

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

August 4, 2025

In the Matter of
Costas Malapanis and Cherie Ansin

OADR Docket No. WET-2025-002
DEP File # 309-1020, SOC Dismissal
Tyngsborough, MA

RECOMMENDED FINAL DECISION ON RECONSIDERATION

Kimberly Craven (“the Petitioner”) on February 10, 2025, filed an appeal with the Office of Appeals and Dispute Resolution (“OADR”) to challenge the Massachusetts Department of Environmental Protection Northeast Regional Office’s (“NERO” or “the Department”) dismissal of her request for a Superseding Order of Conditions (“SOC”) on January 28, 2025. The Petitioner sought the Department’s SOC pursuant to the Massachusetts Wetlands Protection Act (“MWPA”), G.L. c. 131, § 40, and the Wetlands Regulations at 310 CMR 10.00 to overturn an Order of Conditions (“OOC”) issued by the Tyngsborough Conservation Commission (“TCC”) pursuant to the MWPA and the Wetlands Regulations in response to an after-the-fact Notice of Intent filed by the Costas Malapanis (“Applicant”). The OOC authorized construction of a 12’x12’ patio with a 16’x40’ retaining wall on a parcel of land described as Lot 1, Common Land (“the proposed Project”) pursuant to the MWPA and the Wetlands Regulations.¹ The Department based its dismissal on the Petitioner’s lack of response to a request for additional detail and clarification that would constitute evidence of surficial ownership rights over the property where

¹ As discussed below, at p. 4, the TCC also approved the proposed Project pursuant to the Tyngsborough Wetlands By-law which the Petitioner appealed to Superior Court.

Applicant completed the work and which would support Petitioner's claim of standing. The Petitioner contended the Department's dismissal was in error, that the Petitioner had submitted sufficient documents to support standing, and further that the OOC by the TCC approved work that did not meet the Riverfront Regulations, 310 CMR 10.58(5).

On June 26, 2025, I issued a Recommended Final Decision dismissing the appeal for failure to demonstrate standing. The Recommended Final Decision stated that the description of the location of the work in the Petitioner's Notice of Claim and More Definite Statement as "Lot 1, Common Land" was unclear, because the documents that the Petitioner herself submitted showed that Lot 1 and the Common Land were separate parcels of land. The Petitioner had shown a property interest in the Common Land, but not in Lot 1. The Petitioner's failure to identify the parcel of land on which the work took place meant that the Petitioner had not clearly and concisely demonstrated her standing. The Recommended Final Decision was adopted by a Final Decision issued on July 8, 2025.² On July 9, 2025, the Petitioner filed a Motion for Reconsideration, arguing that there was new evidence that was not reasonably available at the time of the original decision, and that I had made errors of law and fact in the Recommended Final Decision. The Department filed an opposition to the Motion for Reconsideration on July 17, 2025, which the Applicant supported. For the following reasons, I recommend the issuance of a Final Decision on Reconsideration, denying the Motion for Reconsideration.

STANDARD OF REVIEW

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); In the Matter of Kevin Slattery and Etchstone Properties, Inc., OADR Docket No. WET-2018-015, Recommended Final

² On July 1, 2025, MassDEP's Commissioner designated Chief Presiding Officer, Salvatore M. Giorlandino, as the final decision maker in this matter.

Decision on Reconsideration (December 17, 2019), 2019 WL 8883857, *5, adopted as Final Decision on Reconsideration (January 7, 2020), 2020 WL 2616493; In the Matter of Gary Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (November 4, 2014), 2014 WL 6633667, *2, adopted as Final Decision on Reconsideration (November 7, 2014), 2014 WL 6633699. Specifically, the party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was “clearly erroneous” and materially impacted the Final Decision’s validity warranting its vacating by the Commissioner. Id. In addition, 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” 310 CMR 1.01(14)(d); Slattery, 2019 WL 8883857, *5; Vecchione, 2014 WL 6633667, *2. Moreover, “reconsideration [of the Final Decision is not] justified by the [party’s] disagreement with the result reached in the Final Decision.” Id.

DISCUSSION

- 1. The Petitioner failed to demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was “clearly erroneous” and materially impacted the Final Decision’s validity warranting its vacating by the Chief Presiding Officer.³**

To her Motion, the Petitioner attaches a Superior Court decision that the Petitioner claims was based on “the same facts, same supporting documents and same allegations submitted to OADR” and that the Superior Court held that the Petitioner did have standing to challenge the TCC’s OOC authorizing the proposed Project pursuant the Tyngsborough Wetlands By-law. However, the Petitioner failed to submit any of the facts, supporting documents, or allegations underlying the Superior Court’s decision. As a result, I have no way of verifying whether that

³ See n. 2, at p. 1 above.

decision was based on the exact same record that I had before me. Further, OADR's review of the Department's SOC denial pursuant to the MWPA and the Wetlands Regulations is not "the identical matter" to that addressed in the Superior Court's review of the local bylaw decision.⁴ The Petitioner's motion for reconsideration does not identify what finding of fact or ruling of law the Superior Court relied on that was overlooked or misconstrued in the Recommended Final Decision. The Petitioner has not demonstrated that the Final Decision was based upon a finding of fact or ruling of law that was "clearly erroneous" and materially impacted the Final Decision's validity warranting its vacating by the Chief Presiding Officer.

2. The Petitioner 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 arguments.

The Petitioner contends that the Superior Court decision held that "the Petitioner has a deeded legal interest in the common land" and that "[t]his interest is sufficient to establish standing." Motion for Reconsideration, p. 3. This argument is unavailing, as it does not address the reason that the Petitioner's appeal was dismissed. The fundamental flaw in the Petitioner's Notice of Claim and More Definite Statement was that I could not discern where she alleged that the work occurred. I specifically noted in my Recommended Final Decision that the Petitioner had indeed alleged a property interest in the Common Land, but that the Notice of Claim and More Definite Statement did not clearly and concisely allege that the work took place on the Common Land. Rather, the Notice of Claim and More Definite Statement were ambiguous as to whether the work took place on the Common Land, in which the Petitioner had alleged a property interest, or on Lot 1, in which the Petitioner had not alleged a property interest. Without

⁴ See In the Matter of Town of Falmouth ("Falmouth"), Docket Nos. 2003-001;002;008, Recommended Final Decision (October 17, 2005), 2005 WL 4124556, *2 ("[T]he Town of Falmouth filed a motion to include in the record a copy of the Superior Court decision upholding the Conservation Commission's decision approving the project under the local wetlands bylaw. . . . I reject the assertion in Falmouth's motion that the case before me concerns 'the identical matter' that is addressed in the Superior Court decision.").

a clear and concise allegation of where the work occurred, an allegation of a property interest in one of the potential locations of the work does not suffice to establish standing. To the extent the Petitioner contends that the Superior Court decision proves that the work occurred on the Common Land, it does not constitute new evidence that was not reasonably available at the time of the original decision. The Petitioner was given two opportunities to clearly and concisely allege the location of the work and failed to do so on both occasions.

The Petitioner additionally alleges that I improperly analyzed the evidence as if for a full adjudication on the merits. The Petitioner does not expound upon this argument. However, my analysis in determining the Petitioner's standing was limited to the Notice of Claim, More Definite Statement, and any documents the Petitioner submitted alongside them. My analysis additionally took all the Petitioner's allegations as true, which was the appropriate standard of review at that stage of the proceeding. Nonetheless, I was unable to determine the location of the work from the Petitioner's allegations. The Petitioner does not point to any allegation or document in the record which proves that the work took place on the Common Land and that I failed to consider.

3. The standard of review of a motion for reconsideration set forth in 310 CMR 1.01(14)(d) does not include the discovery of new evidence that was not reasonably available the time of the original hearing.

The Petitioner contends that the Superior Court decision attached to her Motion is admissible because it constitutes new evidence not reasonably available at the time of the original decision, which the Petitioner asserts is the standard for a motion for reconsideration pursuant to 310 CMR 1.01(14)(d). In its Opposition, the Department correctly asserts that new evidence is not grounds for reconsideration, citing the appeal regulations which provide that a motion for reconsideration must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was "clearly erroneous." Id.

Review of newly discovered evidence not reasonably available at the time of the hearing is addressed in 310 CMR 1.01(14)(e), which provides that a hearing may only be reopened prior to the issuance of a final decision. 310 CMR 1.01(14)(e); See also Falmouth, 2005 WL 4124556, *3 (prior to issuance of a recommended final decision, the presiding officer has discretion to allow new evidence into the record that “was not reasonably available for presentation at the time of the hearing”). The regulations provide no avenue for a party to assert error for the first time and submit new evidence after a Final Decision is issued and the record is closed.

CONCLUSION

The Petitioner has not met her heavy burden to justify reconsideration. Accordingly, I recommend issuance of a Final Decision on Reconsideration denying the Petitioner’s motion on the grounds that the Final Decision contains no error of fact or law.

Date: August 4, 2025



Margaret R. Stolfa
Presiding Officer

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 her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(e), 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.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision on Reconsideration or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

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