

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**September 12, 2016**

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In the Matter of  
George T. Collins

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OADR Docket No. WET-2016-008  
Winthrop, MA

**RECOMMENDED FINAL DECISION ON RECONSIDERATION**

The Petitioners, John Nigro, Rachel Nigro, Mario Marengi, and Karen Marengi, filed this appeal to challenge the Superseding Order of Conditions (“SOC”) that the Massachusetts Department of Environmental Protection’s Northeast Regional Office (“DEP”) issued concerning the real property at 96 Nahant Avenue, Winthrop, Massachusetts (“the Property”). The SOC was issued pursuant to the Wetlands Protection Act, G.L. c. 131 § 40, and the Wetlands Regulations, 310 CMR 10.00. The SOC approved the Property owner’s, George T. Collins, proposed project.

I recently issued a Recommended Final Decision (“RFD”) to affirm the SOC. That RFD was adopted by the DEP Commissioner in his Final Decision. The appeal is before me again based upon the Petitioners’ motion for reconsideration. Collins and DEP oppose the motion for reconsideration. For the reasons discussed below, I recommend that DEP’s Commissioner issue a Final Decision on Reconsideration denying the Petitioners’ motion for reconsideration.

**BACKGROUND**

The Resource Areas at the Property include Coastal Bank and Land Subject to Coastal Storm Flowage (“LSCSF”). G.L. c. 131 § 40; 310 CMR 10.02; 310 CMR 10.30. The project

would consist of a single family house, driveway, and related work. No work would occur on the Coastal Bank, and instead it would be located in LSCSF and the Buffer Zone to the Coastal Bank. The proposed house would be constructed on pilings, with the first floor elevation at 13.5 feet. The attached garage slab would also be on pilings at an elevation of 12.5. The driveway would not be paved and instead would be covered with seashells. The project also involves an extension of Nahant Avenue to create an access road approximately 200 feet long. The short access road would be unpaved and covered with gravel. Although compliance with the stormwater standards is exempt because the project is a single family residence, the project would include measures to mitigate stormwater impacts, including installation of a shallow stormwater basin, designed in an elongated shape (approximately 1.5 feet deep by 60 feet long); that basin is located at the rear of house and is primarily for rain events. Roof runoff will be infiltrated. Original grades will be maintained, with the exception of a small area at the beginning of the gravel extension of Nahant Avenue.

The RFD concluded that summary decision was appropriate because the Petitioners failed to show standing. In fact there was no competent evidence showing a possibility of aggrievement from the project itself and any possible alterations to the resource areas. In addition, there was also no competent evidence showing that the project failed to comply with applicable standards for LSCSF and Buffer Zone to Coastal Bank. To the contrary, Collins' expert, Richard Salvo, stated that the house was designed to be on pilings so that there would be no barrier to coastal flooding, and thus LSCSF could continue to serve the interests of storm damage prevention and flood control. The pilings would enable the flood waters to flow overland, laterally, and inland, without acceleration, reflection, refraction, and diffraction. Salvo also testified that no new stormwater will be directed to the upgradient Marengi property or the

Nigro property. The design also incorporated elements to decrease impervious area on site, including the sea shell driveway and graveled roadway. This enables flood waters to percolate downward and avoids acceleration of flood waters that often occurs with impervious surfaces. There were also no genuine issues of material fact regarding the Petitioners' remaining allegations—that Collins failed to comply with the local permit requirement, failed to provide adequate notice, and failed to provide evidence of a colorable claim of title.

### **STANDARD OF REVIEW AND DISCUSSION**

To succeed on a motion for reconsideration a party must meet a “heavy burden.” Matter of LeBlanc, Docket No. 08-051, Recommended Final Decision on Reconsideration (February 4, 2009), adopted by Final Decision (February 18, 2009). The party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was “clearly erroneous.” See 310 CMR 1.01(14)(d). In addition, “[w]here [a] motion [for reconsideration] [1] repeats matters adequately considered in the final decision, [2] renews claims or arguments that were previously raised, considered and denied, or [3] where it attempts to raise new claims or arguments it may be summarily denied.” Id.

Here, the Petitioners have done nothing more than repeat matters adequately considered in the final decision and renew claims or arguments that were previously raised, considered and denied. On those bases alone the motion for reconsideration should be summarily denied.

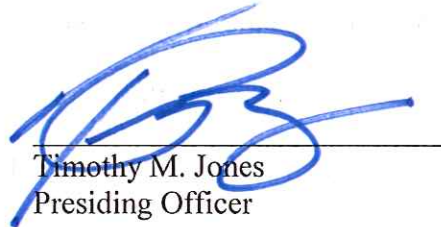


**NOTICE-RECOMMENDED FINAL DECISION ON RECONSIDERATION**

This decision is a Recommended Final Decision on Reconsideration of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision may be appealed and will contain a notice to that effect.

Date:

9/12/14



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Timothy M. Jones  
Presiding Officer

**SERVICE LIST**

In The Matter Of:

George T. Collins

Docket No. WET-2016-008

File No. 082-0421  
Winthrop

Representative

Party

Richard A. Nylan, Jr., Esq.  
Lynch, DeSimone & Nylan, LLP  
10 Post Office Square, Suite 970N  
Boston, MA 02109  
[rnylen@ldnllp.com](mailto:rnylen@ldnllp.com)

APPLICANT  
George T. Collins

John Nigro  
143 Sewall Avenue  
Winthrop, MA 02152  
[jnigro@metprop.com](mailto:jnigro@metprop.com)  
[mariom158@gmail.com](mailto:mariom158@gmail.com)

PETITIONERS  
John Nigro, Rachel Nigro, Mario  
Marenghi, and Karen Marenghi

Elizabeth Kimball  
Mass DEP Office of General Counsel  
One Winter Street  
Boston, MA 02108  
[Elizabeth.Kimball@state.ma.us](mailto:Elizabeth.Kimball@state.ma.us)

DEPARTMENT

Cc:  
Gary Bogue  
MassDEP Northeast Regional Office  
205B Lowell Street  
Wilmington, MA 01887  
[Gary.Bogue@state.ma.us](mailto:Gary.Bogue@state.ma.us)

DEPARTMENT

Winthrop Conservation Commission  
1 Metcalf Square  
Winthrop, MA 02152  
[conservation@town.winthrop.ma.us](mailto:conservation@town.winthrop.ma.us)

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