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Koch v. Litchfield Inland Wetlands Comm'n, No. CV30090655S, 2004 WL 1157405 (Conn. Super. Ct. May 11, 2004)

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Koch v. Litchfield Inland Wetlands Comm'n, No. CV30090655S, 2004 WL 1157405
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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

tank, and presented evidence from a civil engineer and a soil scientist that these activities would not result in an impact to an inland wetlands or watercourses resource.

The court determined the gazebo and the septic tank both qualified as regulated activities because Koch planned to build them within 150 feet and 100 feet, respectively, from the Lake shore. Additionally, the Commission argued its northwest Conservation District's expert concluded these activities around the Lake would only degrade water quality, since septic systems greatly impact the water quality of lakes. In addition, the expert stated the water quality standard given to the Lake by the Connecticut Department of Environmental Protection ("CDEP") meant the CDEP potentially considered the Lake to serve as a drinking water supply or that the Lake was a tributary to a drinking water supply. Therefore, the Commission argued the excavation for the septic tank so close to the Lake was sufficient for the Commission to conclude that these activities would cause or had the potential to cause pollution of the Lake, and constituted significant impact activities as defined by Connecticut statutes. The court agreed the Commission was entitled to consider the possible adverse effects that the construction of the gazebo and installation of the septic tank would have on the Lake. The court stated these considerations, when combined with the Commission's expert testimony, yielded sufficient evidence for the Commission to deny permission for the gazebo and the septic tank. Koch failed to carry the burden of demonstrating the record did not support the Commission's decision.

Therefore, the court dismissed Koch's appeal and sustained the Commission's decision to deny the permit to build the gazebo and the septic tank because substantial evidence in the record supported the Commission's decision.

Stacy Hochman

FLORIDA

Thomas v. S.W. Fla. Water Mgmt. Dist., 864 So. 2d 455 (Fla. Dist. Ct. App. 2003) (holding that a subsequently enacted Florida statute supersedes a previously enacted statute and that the consumptive use of water is therefore controlled by the Southwest Florida Management District).

Milo Thomas ("Thomas") applied to the Southwest Florida Water Management District ("SFWMD") for a permit to increase his water consumption from 345,000 to 970,000 gallons of water per day. Due to the potential impact of the additional water consumption on the Northern Tampa Bay Water Resource Assessment Project area, the SFWMD denied his application. Thomas appealed the administrative decision, arguing that the SFWMD erred in denying his application for an increase because, as a property owner in Pasco County, he possessed