

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

March 25, 2019

In the Matter of

Daniel and Lisa Craig

OADR Docket Nos. WET-2017-012 &
WET-2017-013
DEP File No.: SE 44-1283
Mattapoisett, MA

RECOMMENDED FINAL DECISION ON RECONSIDERATION

INTRODUCTION

These appeals were filed by the Buzzards Bay Coalition, Inc. (“BBC”) and the Town of Mattapoisett Conservation Commission (“MCC”) (collectively “the Petitioners”) after the Massachusetts Department of Environmental Protection (“the Department” or “MassDEP”) issued a Superseding Order of Conditions (“SOC”) to Daniel and Lisa Craig (“the Craigs”) authorizing the Craigs to partially restore wetlands at their property that had been altered without a permit. I issued a Recommended Final Decision (“RFD”) on January 29, 2019, which was adopted as a Final Decision (“FD”) by Deputy Commissioner Stephanie Cooper on March 6, 2019.¹ The FD determined that the SOC was rendered moot by a local enforcement order, vacated the SOC, and dismissed the appeals. The FD determined that the Department lacked

¹ Deputy Commissioner Cooper was designated as the Final Decision-Maker in these appeals by the Executive Office of Energy and Environmental Affairs upon the request of Commissioner Martin Suuberg, who recused himself because of his prior participation in the matter.

jurisdiction to supersede a validly issued, final Enforcement Order issued by the Mattapoissett Conservation Commission.

The Craigs have moved for reconsideration of the Final Decision pursuant to 310 CMR 1.01(14)(d). In their motion, they assert that the Final Decision sets a “dangerous precedent, is contrary to law, and should not be approved.” They assert that the “precise issue” in the case was not addressed by the Final Decision. This “precise issue” is “what entity is the proper authority to interpret the Wetlands Protection Act, in the absence of a local bylaw.” Craig’s Motion to Reconsider Final Decision at p. 4. They argue that the Enforcement Order imposes restoration requirements not authorized by the Massachusetts Wetlands Protection Act (“MWPA”) and the SOC should take precedence over the local enforcement order in the absence of a local wetlands bylaw. It has been the Craigs’ position throughout this appeal that the Superseding Order of Conditions issued by the Department authorizing certain restoration work at their property takes precedence over an Enforcement Order issued by the Mattapoissett Conservation Commission requiring a more complete restoration. The Department and the Petitioners oppose the Motion for Reconsideration. As discussed below, I recommend that the Department’s Deputy Commissioner issue a Final Decision On Reconsideration that denies 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 Gary Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (November 4, 2014), 2014 MA ENV LEXIS 83, at 6, adopted as Final Decision on Reconsideration (November 7, 2014), 2014 MA ENV LEXIS 82. The party must demonstrate

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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.

RECOMMENDATION

The arguments presented in the Motion for Reconsideration were previously raised by the Craigs in their Response to the Order to Show Cause.² The Motion for Reconsideration does not raise any new arguments, or cite to any controlling legal precedent that differs from that already presented and considered in the RFD and FD. The RFD addressed the issue of the local conservation commission’s independent enforcement authority. See RFD at pp. 4-5. The RFD also addressed the Craigs’ argument that the SOC should supplant the enforcement order in order to maintain the Department’s superior role over matters arising under the MWPA. See RFD at pp. 5-6. The Motion for Reconsideration forecasts bleak consequences if the Final Decision is

² They raised the same argument in a letter dated February 1, 2019 and sent to the Department’s Commissioner while the RFD was under review. This letter to the Commissioner, which was not copied to the other parties in this case, was sent despite the clear notice in the RFD that the RFD had been transmitted to the Commissioner and “and no party shall communicate with the Commissioner’s office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.” This letter was also sent to the Commissioner in violation of the Ex Parte Communications Rule at 310 CMR 1.03(7), which provides as follows:

No Party or other Person directly or indirectly involved in an adjudicatory appeal shall submit to the Presiding Officer or any Agency employee involved in the Decision-making process, any evidence, argument, analysis or advice, whether written or oral, regarding any matter at issue in an adjudicatory appeal, unless such submission is part of the record or made in the presence of all Parties. This provision does not apply to consultation among Agency members concerning the Agency's internal administrative functions or procedures.

not reversed, but advances neither new arguments nor controlling legal precedent that would require such reversal.

Because the Craigs have not met their “heavy burden” on this motion for reconsideration, and because their motion “repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied. . . .”, I recommend that the Department’s Deputy Commissioner issue a Final Decision on Reconsideration denying the Craigs’ motion for reconsideration.

Date: 3/25/2019



Jane A Rothchild
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 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.

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SERVICE LIST

IN THE MATTER OF:

DANIEL and LISA CRAIG

Docket No. WET-2017-012, 013

MATTAPOISETT

Korin N. Petersen, Esq.
Buzzards Bay Coalition, Inc.
114 Front Street
New Bedford, MA 02740
Petersen@savebuzzardsbay.org

PETITIONER Buzzards Bay Coalition, Inc.
(WET-2017-012)

Gregory A. Bibler, Esq.
Timothy Bazzle, Esq.
Goodwin Procter, LLP
100 Northern Avenue
Boston, MA 02210
gbibler@goodwinlaw.com
tbazzle@goodwinlaw.com

PETITIONER Buzzards Bay Coalition, Inc.
(WET-2017-012)

George X. Pucci, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
gpucci@k-plaw.com

PETITIONER Mattapoisett Conservation
Commission (WET-2017-013)

George F. Hailer, Esq.
Lawson & Weitzen, LLP
88 Black Falcon Avenue, Suite 345
Boston, MA 02210
ghailer@lawson-weitzen.com

APPLICANTS

Elizabeth Kimball, Esq., Senior Counsel
MassDEP Office of General Counsel
One Winter Street
Boston, MA 02108
elizabeth.kimball@mass.gov

DEPARTMENT

James Mahala, Section Chief
Wetlands & Waterways Program
MassDEP Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

DEPARTMENT

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james.mahala@mass.gov

Cc.

Shaun Walsh, Chief Regional Counsel
MassDEP/Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347
shaun.walsh@mass.gov

DEPARTMENT

Leslie DeFilippis, Paralegal
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108
Leslie.defilippis@mass.gov

DEPARTMENT