

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN RE: Wings Financial Marketing Corporation (previous applicant Robert Catanzaro)
Fresh Water Wetlands Application No: 87-276F

DECISION AND ORDER

This matter is before the Hearing Officer on the application of Wings Financial Marketing Corporation (previous applicant Robert Catanzaro) to alter fresh water wetlands on the west side of Shippee Road in the Town of East Greenwich, Rhode Island.

The applicant requested permission to alter fresh water wetlands by clearing vegetation, filling, grading land, discharging drainage and creating soil disturbance in and within 50 feet of a wooded swamp wetland complex for the purpose of construction of a subdivision roadway through the said wetland complex.

The application was denied by the Wetlands Section of the Department of Environmental Management (DEM) and a hearing was requested.

John B. Webster, Esq. and Michael A. Kelly, Esq. of Adler, Pollock & Sheehan, Inc., represented the applicant and Howard M. Cohen, Esq. and Charles P. Messina, Esq. represented the Department of Environmental Management.

The prehearing conference was held on January 6, 1989 pursuant to notice by DEM.

The Pre-Hearing Conference record was prepared by the Hearing Officer and the following stipulations were entered by the

parties:

a. That Wings Financial Marketing Corporation has the necessary ownership status and is the proper party proceeding in this matter;

b. That the records on file are to be admitted, however, their correctness is not admitted, and the parties reserve the right to question same;

c. That the applicant reserves rights to question the letter of denial and the reasons stated therein.

At the original public hearing scheduled for January 11, 1989, upon motion of the applicant and agreement by the Department, an order was entered by the Hearing Officer allowing the applicant to submit revised plans, and a hearing commenced on said revised plans as submitted on February 22, 1989.

Public hearings were held on January 11, 1989, February 22, 1989, March 9, 1989, March 23, 1989, March 29, 1989, April 6, 1989, April 11, 1989, April 20, 1989 and April 25, 1989.

All of said public hearings were held in appropriate places at locations as convenient as reasonably possible to the site of the proposed project, pursuant to notice by DEM.

The following documents admitted into evidence were marked numerically as follows:

<u>Exhibit No.</u>	<u>Description</u>
1.	Formal Application to Alter a Wetland No. 87-276F dated 9/22/87.
2.	Construction Plans for Deer Run dated 9/10/87.
3.	DEM Denial Letter from Stephen Morin to Robert Catanzaro dated 6/30/88.
4(a)	Letter from Margaret A. Laurence, Esquire to

Stephen G. Morin dated 7/7/88.

- 4(b) Letter from Margaret A. Laurence, Esquire to Stephen G. Morin dated 7/15/88.
- 4(c) DEM Letter from Stephen G. Morin to Margaret A. Laurence, Esquire dated 7/29/88.
5. DEM Attendance Sheet Informal DEM Conference dated 8/3/88.
6. DEM Review Panel Recommendations dated 5/28/88.
7. Wetland Wildlife/Recreation Evaluation dated 5/25/88.
8. DEM Engineering Review Sheet dated 11/19/87.
9. DEM Notice of Administrative Hearing and Pre-Hearing Conference dated 12/19/88.
10. Revised Construction Plans for Deer Run dated 1/27/89.
11. DEM Notice to Abutters of Revised Application from Brian C. Tefft dated 1/31/89.
12. Detention basin design and wetland crossing design from SEM Engineering Associates dated 1/14/89.
13. DEM Evaluation of Application for Permission to Alter Freshwater Wetlands dated 2/29/89.
14. DEM Engineering Review Sheet dated 2/20/89.
15. Revised Construction Plans, Sheet 2 of Exhibit 10.
16. Letter from L. Dill to R. Moran, dated 8/30/88.
17. Letter from L. Dill to H. Heuling dated 8/30/88 (22 pages).
18. Abutter Objections to Revised Application 1989.
19. Resume of Scott F. Moorehead.
20. East Greenwich Conservation Commission Letter 2/15/89 re: Revised Plans.
21. Revised Construction Plans, Sheet 4 of Exhibit 10.
22. Base plan of site with existing topographic and wetlands conditions - watershed areas.

23. Cross section of site with surface and ground water evaluations.
24. Development Sketch, Assessors Plat, Lot 13 at Shippee Road dated December, 1988.
25. Exhibit No. 22 with delineations of flow into basins.
26. Resume of John Meyer.
27. U.S.G.S. Water Supply Paper No. 1775, Plate 2.
28. DEM Rules and Regulations Governing the Enforcement of the Fresh Water Wetland Act dated 6/15/81.
29. Hand drawn schematic illustration of ground/surface water by John Meyer.
30. Resume of John Travassos.
31. ESC Report, "Investigation of Environmental Impacts from the Proposed Tipping Rock Estate Subdivision East Greenwich, Rhode Island".
32. Department of the Army Corps of Engineers "Memorandum for Chief of Regulatory Branch re: Wetland Evaluation Technique (WET)" dated 9/28/88.
33. "Buffer Zones for Water, Wetlands & Wildlife", by Brown & Schaeffer; dated 10/87.
34. U.S. EPA "Loudness and Decibel Chart" dated 2/77.
35. Rhode Island Water Resources Board "Slocum Quadrangle Map", GWM No. 2.
36. MAP - Rhode Island Water Resources Board Ground-Water Reservoirs in Stratified-Drift Aquifers.
37. Exhibit 36 of Rhode Island Water Resources Board Map with Brian Tefft's markings.
38. Resume of Margaret Bradley.
39. DEM Letter from Stephen Morin to Karen Wilson (EPA) dated 3/15/88.
41. Resolution of Town of East Greenwich dated December 8, 1987.
42. Federal Register dated 5/26/88.

43. Resume of Brian Tefft.
44. Aerial photograph of Shippee Road area dated 4/70.
45. DEM Letter from Dean H. Albro to Robert Catanzaro dated 12/2/87.

The Burden of Proof that the subject proposal is not inconsistent with the provisions of the Rhode Island General Laws and the Rules and Regulations of DEM remain with the applicant.

Linda A. Dill was the first witness called to testify for the applicant. She is the Executive Vice President of Wings Financial Marketing Corporation (Wings) the present owner and applicant in this matter.

She stated that Wings purchased the subject property in January of 1988 from Robert Catanzaro, (with Wings planning to pursue the pending application with DEM to alter the fresh water wetlands present on said property), and that direct access from Shippee Road would require crossing said wetlands.

Scott F. Moorehead testified next for the applicant. He has a Bachelor of Science Degree in Civil Engineering from MIT. Mr. Moorehead was qualified as an expert Engineer.

He testified that he visited the site four times; that the entire parcel, including some initial frontage lots, was approximately 70 acres; that it is 100% wooded; that one fourth of the way back there is a large wooded swamp that transects the site in a west-east direction; and that there are approximately 53 acres involved in the proposed project, with 427 feet of roadway and 23 lots (for single family homes).

He explained that the revised plans provide for a three span bridge with an open span culvert across the wetland area; that

the revised plans reduced the road width from 30' to 24', thereby resulting in savings of 20% of surface runoff water; and that said revised plans call for three detention basins.

Mr. Moorehead opined that the project would not pollute the wetlands on the site; that it would not create any adverse effect on water supply, either on the site or adjacent property; that said revised plans would cause the least reasonable alteration of wetland and buffer zone, and that there was no other available or reasonable method to access this property.

Under cross-examination, Mr. Moorehead stated that he was not aware that the site is in a Federally designated sole source aquifer, but he was aware that the site is hydrologically connected with the Hunt's river.

Mr. Moorehead elaborated on the proposed Clear Span Bridge; that the total structure would be 38' long, with clear spans of 10', having natural soil underneath; that the surface water from the bridge would drain to a set of catch basins, which would channel the water directly into the wetlands; and that salt used by the Town of East Greenwich on the bridge and roads (to prevent freezing) would flow with the surface water into catch basins and said flow would be discharged directly into the wetlands.

It was elicited from this witness that road salt is one of the harder pollutants to control in a development like this, and the proposed detention basins were not sedimentation control basins. Also, applicant's proposal does not address the removal of road salt from the sedimentation ponds, nor propose oil/water

separators in the detention basins, which would be more effective in removing pollutants.

Mr. Moorehead stated he did not look at the guidelines on salt standards for drinking water (before testifying) for this project, since he did not believe that surface water runoff from this project will have a negative effect on drinking water. He acknowledged, however, that there are dug wells in the area, which are more susceptible to surface water pollution than driven wells.

Further questioning elicited that a development sketch of Mr. Andruchow's nearby property indicated a proposed road leading off into the Wing's site through the Heuling's property (which adjoins Wing's property), and his response to questioning about said roadway showing access through Andruchow property to Wing's property was "it could be, I suppose, a roadway".

John Meyer was then called to testify for the applicant. He is the director of Environmental Scientific Corp.(ESC) and has a Bachelor of Science from the University of Connecticut and a Masters of Arts from the University of Hartford. His specialization is Aquatic Toxicology. He was admitted as an expert in Biology and Ground Water Impacts.

Mr. Meyer's testimony was that the applicant's evaluation of wetlands was done by two methods:

1. DEM's model of wetlands (Golet)
2. Army corps of Engineers wetlands evaluation technics (WET).

ESC did a pre/post - project stormwater pollutant loadings

process.

He explained that there are two different areas which recharge aquifers:

1. Secondary Recharge (this site typically)
2. Primary Recharge

Mr. Meyer's opinion was that the subject property was not a groundwater recharge area and does not recharge a groundwater aquifer and the proposed project cannot pollute a groundwater aquifer and it cannot effect any drinking water from the aquifer. Further, that road salts would have no adverse effect on wetlands nor the adjacent wells .

This witness explained that the revised plans provided for a 42% decrease in direct impact to wetlands; that in his opinion, the alterations to wetlands were necessary, not random, (but) "that as to undesirability, there would be no adverse impact, so in that sense, not undesirable."

He further testified: that the wetland is in a secondary recharge area, which feeds into a primary recharge area and that water flows from secondary to primary.

That surface water from roads in theory may affect water quality.

That swamps and other fresh water wetlands act as buffer zones and the proposed bridge would reduce the buffer zone.

That the project would have a slight direct impact on wetlands.

Mr. Meyer admitted that ECS's analysis of pollutants does not analyze for sodium and chloride, which are constituents from

road salt runoff; and that they had no data for suspended solids, phosphorus, nitrogen or hydrocarbons.

The applicant then called Brian Tefft, a supervisor with DEM - Fresh Water Wetlands Section, who prepared the Wetland/Wildlife Evaluation for Catanzaro, and also regarding the revised plan. He explained his reasons for recommending the denial of the project, viz., that the wetland is 1.1 mile from the actual physical boundary of the groundwater reservoir, and that this wetland shared a direct surface water hydrological link to the Hunt River Aquifer.

Mr. Tefft testified that the proposed alternation of wetland would encompass total of 27,184 square feet (about .62 acres) , but that the impact extends well beyond the physical area altered; and although the subject wetland does not specifically meet the definition of a valuable wetland per 7.06 (b)(1), of the rules and regulations of DEM that it is nevertheless excellent as a "term of art".

In response to questions asked by the applicant's attorney, Mr. Tefft admitted that he did not see hunters, skiers, bird watchers, nor educational purposes, nor nature photography, but that hunting might be allowed; and he felt that the project is certainly undesirable, if not random and unnecessary.

John Travassos was called to testify for the applicant. He is President and Managing Partner of Environmental Scientific Corp. He has a Bachelor of Science Degree from the University of Rhode Island in Natural Resources, with a concentration in wildlife management and wetlands. He was admitted as an expert

in Natural Resources/Biology.

He testified that he supervised the evaluations of wetland wildlife and recreation; however, he admitted that he did not consider nor perform any specific studies on the effects of trucks and traffic noises on wildlife, nor did he evaluate the effects of domestic animals (cats & dogs), nor the permanent impact on wildlife.

Mr. Travassos stated that he did two site walks; that the WET system came up a medium score, which is similar to rankings or scores by the modified Golet system (with respect to wildlife); that he did a post projection assessment of the site.

He stated that 32,000 square feet will be displaced by the proposed alteration, but there would be no negative impact on wildlife species on the site as a result of the project, and that the site does offer some recreational opportunity, but he saw no sign of people recreating there now.

Mr. Travassos stated further that the subject wetland feeds into a stream and is hydrologically connected with adjacent wetlands and the connection adds to overall value of wetlands.

Mr. Travassos explained that the studies performed of the increases of pre to post project pollutants were as follows:

1. Phosphorus - 400%
2. Lead - 300%
3. Hydrocarbons - from 0 to 5.6 kilograms (12 lbs.) of yearly constituents like Benzine & Carcinogan.
4. Zinc - 200%

The Department called as its first witness Margaret Dean

Bradley, who is a Hydrogeologist with DEM, Groundwater Section. She has a Master's Degree in Geology from the University of Rhode Island and a Bachelors Degree in Geology from Smith College. She maps groundwater flow.

She was admitted as an expert Hydrogeologist.

Ms. Bradley testified that it is evident that groundwater from the site ends up in a groundwater reservoir; that the definition of a "sole source aquifer" is that more than 50% of the population living over it, use it, and that the site is located within the Hunt-Annaquatucket-Pettaquamscutt (HAP) sole source aquifer; that there exists vulnerability of the site in that road salting is a problem and a threat down gradient.

She stated that the site is about 1 1/2 miles from a major sand and gravel deposit that makes up the major aquifer, and there exists very much of a possibility that the project will hurt the public drinking water supply in the area and the project will pollute the aquifer.

Stephen G. Morin was called and testified that he is the Chief of Division of Groundwater and Fresh Water Wetlands; that he made the final determination of the Dept. denial; which was based on Mr. Tefft, site data and reports as measured against the policies and procedures in the Rules and Regulations and the Law.

Brian Tefft was then called by the Dept. He has a Bachelor of Science Degree in Natural Resource Management from the University of Rhode Island, and a Master of Science degree in Wildlife Management from Frosberg State College.

He testified that he visited the site six times; that the wetlands consists of approximately 17 acres, and the drainage direction from the wetlands is south, southeast, eventually confluencing with Scrabbletown Brook.

Mr. Tefft stated that he observed various birds, den trees for mammals and deer droppings (presence of white tail deer), fox and cottontail rabbits; that currently the area is relatively natural and undeveloped and that recreational activities would be affected by a bridge and roadway.

He explained that the Golet score (wildlife) contributes to overall value of wetlands in that it contributes to the recreational value of the area.

The Hearing Officer, attorneys and parties thereupon took a view of the site.

When the hearing resumed, Mr. Tefft stated that physical disturbance factors (noise, etc. - area of impact) extends beyond the actual physical disturbance.

Mr. Tefft's opinion was that the project will have a serious impact, viz., a measurable loss of the recharge area within the watershed of a sole source aquifer which attributes directly to the groundwater reservoir; that the accumulation of sediments can have a negative impact on wildlife habitat through the destruction of vegetation as the sediment (approximately 8 lbs. per year) will probably move less than 20 feet.

Mr. Tefft stated that Mr. Andruchow (the owner of neighboring property) has a project approved by DEM, which might indicate alternative access. If alternative access does exist, it

may not be necessary to alter wetlands.

Mr. Meyer was recalled as a rebuttal witness by applicant. He stated that the wetlands on the site recharges a groundwater aquifer mainly through surface water and that the project will not have an adverse impact upon the Hunt River Aquifer.

It should be noted that the Town of East Greenwich, by resolution dated December 8, 1987, declared that "East Greenwich relies on the Hunt-Annaquatucket-Pettaquamscutt Aquifer system as its sole source (more than 51%) for the municipal drinking water supply"; and the United States Environmental Protection Agency recognized the sensitivity of this area by declaring it a Sole Source Aquifer.

Further, the Town of East Greenwich in a letter to DEM dated February 15, 1989, (in reference to this project) stated that after review of the revised plans, "we feel very strongly that the project will have a major impact on the wetland based on the information furnished to date . . ."

A review of the issues involved indicates the applicant placed great stress on the fact that it incorporated the most environmentally appropriate mitigation measures for reduction of potential groundwater or wetland contamination by stormwater runoff from the proposed bridge and roadway and that every effort had been made to minimize impacts and mitigate unavoidable loss of wetland wildlife habitat by this project. However, a detailed review of its revised plans and the evidence presented indicates that insufficient tests and analysis were done and the results of those taken do not support these allegations. The

alterations proposed would directly impact wetlands adversely and as such are not consistent with the policy and spirit of the Statute and the Rules and Regulations.

Groundwaters are transported from the site via the Scrabble-town Brook, which feeds into the Hunt River, and the site is hydrologically connected with the HAP Reservoir.

The testimony clearly established that the proposed project will reduce the size of the wetlands by two-thirds of an acre, and said project will reduce the ability of the subject wetland to recharge a ground water aquifer.

Although the applicant's witnesses made bold assertions that the project would not affect the quality of the water, it appears their conclusions were based on mere speculation and not properly substantiated. Inadequate measures were planned to prevent contaminants and pollutants in surface water runoff from entering into and harming this fragile wetland area.

The applicant's position as to the issue raised concerning the value of the wildlife and recreational habitat, indicates the applicant failed to give due consideration to the fact that a wetland may be considered "valuable" because of its recreational environment, if it is "capable" of supporting recreation, and other factors should be considered in the determination of its value.

Although the evaluation of the wetlands of the subject property did not place it in a "valuable wildlife habitat" category, according to the revised version of the "Wetland Wildlife Evaluation Model" (Golet), said wetlands clearly provide a valuable

recreational environment.

The testimony of the applicant's expert witnesses as to possible alternative access to the site appeared self-serving, basically unsubstantiated, and tended to affect their credibility.

In reviewing the conflicting testimony of the witnesses, I have found the testimony of the Department's expert witnesses clearly more credible; that their opinions were based on scientific facts and were sincere, honest evaluations of the project and its effect on wetlands. I have therefore accorded more weight to the testimony of the department's witnesses.

Although much thought and careful consideration was given to the rights of the applicant concerning utilization of its property and the prevention of any economic loss, these factors were outweighed by the compelling and overriding need to protect and preserve the purity and integrity of Fresh Water Wetlands.

The health, welfare and well being of the populace and the protection of property require denial of the proposed alteration of the subject wetland, so as to avoid harmful impact on wildlife, potential recreational uses and contamination of present and future drinking water in such a critically sensitive area.

FINDINGS OF FACT

After review of all the documentary and testimonial evidence of record, I make the following specific findings of fact.

1. A Prehearing Conference was held on June 6, 1989.
2. Public Hearings were held on January 11, 1989, February 22, 1989, March 9, 1989, March 23, 1989, March 29, 1989, April

6, 1989, April 11, 1989, April 20, 1989 and April 25, 1989.

3. All hearings were held at sites as convenient as reasonably possible to the site of the proposed project.

4. All hearings were conducted in accordance with the provisions of the "Administrative Procedures Act" (Chapter 42-35 of the General Laws of Rhode Island, and specifically Section 42-35-9) and the "Fresh Water Wetlands Act" (Rhode Island General Laws Sections 2-1-18 et seq.).

5. The parties stipulated that Wings Financial Marketing Corporation has the necessary ownership status and is the proper party proceeding in this matter.

6. The applicant submitted revised plans concerning the subject application, pursuant to the agreement of the parties and the order of the hearing officer; and the hearings conducted were in review of said revised plans.

7. The applicant seeks approval to alter a Fresh Water Wetlands on a parcel of land located west of Shippee Road, .5 miles south of the intersection of Frenchtown Road and Shippee Road, described as Tax Assessors Plat 19-0 lots 9 and 10, opposite pole #8 1/2, in the Town of East Greenwich, Rhode Island. The parcel of land involved in the proposed project consists of approximately 53 acres.

8. The revised plans call for a roadway with an open span construction style bridge crossing said wetlands to service 23 proposed lots (for single family homes) which lie to the rear of the subject premises.

9. The wetlands portion of said land consists of approxi-

mately 17 acres which run in a north/south direction across the entire parcel, and continues onto the property abutting both sides of applicant's land.

10. A hydrologic connection exists between the subject wetlands and the adjoining wetlands.

11. A small intermittent stream is located at the southern edge of the wetlands, which stream flows south toward Scrabbletown Brook, which feeds into the Hunt River, so that the wetlands in the area are associated with the watershed of the Hunt-Annaquatucket-Pettaquamscutt (HAP) Aquifer.

12. A hydrologic connection exists between the subject wetlands and the HAP aquifer.

13. That the wetlands in this area provide a recharge source for the ground water reservoir which provides East Greenwich with drinking water.

14. That the Town of East Greenwich relies on the HAP Aquifer System as its sole source (more than 50%) for the municipal drinking water supply.

15. That the proposed project will permanently reduce the size of the wetland by approximately two-thirds of an acre, which will reduce the ability of the wetland to recharge a ground water aquifer.

16. That the proposed alterations to wetlands will adversely affect water quality through sedimentations and various pollutants.

17. That the subject wetland is in a relatively natural and undeveloped area, which in its natural state is capable of sup-

porting recreation by the general public, which provides a valuable recreational environment and is thereby considered a "valuable" wetland.

18. That the proposed project will adversely effect the wildlife habitat and the recreational environment and will reduce the value of a "valuable" wetland.

19. That the proposed project would thwart the policies expressed in Rhode Island General Laws Section 2-1-19 and is inconsistent with the functions enumerated in Section 2-1-18.

CONCLUSIONS OF LAW

Based upon all the documentary and testimonial evidence of record, I conclude the following as a matter of law:

1. All of said public hearings were held in appropriate places at locations as convenient as reasonably possible to the site of the proposed project.

2. All hearings were held in accordance with Rhode Island General Laws, the Administrative Rules for Practice and Procedure for DEM, DEM Rules and Regulations governing the enforcement of the Fresh Water Wetland Act.

3. That the proposed alteration is inconsistent with the public interest and public policy as stated in Sections 2-1-18 and 2-1-19 of the Rhode Island General Laws and Section 1:00 of the Rules and Regulations of the Department of Environmental Management.

4. That the alteration to the wetlands proposed by the applicant will cause the undesirable disturbance of a fresh water wetland which should be protected by the director.

5. That the proposed alteration will cause an unnecessary and undesirable destruction of fresh water wetlands in that said alterations will result in the reduction of the ability of said fresh water wetlands to recharge a ground water aquifer which has been designated by the appropriate municipal authority as an existing or potential drinking water supply.

6. That the proposed alteration to the wetland will cause an undesirable destruction of fresh water wetlands in that said project proposes significant alterations which will result in the reduction of the value of a "valuable" wetlands which provides a valuable recreational environment.

7. The applicant has failed to sustain its burden of proof that its application will not cause random, unnecessary and/or undesirable destruction of fresh water wetlands.

THEREFORE, IT IS

ORDERED

1. Application No. 87-276F to alter fresh water wetlands be and is hereby denied.

WI hereby recommend the foregoing Decision and Order to the Director for issuance as a final Order.

10-13-89

Date

Joseph F. Baffoni
Joseph F. Baffoni,
Hearing Officer

The within Decision and Order is hereby adopted as a final Decision and Order.

10-13-89

Date

Robert L. Bendick, Jr.
Robert L. Bendick, Jr.,
Director, Department of Environmental Management

CERTIFICATION

I hereby certify that a true and accurate copy of the within Decision and Order has been sent first class mail, postage pre-paid to John B. Webster, Esquire and Michael A. Kelly, Esquire, Adler, Pollock & Sheehan, Inc., 2300 Hospital Trust Plaza, Providence, RI 02903 and Charles P. Messina, Esquire, 9 Hayes Street, Providence, RI 02908 on the 16th day of October, 1989.

Charles P. Messina