

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

September 19, 2017

In the Matter of
Weiss Farm Apartments, LLC

OADR Docket No. WET-2016-015
Stoneham, MA

RECOMMENDED FINAL DECISION ON RECONSIDERATION

The Commissioner of the Massachusetts Department of Environmental Protection (“MassDEP”) previously issued a Final Decision adopting the Recommended Final Decision (“RFD”) issued in this appeal. The RFD recommended that MassDEP’s Commissioner issue a Final Decision and a Final Order of Conditions affirming the Superseding Order of Conditions issued to the Applicant, Weiss Farm, LLC, but with the minor project changes discussed in the RFD. The RFD was issued pursuant to the Wetlands Regulations, 310 CMR 10.00, and the Wetlands Act, G.L. c. 131 § 40.

Since then, the Petitioner, Town of Stoneham Conservation Commission, filed a motion for reconsideration of the Final Decision. MassDEP and the Applicant oppose the motion for reconsideration. I recommend that the motion be denied.

STANDARD OF REVIEW

To succeed on a motion for reconsideration a party must meet a “heavy burden.” Matter of LeBlanc, Docket No. 08-051, Recommended Final Decision on Reconsideration (February 4, 2009), adopted by Final Decision (February 18, 2009). The party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was “clearly erroneous.”

See 310 CMR 1.01(14)(d). In addition, “[w]here [a] motion [for reconsideration] [1] repeats matters adequately considered in the final decision, [2] renews claims or arguments that were previously raised, considered and denied, or [3] where it attempts to raise new claims or arguments it may be summarily denied.” Id.

DISCUSSION


The motion for reconsideration revisits an issue I previously addressed and ruled upon. In particular, I previously denied motions to dismiss and stay that were filed on the eve of the adjudicatory hearing. The Petitioner contends it was error to deny the motion to stay while the bylaw appeal is pending. Because the issue was previously raised and addressed, that alone is grounds for denial. I will add that the denial of the stay under these circumstances was appropriate given that: (1) the parties had already expended very substantial resources in preparing for the hearing; (2) there is a regulatory obligation to resolve appeals expeditiously and judiciously; (3) the DEP and Applicant opposed the stay; (4) the absence of good cause for the Petitioner to have waited several months and until the day before the adjudicatory hearing to file the motion; and (5) the need to avoid rewarding the Petitioner with the sought-after delay after failing to raise the issue until the day before the adjudicatory hearing and after vast resources had been expended. The Petitioner’s allusion to the RFD finding the bylaw denial is “invalid” and “without effect” is without merit. Motion for Reconsideration, p. 2. The RFD never made such finding. Instead, it simply stated that this appeal would not be stayed or dismissed while the bylaw denial and the effect of such denial were appealed in the appropriate forum, which is not here.

For all the above reasons, the Petitioner’s motion for reconsideration should be denied.

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.

Date: 9/19/17



Timothy M. Jones
Presiding Officer

SERVICE LIST

In The Matter Of:

Weiss Farm Apartments, LLC

Docket No. WET-2016-015

File No. 297-0371
Stoneham

Representative

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