNULLED and REVERSED; in light of the court's rulings on summary judgment, declaring invalid Section 12.6.H.1 of the Zoning Bylaw (the provision of the Zoning Bylaw on which the Board's Decision rested), the Board's Decision proceeded on a legally untenable ground in denying the plaintiffs' administrative appeal. The Board shall, without any unreasonable delay after this Judgment becomes final, issue an amended decision consistent with this Judgment, granting the plaintiffs' administrative appeal, and directing the Zoning Officer that the cease and desist order he issued is annulled and not effective. It is further

ORDERED and ADJUDGED that the remaining aspects of the plaintiffs' appeal of the Decision of the Board (regarding the denial of the plaintiffs' variance application) are DISMISSED as moot.

 By the Court. (Piper, J.)

Attest:

Deborah J. Patterson
Recorder

Dated: January 8, 2014

TRUE COPY
ATTEST:


RECORDED