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## Prestige Builders, LLC v. Inland Wetlands Com'n of Ansonia, 831 A.2d 290 (Conn. App. 2003)

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Moyer argued that the water court should have granted this motion because of Empire Lodge's failure to submit a timely objection. The court held that Empire Lodge's failure to object did not deprive the water court of its power to deny the motion for extension. Moyer also contended that the filing of the motion tolled the expiration deadline of the previous motion. The court disagreed, stating that the failure to address the motion did not extend the expired deadline. With respect to the subsequent motion to reconsider, Moyer argued that because the water court did not rule on her second motion to extend, her missed deadline was due to excusable neglect. The court disagreed and held that her actions were not based on an erroneous court order and that her circumstances were different than circumstances of excusable neglect. The court stated that failing to meet a deadline because she decided to wait to hear the ruling of a request to extend the deadline was not the same as relying on an erroneous court order. Thus, the court affirmed the water court's decision.

*Robert E. Wells*

## CONNECTICUT

**Prestige Builders, LLC v. Inland Wetlands Comm'n of Ansonia, 831 A.2d 290 (Conn. App. 2003)** (holding that an inland wetlands commission must enact a formal regulation granting it authority over upland review areas before it can regulate those areas.)

In 2000, in the Superior Court of Connecticut at Ansonia, Prestige Builders sought review of the inland wetlands commission's denial of its application to construct a nine lot residential subdivision. The complaint addressed two issues: (1) whether current statutes provided the Inland Wetlands Commission of the City of Ansonia ("Commission") authority to regulate activities in upland review areas without first enacting a regulation governing activities in such areas, and (2) whether common law provided the Commission with such authority. The superior court dismissed the complaint and Prestige Builders appealed to the Appellate Court of Connecticut. On appeal, the court found in favor of Prestige Builders and remanded the case, directing the commission to grant the construction application.

Prestige Builders owned property within the City of Ansonia. Several areas of wetlands and watercourses totaling one acre existed on the property. In 2000, Prestige Builders proposed a nine lot residential subdivision on approximately 7.5 acres of the property. The Commission determined that because the property contained wetlands and watercourses, any activity in and around those areas constituted regulated activity, as defined by the Commission's regulations. Therefore, the Commission indicated it had authority to analyze the environmental impacts of the proposed construction.

Subsequently, the Commission denied the application, stating that the proposed construction could lead to flooding, erosion, and icing, thus creating a negative effect on wells. Prestige Builders denied that there was any regulated activity on the property since there would be no activity on the wetland portion of the property. Prestige Builders further argued that the Commission had not enacted a regulation granting it authority over upland review areas.

First, the court addressed whether the Commission had statutory authority to regulate the upland review area without first enacting a formal regulation. The court applied the standard articulated in *State v. Courchesne*, which states, "in interpreting statutes, we look at all the available evidence, such as statutory language, the legislative history, the circumstances surrounding its enactment, the purpose and policy of the statute, and its relationship to existing legislation and common law principles." Accordingly, the court held that a commission must first enact a formal regulation to exercise authority over upland review areas. The court further held that the Commission improperly exercised its authority in denying the application since it had not enacted any regulation giving it authority over upland review areas.

Second, the court discussed whether the common law provided the Commission authority to deny the application. The court cited a string of relevant cases recognizing the authority of an inland wetlands commission to regulate activities in areas adjacent to wetlands or watercourses that would have negative impacts on such wetlands or watercourses. However, in each case, the local commission had enacted formal regulations over upland review areas.

Although the Commission adopted a regulation governing upland review areas after denying the application, the court found that such an amendment could not be retroactively applied to Prestige Builders. Thus, the court ruled in favor of Prestige Builders and ordered the Commission to grant the application for the nine-lot residential neighborhood.

*Tonn K. Petersen*

## FLORIDA

**Slusher v. Martin County, 859 So. 2d 545 (Fla. Dist. Ct. App. 2003)**  
(holding the issuance of a well permit was improper because the district court misinterpreted their own rule by misconstruing the definition of an existing legal use).

James W. Slusher bought property in 1994 with a pond created for the purpose of raising fish. Soon thereafter, Martin County began operating a well adjacent to Slusher's property, which caused Slusher's pond to drain. The South Florida Water Management District ("District") had issued Martin County a permit to operate the well