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ian rights as inherent rights incident to the ownership of land that abuts or runs along a watercourse. The court noted that under this rule, each riparian owner possesses an equal right to use the water for reasonable recreational purposes.

The court added that when a natural stream was dammed for an extended period of time, the resulting body of water was treated as a natural body of water for riparian rights purposes. The court further noted that the owner of land upon which a dam was constructed may use the water for any purpose, provided non-interference with the rights of other users.

The court also disagreed with Ace on its claim that the Buccinos were only granted the right to use the Pond for industrial purposes. The court found that an owner of land that abuts against a watercourse possesses recreational water usage rights of that watercourse even if the owner's deed does not specifically mention such use. The court thus concluded that no material disputed facts existed and affirmed the decision of the superior court. Therefore, the court held that the Buccinos were entitled to judgment as a matter of law.

Michael O'Loughlin

Avalon Bay Cmty., Inc. v. Inland Wetlands Comm'n of the Town of Wilton, 832 A.2d 1 (Conn. 2003) (holding that a land developer's plan does not require the issuance of an inland wetlands permit when the plan falls outside the jurisdiction of the Inland Wetland and Watercourses Act).

Avalon Bay Communities, Inc. ("Avalon Bay"), an apartment complex management and land development corporation, brought an appeal against the Inland Wetlands Commission of the Town of Wilton ("Commission") in the Connecticut Supreme Court. The Commission denied Avalon Bay's application for an inland wetlands permit. The Superior Court in the Judicial District of New Britain dismissed Avalon Bay's appeal. The Appellate Court granted the petition for review and then transferred the appeal to the Connecticut Supreme Court.

In May 1999 Avalon Bay applied for a permit in order to construct an affordable housing complex on a 10.6 acre parcel of property. The property contained two small wetlands areas totaling 0.32 acres. Avalon Bay's housing plan included regulated activities near the wetlands and the Commission denied their permit application citing potential impact to the wetlands. In November 1999 Avalon Bay submitted a revised plan to the Commission that eliminated all activities in the wetlands area. Again, the Commission denied the permit request, this time because the development occurring outside the wetlands potentially results in loss or reduction of the spotted salamander, which relies upon the wetlands for five weeks per year for a portion of its lifecycle. While the spotted salamander is not listed as a federal or state en-

dangered, threatened, or special concern species, the Commission believed that loss or reduction of the spotted salamanders reduces wetlands biodiversity.

The Connecticut Supreme Court addressed Avalon Bay's dispositive issue of whether the Commission acted outside its jurisdiction by denying the company a permit when its proposed construction would not physically harm the wetlands. Avalon Bay argued that the Inland Wetland and Watercourses Act ("Act") served to protect wetlands from physical damage or intrusion, but not the wildlife relying on the wetlands for a portion of their life cycle. The Commission disputed Avalon Bay's interpretation and argued for a liberal construction of the Act to include protection of wildlife.

The Act authorizes any municipality to create a board or commission to regulate activities affecting wetlands located within its limits and to grant, deny, or limit any permit for a regulated activity. As concluded in *Queach Corp. v. Inland Wetlands Commission*, a commission is permitted to regulate activities occurring outside of wetlands provided the activities result in a likely impact or affect on wetlands or watercourses. To fully interpret the statute, the court first looked at its meaning and words. The Act defines both wetlands and watercourses and narrowly limits these terms to physical characteristics that do not protect aspects of the wetlands, such as wildlife species. Therefore, the court concluded the Act protects the physical characteristics of wetlands and not the wildlife like the spotted salamander.

Next, the court examined the legislative history of the statute. The court noted the significance of the absence of the term "wildlife" from the Act. In comparison, when the legislature protected wildlife in other statutes, it did so expressly. The Act provides that certain, nonregulated uses of wetlands and watercourses are permitted, as long as they do not disturb the wetlands or watercourses. In addition, certain Connecticut Department of Environmental Protection regulations allow for the intentional hunting and taking of spotted salamanders. Thus, the court concluded that since the legislature did not provide municipal commissions with the authority to regulate the intentional taking of wildlife, such as the spotted salamander, in wetlands and watercourses, the legislature did not intend to authorize the commissions to deny permits for incidental impacts to such wildlife.

Lastly, the court analyzed the legislative policy implemented by the statute. The court noted that if the denial of a permit due to development near wetlands occurred based on the single consequence of reducing a species that relies on the wetland, this results in the commission's unlimited jurisdiction. Furthermore, every attempt to develop property with nearby wetlands would require a review by a commission to determine if the construction negatively impacts on the species. The Commission argued that the Act was broad enough to include a wetland species like the spotted salamander within its protection, but

the court cited the operative language of the statute as the most important factor. The court noted that one of the broad purposes of the Act, preventing loss of fish and other beneficial aquatic organisms, wildlife, and vegetation, serves only to protect wildlife as a secondary effect of protecting the wetlands themselves. The court also emphasized the lack of evidence showing the classification of spotted salamanders as beneficial wildlife. In addition, the court specifically noted that while the Act requires the Commission to consider the irreversible and irretrievable loss of wetland or watercourse resources, the Act does not define resources. Therefore, the Act could not broadly include wildlife as the Commission contended. Ultimately, the court rejected the Commission's broad interpretation of the statute.

In conclusion, the Connecticut Supreme Court held that the Inland Wetland and Watercourses Act did not confer jurisdiction over wildlife or the biodiversity of wetlands and watercourses; therefore the Commission acted outside its jurisdiction and Avalon Bay's revised development plan did not require an inland wetlands permit. The Supreme Court remanded the case to the trial court to render judgment vacating the denial of the inland wetlands permit and remanded to the Commission with direction to issue a declaratory ruling that Avalon Bay's revised plan did not require a permit.

Julia Herron

Koch v. Litchfield Inland Wetlands Comm'n, No. CV30090655S, 2004 WL 1157405 (Conn. Super. Ct. May 11, 2004) (dismissing the appeal of action in which the Litchfield Inland Wetlands Commission denied part of an application to conduct regulated activities, where substantial evidence in the record supporting the Commission's decision existed).

Sidney Koch and Sheila Nevins ("Koch") owned a twenty-one acre parcel of land in the Town of Litchfield, which adjoined a pond named Lake Floren ("Lake"). Koch filed an application with the Litchfield Inland Wetlands Commission ("Commission") seeking a permit to construct a boathouse, a septic tank for the boathouse, a utility trench, a gravel driveway, a gazebo, two boardwalks, and a floating dock, all within 150 feet of the shore of the Lake or the wetlands surrounding the Lake. The Commission held a public hearing and voted to approve all activities except the gazebo and the septic tank. Koch appealed the Commission's decision to the Connecticut Superior Court, Judicial District of Litchfield.

A court will generally uphold an agency decision where there is substantial evidence in the record supporting that decision. Moreover, the party who challenges an agency's decision carries the burden of demonstrating that no substantial evidence in the record to support the agency's decision exists. Here, Koch argued the Commission lacked substantial evidence to deny the proposed gazebo and septic