

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

August 5, 2024

In the Matter of Aspen Properties,
LLC

OADR Docket Number: WET-2024-014
DEP File No. SE 269-1050
Raynham, Massachusetts

RECOMMENDED FINAL DECISION ON RECONSIDERATION

The Petitioner, Diane Tavares, has filed this appeal with the Office of Appeals and Dispute Resolution ("OADR")¹ challenging the Department of Environmental Protection ("Department") Southeast Regional Office's ("SERO") issuance of a Superseding Order of Conditions ("SOC") dated April 23, 2024, pursuant to the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 ("MWPA"), and the Wetlands Regulations, 310 CMR 10.00, *et seq.* The SOC allows the construction of a single-family dwelling, utilities, grading work, and landscaping.

I issued a Recommended Final Decision ("RFD") on July 2, 2024, recommending that the Commissioner issue a Final Decision affirming the SOC because the Petitioner's Appeal Notice does not meet the requirements of 310 CMR 1.01(6)(b) and 310 CMR 10.05(7)(j)2.b.v. The Commissioner appointed Chief Presiding Officer Salvatore Giorlandino as Final Decision

¹ OADR is an independent quasi-judicial office in the Department which is responsible for advising its Commissioner in resolving all administrative appeals of Department Permit Decisions, Environmental Jurisdiction Determinations, and Enforcement Orders.

Maker.² The Chief Presiding Officer issued a Final Decision on July 19, 2024. The Petitioner filed a Motion to Reconsider by E-mail on July 29, 2024. The Department and the Applicants filed oppositions timely.

I. Motions for reconsideration.

A party seeking reconsideration of a Final Decision has a heavy burden of demonstrating that the Final Decision was unjustified. 310 CMR 1.01(14)(d); Matter of Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (Nov. 4, 2014), 2014 MA ENV LEXIS 83, *6, adopted as Final Decision on Reconsideration (Nov. 7, 2014), 2014 MA ENV LEXIS 82. The party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was "clearly erroneous." Id. A Motion for Reconsideration may be summarily denied if "[it] repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied, or where it attempts to raise new claims or arguments" Id. at 6-7. Moreover, "reconsideration [of the Final Decision is not] justified by the [party's] disagreement with the result reached in the Final Decision." Id. at 7.

II. The Petitioner's motion to reconsideration should be summarily denied.

The Petitioner's motion for reconsideration makes arguments that were raised in her filings in the case previously, including that water is running down Williams Avenue and that removing trees and landscaping an adjoining lot will cause flooding on the Petitioner's property. These arguments were considered and rejected in light of the Petitioner's failure, despite multiple opportunities, to submit an Appeal Notice that adequately stated a claim for relief. The Petitioner's motion for reconsideration should therefore be summarily denied.

² The Adjudicatory Proceeding Rules at 310 CMR 1.01(14)(b) provide that "[e]very final decision" issued in an administrative appeal "shall be in writing and shall be signed by the [Department's] Commissioner or a designee of the Commissioner."

III. Conclusion.

The Petitioner's motion fails to raise a substantive basis on which to reconsider my RFD. For that reason, I recommend that the Commissioner's Designee issue a Final Order on Remand denying the motion.

A handwritten signature in black ink, appearing to read 'PM Groulx', written over a horizontal line.

Patrick M. Groulx
Presiding Officer

Date: August 5, 2024

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Petitioner

Aspen Properties, LLC

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