

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**

November 28, 2023

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In the Matter of  
Wall Street Development Corp.  
315-319 Summer St.  
(Warwick Road Extension)

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OADR Docket No. WET-2023-001  
MassDEP-SE-File # 315-1276

OADR Docket No. WET-2023-013  
MassDEP-SE-File # 315-1286  
Walpole, MA

**RECOMMENDED FINAL DECISION**

Wall Street Development Corp., (both the “Petitioner” and the “Applicant”) initiated an appeal on February 6, 2023 to challenge the denial of a request for a Superseding Order of Conditions (“SOC”) issued by the Massachusetts Department of Environmental Protection Southeast Regional Office (“MassDEP” or the “Department”) (MassDEP-SE-File No. 315-1276; OADR Docket No. WET 2023-001). The Applicant sought the SOC to review the denial of an Order of Conditions issued by the Walpole Conservation Commission (“WCC”) regarding a proposed 2-lot residential subdivision at 315-319 Summer Street, Walpole, Massachusetts.

After the filing the February 6, 2023 appeal, on April 4, 2023 the Applicant filed a subsequent Notice of Intent for the same or similar project (“MassDEP-SE-File No. 315-1286” or “refiled NOI”) with the WCC. As a result, I stayed these proceedings consistent with MassDEP Policy 88-3, Multiple Notice of Intent Filings for the Same or Similar Projects on the Same Property (“Policy 88-3”).<sup>1</sup>

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<sup>1</sup> Policy 88-3 encourages such refilings at the local level, essentially in the interest of early settlement for an applicant to resolve its differences with the Department and the Conservation Commission, and provides that upon written notice of a refiling, the original appeal will be stayed while the new filing is processed. Policy 88-3 also provides that the Applicant has 21 days from

On August 21, 2023 I directed the Applicant to provide a Status Report detailing the status of the refiled NOI by September 11, 2023. The Applicant's subsequent Status Report indicated that the WCC had accepted the refiled NOI as complete but failed to hold a public hearing within twenty-one (21) days and the Applicant appealed the failure to MassDEP. MassDEP then issued as SOC denial of the refiled NOI on August 25, 2023.<sup>2</sup> On September 8, 2023 the Applicant appealed the SOC denial of the refiled NOI, which is assigned OADR Docket No. WET 2023-013.

Pursuant to 310 CMR 1.01(5) and 310 CMR 1.01(6)(d), I ordered the Petitioner to show cause why the earlier appeal should not be dismissed consistent with Policy 88-3. The Petitioner filed its response on October 27, 2023 and agreed that the earlier appeal (OADR Docket No. WET-2023-001; MassDEP-SE-File #315-1276) could be dismissed without prejudice pursuant to Policy 88-3. The Petitioner will go forward with OADR Docket No. WET-2023-013; MassDEP-SE-File #315-1286. I recommend that MassDEP's Commissioner issue a Final Decision dismissing WET-2023-001 to allow WET 2023-013, the appeal for the same or similar project, to proceed.

**Date:** November 28, 2023



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Margaret R. Stolf  
Presiding Officer

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the date of issuance of an Order of Conditions resulting from the refiled NOI to withdraw, in writing, one of the two pending Notices of Intent. Failure to do so will result in the Applicant being required to Show Cause why the earlier filed Notice of Intent should not be dismissed.

<sup>2</sup> The Applicant's Status Report incorrectly indicated that MassDEP had not yet issued an SOC.

## **NOTICE- RECOMMENDED FINAL DECISION**

This decision is a Recommended Final Decision 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 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 shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

## **SERVICE LIST**

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