

IN RE: Lake Wionkhiege Improvement  
Association Freshwater Wetlands  
Application No. 91-0154F

DECLARATORY RULING

TRAVEL: The Applicant (Petitioner) in this matter has standing to Petition for Declaratory Rulemaking and has done so in the manner prescribed by regulation in a filing dated February 18, 1992. As is its right, the Division of Freshwater Wetlands objected to said Petition in its memorandum dated February 25, 1992.

PETITION: The Petitioner requests that the Director find and Declare as follows:

- 1). That Rule 2.03 (of the Freshwater Wetlands Regulations) requires only the signature of the owner of the "subject property" on which the proposed wetland alteration will be taking place, and not the signatures of all abutters who might somehow be "affected" by the application.
- 2). That the Applicant has submitted adequate proof of ownership with its application; and
- 3). That the Wetlands Division should proceed with its consideration of, and issue a decision on, the Applicant's application based upon the substantive merits of the proposed project.

Arguments in support of the above requested determinations were articulated by the Petitioner in its February 18 submission and rebutted by the Division in its filing of February 25. Those arguments speak for themselves and will not be characterized or summarized herein.

RULED that Rule 2.03 of the Department's Freshwater Wetlands Regulations requires that an application be signed by the owner of the property on which is located the wetland proposed to be altered pursuant to that application; provided that R.I. General Laws Section 2-1-20 defines such a wetland as including an [additional] "area of land within fifty feet (50') of the edge of any bog, marsh, swamp, or pond."

EXHIBIT D

In the matter before me, the proposed alteration, as characterized by the Petitioner itself, is the raising of a lake's present water level some 2 1/2 feet to a level represented as reestablishing a pre-existing condition. The legal wetland proposed to be altered pursuant to this application, therefore, incorporates all property which will be inundated, plus the additional fifty feet of so-called jurisdictional or statutory wetland prescribed by law. The Petitioner claims to own the, to be inundated, property in fee, but does not appear to assert an ownership interest in all, or some of the adjoining fifty foot wide jurisdictional/statutory wetland. The application must be signed, both by owners of inundated land and owners of associated (50') jurisdictional/statutory wetland, for it to be properly before the Division of Freshwater Wetlands.

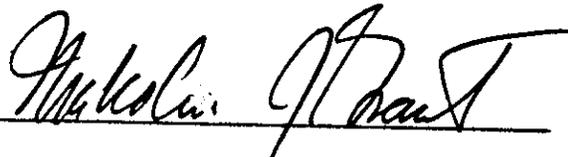
RULED That the Applicant has not established full ownership of the legal wetland proposed to be altered, most particularly as to the fifty foot jurisdictional/statutory portion of that wetland.

RULED that the Wetlands Division should not further consider or review and may not issue a decision on this application absent proof that it has been signed by owners of all property as described herein above.

ENTERED AS A DECLARATORY RULING

on March 23, 1992.

BY



Malcolm J. Grant  
In His Capacity As  
Designated Director

CERTIFICATION

I hereby certify that I caused a true copy of the within Declaratory Ruling to be forward to Attorneys Robert M. Steele and Henry R. Kates, Tillinghast Collins and Graham, One Old Stone Square, Providence, R.I. 02903 by regular mail, postage prepaid, and to Attorneys Catherine Robinson Hall and Kathleen M. Lanphear by Inter-office mail; all this 24 day of March, 1992.

