

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

IN RE: Kambiz KARBASSI AAD No. 91-021/FWA
(Agent for Frank Gladding)
Freshwater Wetlands Application No. 90-0175F

ORDER

This matter came before Hearing Officer McMahon on March 23, 1992 pursuant to the Motion to Reconsider Denial of Town of Jamestown's Motion to Intervene which was filed on March 11, 1992. Objections were due March 18, 1992.

Applicant's Objection to Motion to Reconsider Denial of Town of Jamestown's Motion to Intervene was filed with the DEM Administrative Adjudication Division on March 19, 1992. The Objection to Motion to Reconsider Denial of Motion to Intervene by the Town of Jamestown was filed by the Division of Freshwater Wetlands on March 23, 1992.

Rule 8.00 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:

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

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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).

Clearly then the objections were untimely filed and must therefore be deemed waived. 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).

Rule 8.00 (a) 1 allows a party to request "any order or action not inconsistent with law or these regulations." Ordinarily a requested Order would be granted when there is no objection. Here, however, petitioner is not a party and seeks to have an Order reconsidered which was consistent with law and the DEM AAD Rules. Accordingly, petitioner's Motion to Reconsider cannot be granted solely upon procedural grounds.

I have reviewed the Town's Motion to Reconsider as well as its earlier Motions to Intervene which were filed on February 3, 1992 and February 20, 1992. The Motions to Intervene are identical in all substantive respects.

The Decision and Order entered on February 26, 1992 set forth the pertinent requirements of Rule 13.00 (Intervention and Participation) of the AAD Rules: petitioner must be present at the prehearing conference; the petition to intervene must be filed not later than seven (7) days prior to the date set for

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the initial prehearing conference; and the petition must specifically describe the injury in fact alleged by petitioner and set forth the manner in which petitioner's interests differ from, and are not adequately represented by existing parties. None of these requirements had been met by the Town of Jamestown.

In the Town's Motion to Reconsider, among cataloging the various alleged sins of the DEM AAD Clerk--or perhaps cataloging the various misinterpretations which were placed on an accurate dissemination of information--the Town Solicitor cites the timing of his appointment as grounds for the Town's noncompliance with Rule 13.00. His client, however, had more than two (2) weeks notice that a deadline for intervention existed. See the Notice of Administrative Hearing and Prehearing Conference sent by certified mail on January 3, 1992 to the Town Council President Victor V. Calabretta and by regular mail, same date, to Theresa C. Donovan, CMC, Jamestown Town Clerk, among others. Dr. Dennis Hart, AAD No. 91-005/ISA (Petition denied 1/9/92).

The Motion to Reconsider also devotes several paragraphs to the fact that the first Motion to Intervene was sent to the incorrect attorneys, requiring the second Motion to be filed.

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The Decision and Order recognized that even if the second Motion was considered filed nunc pro tunc, it would not have been timely filed. Decision and Order on the Town of Jamestown's Motion to Intervene, p. 2.

The Town has used its Motion to Reconsider to reiterate and expand on its reasons for intervention: the Town has "a specific interest in this case which interest may not necessarily be adequately represented" by DEM; that officials of the Town "have personal knowledge relative to Freshwater Wetlands problems in the subject area which would be of assistance to the trier of fact"; and that the interests of the Town and DEM "do not necessarily coincide in that should this variance be granted, and other similar variances be granted in the future" any diminution of the quality of life in the Town would be borne by the citizens of Jamestown and not by DEM.

While the Town has made it abundantly clear that it wants to be a party to this action, any petitioner must abide by the requirements of the AAD Rules and meet the legal standard for intervention. Rule 13.00 (d) specifies that "Intervenors shall be persons who have demonstrated an injury in fact which will result from a challenged action or application and whose interests are not adequately represented by other parties to the hearing." As a matter of law, I find that the Town has still

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not met the substantive requirements for intervention. Its basis is that it has a "specific interest", "personal knowledge" and down the road may be affected if DEM changed its mind in this instance and in future instances. This is clearly speculative and not a demonstration of injury in fact. Akroyd v. R.I. Dept. of Employment Sec., 585 A.2d 637 (RI 1991); E. Greenwich Y.C. v. Coastal Res. Man., 118 RI 559 (1977); R.I. Ophthalmological Soc. v. Cannon, 113 RI 16 (1974).

To allow intervention on the basis of the procedural and substantive inadequacies herein would be a complete disregard of properly adopted Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters. Accordingly, the Hearing Officer has determined that the Town of Jamestown's Motion to Intervene is and remains denied.

Entered as an Administrative Order this 23rd day of March, 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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CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded via regular mail, postage prepaid to James A. Donnelly, Esq., 24 Salt Pond Road (C-3), Wakefield, RI 02879-4324; Sean O. Coffey, Esq., One Park Row, Providence, RI 02903 and via interoffice mail to Michael K. Marran, Esq., Two Charles Street, Providence, RI 02904-2269 on this 30th day of March, 1992.

Tracy Shields