

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF GROUNDWATER AND FRESHWATER WETLANDS

IN RE: JOHN AND JOANANNE MARSHALL
APPLICATION NO. 5017F

FINAL DECISION AND ORDER

This matter is before me as Director to issue a final agency decision and order. I have reviewed the recommendation of the hearing officer as well as all the documentary and testimonial evidence of record.

FINDINGS OF FACT

The findings of fact made by the hearing officer on which the conclusions of law are based address the connector road per se. While I agree with the findings made by the hearing officer I cannot conclude as a matter of law, based upon the findings of fact and the evidence of record that excepting construction of the connector road, proposed alterations are not random, undesirable or unnecessary. Nor do I conclude that, excepting construction of the connector road, the proposed alterations are in the best public interest.

Though considerable testimony exists on the need and desirability of the connector road per se, I find the record deficient with respect to the filling and alterations that are not part of the connector road per se. The record has

insufficient evidence concerning the reason for filling the entirety of the wetlands. The hearing officer finds in her findings of fact that the wetland is unique, valuable and that the natural values of the wetland will be greatly eliminated through construction and filling. In light of the hearing officer's finding that the subject wetland is unique and valuable, even if the public interest is served by construction of a connector road, there must be adequate demonstration that the proposed limits of filling are appropriate and necessary from an engineering perspective.

FINDINGS OF FACT

After considering all the documentary and testimonial evidence of record, I make the following findings of fact in addition to those made by the hearing officer:

1. It is possible that the connector road, sewer and utility could be built in a manner that would require less extensive filling of the subject wetland.
2. There is no evidence of record demonstrating that it is necessary to fill beyond the limits of the road and its shoulders and side slopes to construct the connector road, sewer and utilities.

CONCLUSIONS OF LAW

Based upon review of all the testimonial and documentary evidence of record I accept conclusions of law numbered 1 and 2 and reject the remaining conclusions of law and make the following additional conclusions of law:

1. That the proposed alteration regarding only construction of the connector road, sewer and utility is consistent with the public interest and public policy as stated in Section 2-1-18 and 2-1-19 of the Rhode Island General Laws and Section 1:00 of the Rules and Regulations of the Department of Environmental Management.
2. That the alteration to the wetlands proposed by the applicant with regard only to the construction of the connector road, sewer and utility per se will not cause an unnecessary nor undesirable destruction of freshwater wetlands.
4. The applicant has not sustained the burden of proof that the application in it's entirety will not cause random, unnecessary, and/or undesirable destruction of freshwater wetlands. The applicant has sustained its burden of proof that the construction of the connector road, sewer and utilities per se will not cause random unnecessary and/or undesirable destruction of freshwater wetlands.

THEREFORE, IT IS

O R D E R E D

1. Application No. 5017F to alter a freshwater wetland is approved only for construction of the connector road, its shoulders and side slopes.
2. The applicant, should it wish to reopen the hearings to present additional evidence of further filling necessary to accomplish safe and appropriate construction of the connector road, should direct any such motion to the hearing officer for consideration.

I hereby adopt the recommendation of the hearing officer except as amended herein as a final agency Order this 6th day of April, 1990.

Robert L. Bendick, Jr.

Robert L. Bendick, Jr.
Director
Department of Environmental
Management

CERTIFICATION

I hereby certify that I caused a copy of the within Recommendation and Final Decision and Order to be mailed first class mail to James M. Sloan, III, Esquire, 1309 Turks Head Building, Providence, R.I. 02903, James M. Russo, Assistant City Solicitor, East Providence City Hall, East Providence, R.I. 02914 and Sandra Calvert Esq. by interoffice mail this 10th day of April 1990.

Marilyn Stone

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