

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

100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**August 30, 2024**

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In the Matter of  
Spring Street Realty Trust

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OADR Docket Number: WET-2024-021  
DEP File No. SE 060-1340  
Rehoboth, Massachusetts

**RECOMMENDED FINAL DECISION**

Todd C. Keating ("Petitioner") has filed this appeal with the Office of Appeals and Dispute Resolution ("OADR")<sup>1</sup> challenging the issuance by the Southeast Regional Office of the Massachusetts Department of Environmental Protection ("Department") a Superseding Order of Conditions ("SOC") dated June 18, 2024, pursuant to the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 ("MWPA"), and the Wetlands Regulations, 310 CMR 10.00 *et seq.* The SOC permits Spring Street Realty Trust ("Applicant") to construct a single-family house within the Buffer Zone to Bordering Vegetated Wetlands. The Petitioner seeks to overturn the Department's decision.

The Petitioner filed his appeal notice on June 27, 2024. That Appeal Notice was executed by an attorney on behalf of the Petitioner. The Appeal Notice raised two grounds for appeal. First, "[t]he Decision is in error initially as we contend that an opportunity to be heard was not

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<sup>1</sup> OADR is an independent quasi-judicial office in the Department which is responsible for advising its Commissioner in resolving all administrative appeals of Department Permit Decisions, Environmental Jurisdiction Determinations, and Enforcement Orders.

presented to the abutter." Appeal Notice, p. 1. Second, "the Decision does not address how the wetlands and this area are being protected by constructing a single family home pursuant to Section 40" and the "Decision does not in any way maintain the wetlands for this area. In fact, the Decision appears to allow a well in the wetland." *Id.* at pp. 1-2. The Petitioner sought to vacate the SOC, and "[t]he property at issue should remain for what its original intention was and for what purpose it has served for this overall development." *Id.* at p. 2.

After reviewing the Appeal Notice, I issued the following order on July 12, 2024:

Under 310 CMR 10.05(7)(j)[2.]b.v., an Appeal Notice must include "a clear and concise statement of the alleged errors contained in the Reviewable Decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c. 131, § 40, including reference to the statutory or regulatory provisions the Party alleges has been violated by the Reviewable Decision, and the relief sought, including specific changes desired in the Reviewable Decision." The Petitioner's Appeal Notice does not include this clear and concise statement, nor does the Appeal Notice describe the basis of the Petitioner's standing to appeal under 310 CMR 10.05(7)(j)2.a. Pursuant to my authority under 310 CMR 1.01(5)(a)15.d., the Petitioner is ordered to provide a more definite statement by **July 19, 2024**. The Petitioner is also ordered to provide a completed and signed Fee Transmittal Form.

(emphasis in original).

After granting a brief extension, the Petitioner filed a More Definite Statement. In that statement, the Petitioner stated, in part, the following:

The project overall is inconsistent with the intent of the Wetland Act and Regulations 310 CMR 10.02 which is to protect freshwater wetlands and control stormwater and preserve wildlife. The application submitted intends to build a single family home on a lot in a developed subdivision. This subdivision was created over 20 years prior to this application. In those 20 years this Lot has remained as the only undeveloped lot....

This proposed Lot was declared for Open Space - indicated on the subdivision plan. Second, the Lot contains wetlands and ground water protection area. Development of this Lot will directly affect all categories of areas significant to protection. This Lot should not be developed as so to allow it remain in its natural state for the protection of these interests....

The original decision and decision at the Regional Level correctly found that the area is significant to protection but ignored the intent of the Lot when it granted standard conditions. 310 CMR 10.03(1)(a)(l).

More Definite Statement, pp. 1-2. I determined that the More Definite Statement still failed to meet the requirements of 310 CMR 10.05(7)(j)2.b.v.

I issued an Order to Show Cause on July 29, 2024, stating, in part: "The Petitioner is therefore given until **August 16, 2024**, to show cause why this case should not be dismissed for failure to comply with 310 CMR 1.01(6)(a). Any response should include a statement that meets the requirements of 310 CMR 10.05(7)(j)2.b.v." Order to Show Cause, p. 3 (emphasis in original). The Petitioner did not file anything further with OADR.

**I. Analysis.**

**A. Pleading Standard for Notices of Appeal.**

A wetlands appeal is commenced by filing an Appeal Notice. 310 CMR 10.05(7)(j)2.a. 310 CMR 1.01(6)(b) requires that an Appeal Notice "state specifically, clearly and concisely the facts which are grounds for the appeal, the relief sought, and any additional information required by applicable law or regulation." When an Appeal Notice does not meet the requirements of 310 CMR 1.01 and other applicable regulations, 310 CMR 1.01(6)(b) allows the Presiding Officer to "dismiss the appeal or require a more definite statement." In the event the Petitioner fails to file a more definite statement within the required time, the appeal "shall be dismissed." Id.

The Wetlands Regulations also require that an Appeal Notice include specific information, 310 CMR 10.05(7)(j)2.b., including:

a clear and concise statement of the alleged errors contained in the Reviewable Decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c. 131, § 40, including reference to the statutory or regulatory provisions the Party alleges has been violated by the Reviewable Decision, and the relief sought, including specific changes desired in the Reviewable Decision. The Petitioner's Notice of Appeal does not comply with the regulations.

310 CMR 10.05(7)(j)2.b.v. If the Appeal Notice does not contain this required information, then the appeal may be dismissed. 310 CMR 10.05(7)(j)2.c.

**B. The Petitioner's Appeal Notice does not meet the requirements of 310 CMR 1.01(6)(b) and 310 CMR 10.05(7)(j)2.b.v.**

The Petitioner's Appeal Notice (including the More Definite Statement) fails to provide "a clear and concise statement of the alleged errors contained in the Reviewable Decision[,] how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the [MWPA], and the relief sought, including specific changes desired in the Reviewable Decision." 310 CMR 10.05(7)(j)2.b.5. I therefore requested that the Petitioner file his More Definite Statement.

The More Definite Statement is also deficient in two ways. First, the Petitioner failed to identify any section of the Wetlands Regulations that the SOC violated except for the abstract principles of 310 CMR 10.02 and 10.03. There was nothing indicating that there was a procedural violation or that the construction failed to meet the applicable performance standards. Second, the More Definite Statement, in seeking to enforce the intent of the subdivision, has asked me to resolve a property dispute, though it is long settled that the Department may not adjudicate a property dispute. Tindley v. Dept. of Environmental Quality Engineering, 10 Mass.

App. Ct. 623, 411 N.E. 2d 187 (1980). Jurisdiction over matters of title is granted only to the Superior Court, see G.L. c. 212, § 4, and Land Court. See G.L. c. 185, § 1. "The Department does not adjudicate property disputes and typically will accept a colorable claim of ownership as the basis for the submittal of a Notice of Intent." Matter of John Schindler, OADR Docket No. WET-2011-024 and 026, Recommended Final Decision (Dec. 5, 2011), 2011 MA ENV LEXIS 135, \*7, Adopted as Final Decision (Dec. 27, 2011), 2011 MA ENV LEXIS 134.

Despite having been given multiple opportunities, the Petitioner has failed to fix the deficiencies in its Appeal Notice, and in fact submitted no response to the Order to Show Cause at all. See 310 CMR 1.01(10) (authorizing sanctions for failure to "comply with orders issued"). Dismissal is therefore appropriate.

## **II. Conclusion.**

The Petitioner's Appeal Notice fails to comply with the rules for filing an appeal. For the foregoing reasons, I recommend that the Commissioner issue a Final Order dismissing this matter for failure to comply with 310 CMR 10.05(7)(j)2.b.



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Patrick M. Groulx  
Presiding Officer

**Date:** August 30, 2024

### **NOTICE OF RECOMMENDED FINAL DECISION**

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to MassDEP's 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)(d) and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

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

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