



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Rebecca L. Tepper
Secretary

Bonnie Heiple
Commissioner

February 24, 2025

In the Matter of
Linda Canzanelli

OADR Docket No. WET-2024-025
DEP File No. 259-0834
Pepperell, MA

FINAL DECISION ON RECONSIDERATION

The Petitioner Kelli Kinney has filed a Motion for Reconsideration of the Final Decision that I issued in this appeal on November 19, 2024 dismissing the appeal as untimely.¹ I have reviewed the record in the appeal and the Presiding Officer's Recommended Final Decision on Reconsideration which I adopt with the following clarifications in issuing this Final Decision Reconsideration denying the Petitioner's Motion for Reconsideration pursuant to 310 CMR 1.01(14)(d)2 for failure to satisfy the requirements for reconsideration of the Final Decision.

STANDARD OF REVIEW

310 CMR 1.01(14)(d) provides in relevant part:

Where a finding of fact or ruling of law on which a final decision is based is clearly erroneous, a party may file a motion for reconsideration setting forth specifically the grounds relied on to sustain the motion. Where the

¹ Bonnie Heiple, the Commissioner of the Massachusetts Department of Environmental Protection ("MassDEP" or "the Department"), had previously designated me as the Final Decision-Maker in this appeal in accordance with her authority under the Adjudicatory Proceeding Rules at 310 CMR 1.01(14)(b). This Rule provides in relevant part that "[e]very final decision" in an administrative appeal "shall be in writing and shall be signed by the [Department's] Commissioner or a designee of the Commissioner."

motion 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, it may be summarily denied. . . .

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 Decision on Reconsideration (December 17, 2019), 2019 MA ENV LEXIS 149, at 10, adopted as Final Decision on Reconsideration (January 7, 2020), 2020 MA ENV LEXIS 5; 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. 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 Final Decision-Maker.³ 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 MA ENV LEXIS 149, at 10; Vecchione, 2014 MA ENV LEXIS, 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.

DISCUSSION

On May 21, 2024, the Pepperell Conservation Commission ("Commission") issued an Order of Conditions (“OOC”) to Linda Canzanelli (“the Applicant”) for which the Petitioner contends that she submitted a request for a Superseding Order of Conditions (“SOC”) to

² See n.1 above, at p. 1.

MassDEP on June 5, 2024, mailing the request to the MassDEP's Boston Office. She later mailed a copy to MassDEP's Central Regional Office (the "Central Region") on July 16, 2024. On August 14, 2024, the Central Region dismissed Ms. Kinney's SOC request as untimely because it was not filed within ten (10) business days of the OOC's issuance ("Reviewable Decision").⁴

On September 5, 2024, the Petitioner initiated this appeal with the Office of Appeals and Dispute Resolution ("OADR") challenging the Central Region's denial/dismissal of her SOC request. The Presiding Officer's Recommended Final Decision of October 16, 2024 recommended that I issue a Final Decision dismissing the Petitioner's appeal as being untimely because it was not filed within the appeal deadline discussed below and she provided no evidence to the contrary. The Final Decision that I subsequently issued adopted the Recommended Final Decision.

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.

In her Motion for Reconsideration the Petitioner correctly references the regulatory requirement that appeals to OADR of Reviewable Decisions must be filed no later than ten (10) business days after the issuance of the Reviewable Decision.⁵ However, the facts the Petitioner then presented in her Motion for Reconsideration, which were the same facts addressed in the Recommended Final Decision, demonstrate that she filed her appeal with OADR within 10 business days of the date she received the Reviewable Decision, and not within 10 business days of the date the Central Region issued the Reviewable Decision. In sum, the Petitioner has failed

³ See G.L. c. 131, § 40 and 310 CMR 10.05(7)(c) and (d).

⁴ See Motion for Reconsideration, p. 2, citing, 310 CMR 10.05(7)(j)2.a.

to demonstrate that the Final Decision was based upon a finding of fact or ruling law that was clearly erroneous or materially impacted the validity of the Final Decision.

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.

In her Motion for Reconsideration the Petitioner repeats her contention that the SOC request dismissed by the Reviewable Decision was timely, but the relevant inquiry is whether her appeal of the Reviewable Decision to OADR was timely. By her own admission it was not. As a result, the Recommended Final Decision properly recommended dismissal of her appeal to OADR because it was untimely and she provided no evidence to the contrary. The Petitioner also contends that there is no showing of prejudice in allowing her late appeal to OADR to proceed contending that the process exists for citizens to protect the environment and this denial goes against that spirit. The Wetlands Regulations and the Adjudicatory Proceeding Rules at 310 CMR 1.01 provide a meaningful opportunity to an individual or entity having the right to challenge a Reviewable Decision, to file an appeal with OADR challenging the Reviewable Decision as being in violation of the MWPA and the Wetlands Regulations. However, such an appeal must be filed within the appeal deadline established by the MWPA and the Wetlands Regulations. Here, the Petitioner's appeal to OADR was not filed within the appeal deadline, and as such, it was properly dismissed by the Final Decision.

CONCLUSION

For the reasons set forth above, the Petitioner's Motion for Reconsideration of the Final Decision is denied pursuant to 310 CMR 1.01(14)(d)6 for failure to satisfy the requirements for reconsideration of the Final Decision. Any party may appeal this Final 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 Final Decision.



Date: February 24, 2025

Salvatore M. Giorlandino
Chief Presiding Officer

SERVICE LIST

Kelli Kinney
7 Prescott Street
Pepperell, MA 01463
kellikinney@aol.com

Petitioner

Linda Canzanelli
11 Prescott Street
Pepperell, MA 01463
lcanzanelli@rivier.edu

Applicant

Christopher J. Alphen, Esq.
Blatman, Bobrowski, Haverty & Silvers, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742
Chris@bbhslaw.net

Applicant's Legal Representative

Pepperell Conservation Commission
c/o Paula Terrasi, Conservation Administrator
Town Hall
1 Main Street
Pepperell, MA 01463
pterrasi@town.pepperell.ma.us

Conservation Commission

Judith Schmitz, Wetlands Section Chief
Ann Blackman, Chief Regional Counsel
MassDEP/CERO
Bureau of Water Resources
8 New Bond Street
Worcester, MA 01606
Judith.Schmitz@mass.gov
Ann.Blackman@mass.gov

MassDEP

Ian M. Leson, Esq.
MassDEP/Office of General Counsel
Jakarta Childers, Program Coordinator
100 Cambridge Street, 9th Floor
Boston, MA 02114
Ian.m.leson@mass.gov
Jakarta.Childers@mass.gov

MassDEP's Legal Representative