

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

IN RE: Mitchell J. & Tammie J. Parkhurst
Notice of Violation No. C90-0165

DECISION ON DIVISION'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came before Hearing Officer McMahon on July 14, 1992 pursuant to the Motion for Partial Summary Judgment filed by the Division of Freshwater Wetlands ("Division") on July 2, 1992. Said motion sets forth that there is no genuine issue as to any material fact relating to liability or restoration and that the Division is entitled to partial summary judgment as to liability and restoration as a matter of law. Respondents have filed no objection.

Background

At the Prehearing Conference on June 4, 1992, the parties agreed to the following stipulations:

1. A Notice of Violation and Order ("NOVAO") was issued to Mitchell J. and Tammie J. Parkhurst ("Respondents") on November 19, 1990.
2. Respondents received this NOVAO on November 26, 1990.
3. The NOVAO was recorded in the Burrillville Land Evidence Records on November 20, 1990 at Book 147, Page 218.
4. At the time that the NOVAO was issued, the Respondents were the legal owners of property located approximately 200 feet south of the intersection of Staghead Drive and Buck Hill Road, identified as Assessor's Block 2, Lot 139 in the Town of Burrillville, Rhode Island, the "site."

5. Respondents' filed a request for an adjudicatory hearing on December 5, 1990.
6. Freshwater wetlands as defined by the Freshwater Wetlands Act ("Act"); specifically a wooded swamp and its associated fifty (50') perimeter wetlands are located on the site.
7. The freshwater wetlands on the subject site were altered and remain in an altered state.
8. The Respondents or their agents constructed a garage in freshwater wetlands on the site.
9. The Respondents altered or permitted alteration of freshwater wetlands on the site.
10. Neither the Respondents nor any other person received a freshwater wetlands permit to alter the wetlands on the site.
11. The Respondents are the current owners of the subject property.

DECISION AND ORDER

Section 8.00 (a) of the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules") provides in pertinent part:

8.00 Motions.

a) General Requirements.

1. * * *

2. Presentation/Objection to Motions.

. . . Within seven (7) days after a written motion is filed with the Administrative Adjudication Division or AHO, a party opposing said motion must file a written

objection to the allowance of the motion and shall, if desired, request oral argument. All motions and objections shall be accompanied by a written memorandum, specifying the legal basis and support of the party's position. Failure to file a written objection within the prescribed time period, will be deemed a waiver of the objection (emphasis added).

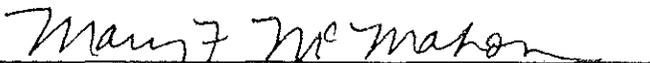
As a result thereof, the Division's motion for partial summary judgment will be granted on procedural grounds. Carol Anne Mancini, AAD No. 91-039/IE (Department's Motion to Dismiss granted 1/13/92); Fredric Dupuis Spotless Cleaners, AAD No. 92-001/AHE (Respondent's Motion to Dismiss granted 2/3/92).

Wherefore, it is hereby

ORDERED

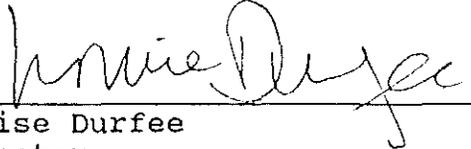
1. Division's Motion for Partial Summary Judgment is hereby granted as to Respondent's liability for altering freshwater wetlands without approval of the Division and as to the Order of Restoration.
2. A hearing will be scheduled regarding the penalty portion of the violation.

Entered as an Administrative Order this 14th day of July,
1992.


Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th Floor
Providence, RI 02908

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Entered as a Final Order this ^{HK} 20 day of July, 1992.



Louise Durfee
Director
Department of Environmental Management
9 Hayes Street
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision to be forwarded via regular mail, postage prepaid to John F. Pellizzari, Esq., Oster & Groff, Smithfield Avenue, Lincoln, RI 02865-0087 and via interoffice mail to Patricia C. Solomon, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 20th day of July, 1992.

