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Osborn v. Town of Easton Conservation Comm'n, No. CV030406547S, 2005 Conn. Super. LEXIS 999 (Conn. Super. Ct. Apr. 1 2005)

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statute requires that in order for a court not to find a certain practice a public nuisance, the practice must be reasonably associated with agricultural production. The court again concluded that the trial court's preclusion of GSS's evidence prevented it from determining whether it could find an operational conflict that would preempt the local ordinance by state and/or federal law.

The court concluded that identifying an operational conflict was a matter of fact that must be resolved using the evidentiary record. The court reversed and remanded the case for further proceedings consistent with its opinion.

William S. Hoebel, III

CONNECTICUT

Osborn v. Town of Easton Conservation Comm'n, No. CV030406547S, 2005 Conn. Super. LEXIS 999 (Conn. Super. Ct. Apr. 1, 2005) (holding the Easton Conservation Commission's regulations do not require a public hearing for the Commission to grant an inland wetlands permit to conduct a regulated activity, when the activity did not have a significant impact on the wetlands).

Leslie and William Osborn ("Osborn") filed suit in the Superior Court of Connecticut to appeal the Easton Conservation Commission's ("Commission") grant of a building permit to property owner Paul Russo and builder Rami Rachamkin. Osborn sued the Connecticut Department of Environmental Protection, the Commission, Russo, and Rachamkin (collectively "CDEP"), alleging the Commission abused its own discretion by not requiring a public hearing before granting the permit and that the permit was incomplete. Osborn had statutory standing to bring the appeal because Osborn owned property abutting the proposed building site.

Easton, Connecticut's Inland Wetlands and Watercourses Regulations require a public hearing for an inland wetlands permit when the "application involves a significant activity which may have a significant impact on the area for which the application has been filed." CDEP's application involved the construction of a house within a designated inland wetlands area. The court evaluated the application to determine whether the construction of a house qualified as a significant activity. A significant activity can include: (1) deposition or removal of material that will have a major effect on the inland wetland; (2) a substantial change to the natural channel or natural dynamics of a watercourse system; (3) substantial diminishment of the natural capacity of the inland wetlands to support wildlife and prevent flooding; (4) an activity which causes siltation or sedimentation in the wetlands; or (5)

an activity which destroys unique educational or scientific value of the inland wetlands.

The court held the construction of the house did not create a significant impact based on any of the significant impact factors. Citing past decisions, the court held an “activity that merely impacts or affects wetlands is not a significant activity.” Accordingly, the Commission did not have to hold a public hearing. The court also noted that the Osborns were present and able to communicate their concerns about the permit during the Commission’s regular meetings.

After finding no requirement for a public hearing to grant the permit, the court analyzed whether the permit was complete. A complete permit required a proper application and a record of why the Commission granted the permit. The court does not require specific reasons for granting the permit if the record contains substantial evidence supporting the conclusion to approve the permit.

In finding the permit was complete and the record was sufficient, the court looked at the entire application process and the restrictions placed on building permit as granted. The Commission met four times to discuss the permit application. During the meetings, the Commission and Osborn communicated concerns about how the proposed building would affect the inland wetlands. Between meetings, Rachamkin revised his application to address the concerns of the Commission. To comply with the Commission’s grant of the permit, Rachamkin reduced the proposed size of his house, changed the location, and agreed to build a silt fence and stone wall to protect the inland wetlands. Rachamkin also provided the Commission soil science reports showing that the building site was suitable. The court found this evidence sufficient to consider the permit complete.

The court dismissed the appeal holding no public hearings were required and the permit was complete.

Thomas Jantunen

Ace Equip. Sales, Inc. v. Buccino, 869 A.2d 626 (Conn. 2005) (reversing adoption of the civil law rule that afforded an inherent riparian right by virtue of abutting property ownership).

Ace Equipment Sales, Inc., Willington Fish and Game Club, LLC, and Willington Fish and Game Club, Inc. (collectively “Ace”), were owners in fee simple of ninety-nine percent of the bed underlying a man-made, non-navigable pond formed by a dam that impounded waters from a non-navigable brook. Thomas and Irma Buccino (“Buccinos”) owned the dam and downstream mill property that abutted the southwesterly end of the pond. The Buccinos’ deed contained an easement for flow rights to use pond water for industrial purposes and a right-of-way across Ace’s property for pond access. The deed also required that the Buccinos maintain minimum water levels in the