

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION

RE: OLD NORTH LAND INVESTMENTS, LLC  
SUBDIVISION SOIL EVALUATIONS

AAD NO. 11-004/ISA

ORDER

This matter came on before Hearing Officer David Kerins on the Motion to Dismiss filed by the Office of Water Resources (“OWR”) and the Objection thereto filed by Appellant Old North Land Investments, LLC (“Old North”).

The Motion seeks to dismiss the appeal filed by Old North by letter dated April 6, 2011. In his letter of appeal, the attorney for Old North states that his client is seeking relief “from a determination by the Department dated March 3, 2011...purporting to reject disclaim and render inconclusive soil evaluations previously witnessed and approved by or on behalf of the Director in accordance with the provisions of Rule 15.5 of the OWTS Rules”. The Appellant states that it is taking this appeal pursuant to Rule 49 of the OWTS Rules.

OWR, in its Motion and Memorandum in support thereof, argues that the appeal should be dismissed on the basis that this is not a “contested case” as provided for in the Administrative Procedures Act (“APA”) and therefore the Administrative Adjudication Division (“AAD”) is without jurisdiction.

Analysis

Rule 49.1 of the OWTS Regulations provides as follows. “Right to Appeal- Any person whose permit applications is denied may appeal to the Director for review of the

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decision on which the denial is based by filing an appeal with the Administrative Adjudication Division". Rule 49.2 goes on to say that the appeal shall be filed "within 30 (30) days of the denial of the subject application" (emphasis added).

On reading of the March 3, 2011 letter from Brian Moore of OWR shows that it is not a denial of an application. The letter expresses concern regarding previous soil evaluations and advises the applicant that it feels that wet season testing should be conducted in the coming season. The letter does not say that the application is denied. The OWR letter of March 3, 2011 is not a final determination of denial of an application from which an appeal could be taken.

**Findings of Fact**

1. The letter from OWR to Appellant dated March 3, 2011 is not a final determination denying Appellant's application.

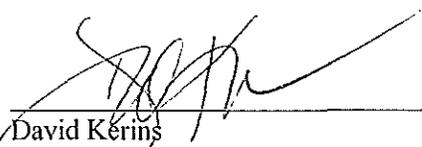
**Conclusions of law**

1. A preliminary request by OWR is not subject to appeal and/or request for Adjudicatory hearing before the AAD.
2. The AAD is without jurisdiction to hear the Appellant's appeal.

**ORDERED**

1. The appeal is Denied and Dismissed.

Entered as an Administrative Order this 14<sup>th</sup> day of June, 2011

  
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David Kerins  
Chief Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02908  
(401) 574-8600

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded, via regular mail, postage prepaid to: William R. Landry, Esquire, Commerce Center, 30 Exchange Terrace, Providence, RI 02903; Dennis Vinhateiro, Principal Planner, Town of South Kingstown, P.O. Box 31, Wakefield, RI 02880-0031 and via interoffice mail to Joseph LoBianco, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 14<sup>th</sup> day of June, 2011.

  
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Bruce L. Stewart