



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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**January 8, 2025**

\_\_\_\_\_  
In the Matter of  
George Thibeault  
\_\_\_\_\_

Docket No. WET-2021-035  
DEP File No.: SE 056-1072  
Pembroke, MA

## **FINAL DECISION**

The Recommended Final Decision recommends denying the Petitioner's request to withdraw his appeal and instead dismissing the appeal as in violation of 310 CMR 1.01(4)(b) (the "good faith filing requirement") and denying the Applicant's request for reasonable costs and attorneys' fees. I adopt the portions of the Recommended Final Decision denying the Petitioner's request to withdraw (*i.e.*, the Discussion section of the Recommended Final Decision) and denying the Applicant's request for reasonable costs and attorneys' fees (*i.e.*, Section II of the Recommended Final Decision). I decline to adopt the recommendation to dismiss the appeal as frivolous in violation of 310 CMR 1.01(4)(b) (Section I of the Recommended Final Decision). Instead, I dismiss the appeal for failure to state a claim on which relief can be granted.

A review of the record reveals that the Petitioner's filings typically lacked important substance or were filed at times that raise questions about the Petitioner's motives. Nonetheless,

I am not able to conclude from the record that the Petitioner or his counsel signed filings knowing that the information in them was not true and accurate, or that documents were filed for the purpose of delay. *See* 310 CMR 1.01(4)(b). Therefore, I decline to dismiss the appeal as a sanction against the Petitioner for violating the good faith filing requirement of 310 CMR 1.01(4)(b). However, as discussed below, a dismissal for failure to state a claim on which relief can be granted is warranted.

The Petitioner's initial Notice of Claim was threadbare and did not meet the requirements of 310 CMR 1.01(6)(b). The Petitioner's next filing, an Opposition to the Applicant George Thibeault's Motion to Dismiss (Nov. 24, 2021), offered some additional outlining of his claims, but not enough to settle several threshold legal questions to determine if any claim had been made upon which relief could be granted. The Presiding Officer thus ordered further briefing to better understand if the Petitioner had raised a claim on which relief could be granted. *See* Order for Additional Briefing On Third Party Collateral Attack and Standing (Dec. 14, 2021). Specifically, the Presiding Officer required additional briefing on the legal questions of (1) whether Petitioner could collaterally attack an Order of Resource Area Delineation ("ORAD") based on an alleged mutual mistake of fact when none of the parties to the ORAD has indicated there was a mutual mistake of fact, and (2) if Petitioner's allegations, even if assumed to be true, in fact constituted a mutual mistake of fact. *Id.* at 2-3.

Petitioner never responded to that order. Consequently, the sum total of Petitioner's allegations and legal arguments before me are those made in his Opposition filing from November 24, 2021, with no additional clarity about the threshold questions raised in the Presiding Officer's Order for Additional Briefing. In deciding motions for failure to state a claim, the non-moving party is owed no deference as to any conclusions of law. *See* 310 CMR 1.01(11)(d)(2) ("In deciding the motion [for failure to state a claim], the Presiding Officer shall

assume all the facts alleged in the notice of claim to be true. Such assumption shall not apply to any conclusions of law.”). I therefore dismiss this appeal for failure to state a claim on which relief can be granted, and affirm the Superseding Order of Conditions issued on August 16, 2021. The Final Order of Conditions shall be effective as of the date of this Final Decision.

The parties to this proceeding are notified of their right to file a motion for reconsideration of this decision, pursuant to 310 CMR 1.01(14)(d). The motion must be filed with the Case Administrator and served on all parties within seven business days of the postmark date of this decision. A person who has the right to seek judicial review may appeal this decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this decision.



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Bonnie Heiple  
Commissioner

## **SERVICE LIST**

**In the Matter of:**

**Docket No. WET-2021-035**

**George Thibeault**

**File No. SE 056-1072  
Pembroke, MA**

**Representative**

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