

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
Re: Sportsmen's Cove Associates
AAD No. 11-004/FWA
November 2011

DECISION AND ORDER

This matter came on before Hearing Officer David Kerins on the Department of Environmental Management's (the "Department") Motion to Dismiss Appeal and the Objection thereto filed by Sportsmen's Cove Associates ("Sportsmen"). The appeal was filed by Sportsmen's by request for hearing on September 13, 2011. The Department is represented by Richard Bianculli, Jr. Esq and Sportsmen is represented by John Dorsey Esq., and Mark Russo Esq. The parties have filed Memoranda in support of their positions as required by the Rules and Procedures of the Administrative Adjudication Division (the "AAD"). Neither party asked to present an oral argument.

The facts leading up to this appeal are not in dispute and for the purposes of this decision the Hearing Officer will adopt the facts presented in Appellant's Memorandum as follows:

1. The subject parcel is more particularly described as the mud cove overlook (the "Overlook") as described in the Certificate of Transfer of land (the "Certificate of Transfer") recorded in Book 275, Page 0386 in the Town of Charlestown land evidence records. The Overlook was acquired by the Rhode Island Department of Transportation ("RIDOT") through a condemnation of land pursuant to R.I. Gen Laws § 37-6.2-2 (the "Taking Statute").

2. The Talking Statue authorizes the Director of RIDOT to acquire by gift, purchase or condemnation any interest, estate, or right in and to real property adjacent to or within federal aid highways so as to improve strips of the lands necessary for restoration, preservation, and enhancement of scenic beauty within and adjacent to highways, or for the establishment of publicly owned and controlled rest and recreation areas, sanitary, and other facilities within and adjacent to the right of way of the highways reasonably necessary to accommodate the traveling public.

3. Pursuant to the Certification of Transfer, RIDEM acquired ownership of the Overlook from DOT. DEM has allowed the Town of Charlestown (the "Town") to assume care, control, and maintenance of the Overlook pursuant to the Park Use Agreement (the "Agreement") recorded at Book 293, Page 0500 of The of Charlestown land evidence records.

4. On or about November 29, 2010, the Town submitted an application to the Rhode Island Coastal Resources Management Council (the "CRMC") for the installation and construction of the mud cove nature trail (the "Nature Trail"). The application for the construction of the Nature Trail includes the installation of stone dust trails, picnic areas, a raised wetland walkover structure (the "Wetland Walkover"), a 10' x 20" salt pond observatory deck (the "Observatory Deck"), and a parking lot.

5. On or about May 4, 2011, the contested hearing was held before the CRMC regarding the Town's application for the construction of the Wetland Walkover/Observatory Deck. At the conclusion of the hearing, the CRMC granted the Town's application for the installation and construction of the Wetland Walkover/Observatory Deck. The approval was subject to RIDEM's approval of the proposed construction of the Wetland Walkover/Observatory Deck. Pursuant to the Agreement, the Town is required to obtain RIDEM's approval prior to any major alteration or construction of the Overlook.

6. Thereafter, Sportsmen's Cove pursuant to R.I. Gen. Laws § 42-35-15, filed an appeal of the CRMC decision to the Rhode Island Superior Court. Simultaneous with that appeal, Sportsmen's Cove filed the instant Petition for an administrative hearing, regarding RIDEM approval of

proposed Wetland Walkover/Observation Deck as it relates to the Agreement and the Taking Statute.

ANALYSIS

OC&I on its Motion and Memorandum argues that the AAD lacks jurisdiction to consider Sportsman's appeal and that if it did have jurisdiction the appellant lacks standing to file its appeal. Sportsman argues in its Motion and Memorandum that the AAD has jurisdiction over "contested licensing proceedings" and that it has standing.

A brief review of the facts show that the Rhode Island Department of Transportation (The "RIDOT") took title to property described as the "overlook" pursuant to RIGL § 37-6.2-2, the "Taking Statute". RIDOT thereafter conveyed title of the Overlook to the Rhode Island Department of Environmental Management (the "RIDEM"). RIDEM in turn entered into a Park Use Agreement with the Town of Charlestown. The Town of Charlestown applied to the Coastal Resources Management Council (the "CRMC") for permission to install a Nature Trail and Overlook Deck. CRMC granted Charlestown permission to carry out the work requested on the condition that the "Town must obtain the prior written consent of the department for any major alteration or construction" by decision dated July 12, 2011. Sportsman filed a request for hearing before the AAD on September 13, 2011.

It does not appear from the facts presented that Charlestown has requested a permit or permission from RIDEM for any major alteration or construction. It also does not appear that Charlestown has commenced to any major alteration or construction without permission.

The jurisdiction of the AAD is established by RIGL § 42-17.2-2 and includes hearing appeals in "contested licensing proceedings". The appeal filed by Sportsmen requests "an administrative ruling from RIDEM that the proposed Wetland Walkover and Observation Deck exceed the allowed use of the Overlook, pursuant to the Taking Statute".

The appeal of Sportsmen is not an appeal from a permit application which was granted or denied by RIDEM. It does not appear that Charlestown has filed an application for a permit. The AAD is not authorized by statute to rule on matters such as determining if a proposed project exceeds the allowed use pursuant to the Taking Statute. The AAD is without jurisdiction to consider and adjudicate the subject appeal. The appeal, therefore, should be dismissed.

FINDING of FACTS

1. On September 13, 2011 Appellant, Sportsmen's Cove Associates, ("Sportsmen") filed a request for "administrative ruling from RIDEM that the proposed Wetland Walkover and Observation Deck exceeds the allowed use of the Overlook, pursuant to the Taking Statute".
2. The appeal is not being taken from any permit or licensing approval or denial by the Rhode Island Department of Environmental Management ("RIDEM").
3. The appeal is not being taken from a "contested licensing proceeding".
4. The Administrative Adjudication Division of the Department of Environmental Management lacks jurisdiction to consider Sportsmen's appeal.

CONCLUSIONS of LAW

1. The AAD is authorized by RIGL § 42-17.7-2 to hear appeals involving "contested licensing proceedings".
2. The facts as alleged in Sportsmen's appeal do not constitute "contested licensing proceedings".
3. The AAD is without jurisdiction to consider Sportsmen's appeal.
4. The matter should be dismissed pursuant to Rule 12 (b) (1), 12 (b) (3) and 12 (b) (6) of the Rhode Island Superior Court Rules of Civil Procedure.

Wherefore, it is hereby

ORDERED

1. RIDEM'S Motion to Dismiss is **GRANTED**.
 2. The Appeal filed by Sportsmen's Cove Associates is **DISMISSED**.
Entered as an Administrative Order this _____ day of November, 2011.
- David Kerins
Chief Hearing Officer