MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CARLA MALONE STECK,

Respondent,

v.

MISSOURI DEPARTMENT OF NATURAL RESOURCES AND MISSOURI CLEAN WATER COMMISSION,

Appellants.

DOCKET NUMBER WD83568

Date: April 13, 2021

Appeal from:
Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., and Thomas H. Newton and Thomas N. Chapman, JJ.

Attorneys:
Timothy P. Duggan, Jefferson City for appellant
Kent L. Brown, Jefferson City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CARLA MALONE STECK, Respondent,
v.
MISSOURI DEPARTMENT OF NATURAL RESOURCES AND MISSOURI CLEAN WATER COMMISSION, Appellants.

WD83568 Cole County

Before Division One Judges: Alok Ahuja, P.J., and Thomas H. Newton and Thomas N. Chapman, JJ.

In December 2000, Carla Steck obtained approval from the Department of Natural Resources to implement on-site wastewater treatment systems (also known as septic systems) in a 32-acre, 12-lot residential housing development she was planning in Jefferson City, to be known as "Beverly's Hill." The Department's approval specified that each of the lots in the development would be 2.2 acres or larger, and that "[n]o lot may be reduced in size by more than 10% without prior approval of the Department of Natural Resources."

On December 6, 2016, Steck submitted a new request for approval to the Department. Steck's 2016 request proposed to subdivide one lot in Beverly's Hill into two lots: a one-acre lot that would remain within the Beverly's Hill subdivision; and a 1.2-acre lot which would be joined to a commercial parcel of 0.11 acres which was located outside of Beverly's Hill. A single-family home would be built on the one-acre lot, while the other lot would operate an art studio. Steck sought Department approval of a "cluster" wastewater treatment system that would service both lots, but would be located entirely on the one-acre residential lot.

The Department approved the subdivision of the existing lot, and the employment of a cluster wastewaster treatment system, in June 2017. The Department required, however, that the entire acreage of both lots be used for dispersal of effluent from the treatment system.

Steck filed an administrative appeal. The Administrative Hearing Commission ("AHC") issued a recommendation that the Clean Water Commission sustain the Department's June 2017 approval letter. The Clean Water Commission adopted the AHC's recommendation.

Steck then sought judicial review in the Circuit Court of Cole County. The circuit court reversed the Clean Water Commission's decision, finding that the Department lacked regulatory authority over Steck's construction of the cluster wastewater treatment system, and that the Commission had improperly considered new evidence at the meeting at which it considered the AHC's recommendation.

The Department appeals.

REVERSED.

Division One holds:

Section 621.250.1 transfers "[a]ll authority to hear contested case administrative appeals granted . . . [to] the clean water commission" to the AHC. The Commission retains "[t]he authority to render final decisions after hearing on appeals heard by the administrative hearing commission." *Id.* Section 621.250.3 requires, however, that the Commission's final decision "be based only on the facts and evidence in the hearing record" created before the AHC.

The Clean Water Commission heard from both Steck, and from the Department soil scientist who reviewed her 2016 application, at the meeting at which it considered the AHC's recommended decision. This does not justify reversal, however. The Commission members emphasized multiple times during the meeting that their review was confined to the record developed before the AHC, and Steck has failed to identify any particular fact, or piece of evidence, which was introduced during the Commission meeting, that was not already present in the AHC record. The fact that the Commission adopted the AHC's recommended decision, without modification, also cuts against Steck's argument that the Commission improperly considered extra-record evidence.

Steck also argues that the Department lacked regulatory authority because her proposed subdivision of a single lot in Beverly's Hill did not itself constitute a "residential housing development." Steck does not dispute that her establishment of the Beverly's Hill subdivision in 2000 constituted a "residential housing development" which required Department approval before on-site wastewater treatment systems could be implemented. In her 2016 request, Steck was seeking to modify, or obtain an exemption from, the conditions the Department had lawfully imposed on the entire development in 2000. The Department's regulatory authority was triggered by Steck's request for relief from the conditions the Department had imposed in 2000.

Opinion by: Alok Ahuja, Judge April 13, 2021

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