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Queach Corp. v. Inland Wetlands Comm'n, No. 430078, 2000 Conn. Super. LEXIS 2283 (Conn. Super. Ct. Sept. 1, 2000)

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land adjoining a watercourse. The court acknowledged such rights are usufructuary. Furthermore, title to the land under the stream is indicative of riparian ownership. Using Connecticut law, the court reaffirmed that ownership of the soil carries with it usufructuary ownership of the above water. The court then focused on Pennsylvania law, which states when a non-navigable pond exists, where the land under the water is owned by others, no riparian rights attach to the property bordering on the water. An attempt to exercise any such rights by invading the water constitutes a trespass.

Based upon the aforementioned law, the court held Peck had not claimed title to any sub-aqueous land and the evidence indicated that he held title only to the land abutting the high water mark of the pond. Therefore, the court found Peck possessed no riparian rights. Accordingly, the court dissolved the temporary injunction against Edelman and enjoined Peck from any use or entry upon the pond without the Edelman's consent.

Kimberley E. Montanaro

Queach Corp. v. Inland Wetlands Comm'n, No. 430078, 2000 Conn. Super. LEXIS 2283 (Conn. Super. Ct. Sept. 1, 2000) (holding amendments to town wetlands and watercourses regulations are facially valid).

On July 29, 1999, the Inland Wetlands Commission ("Commission") adopted amendments to the Town of Branford's Inland Wetlands and Watercourses Regulations ("Amendments"). Queach Corporation ("Queach"), which owned land adjacent to and including a substantial area of wetlands, appealed the Amendments' facial legality.

Queach contended the Amendments defined "regulated activity" more broadly than, and in conflict with, the Connecticut General Statutes. The Amendment definition specified as regulated a number of activities within 100 feet of wetland or watercourse boundaries. The Amendments also authorized the Commission to regulate such activities within upland review areas or other non-wetland or non-watercourse areas when the activities affect wetlands or watercourses.

The court cited to a Connecticut Supreme Court opinion that held an administrative regulation was presumed valid unless it was inconsistent with or beyond the authorizing statute. The court also found legislative expression of a strong public policy, supported by case law, emphasizing public interest to preserve and protect wetlands and watercourses from unregulated uses. Therefore, the court broadly construed the Inland Wetlands and Watercourses Act ("Act") as applying to activity that occurs outside of, but affects, wetlands areas.

The court explained the Amendments did not expand the Act, but rather itemized specific activities that could be regulated under the

statute. The court held the 100-foot buffer zone was reasonable in view of the statute's purposes. The court also held the regulatory powers that the Amendments granted the Commission were within the broad powers case law bestowed on inland wetlands agencies. The court rejected Queach's argument that the 100-foot buffer zone was not supported by evidence in the record.

Queach contended the Connecticut Legislature's 1995 enactment of state statutes that provided municipal agency regulations shall "apply only to those activities which are likely to impact or affect an inland wetlands area" limited the case law cited. The court disagreed, stating legislative history indicated the statutes simply codified relevant case law.

Queach also challenged the portion of the Amendments that identified as a "significant activity" "any activity which causes a substantial diminution of flow of a natural watercourse, or groundwater levels of the regulated area." The court reasoned that an activity causing a substantial diminution of flow of a natural watercourse or of groundwater levels could plainly have an adverse effect on the health of affected wetlands. Accordingly, the court held this portion of the Amendments was also consistent with the supreme court's broad construction of the Act.

Finally, Queach argued several other provisions of the Amendments effectively required an applicant to submit alternatives to the Commission, even if the proposed use of the property did not have any effect or impact upon wetlands and watercourses. The court stated the provisions applied only to applications to undertake regulated activities. The court stated, under the purposes and policies of the Act, the Commission may consider all relevant facts and circumstances, including feasible and prudent alternatives to the proposed regulated activity that would cause less or no environmental impact to wetlands or watercourses. Thus, the court concluded the required listing of alternatives was reasonable and consistent with the Commission's broad legislative mandate. Therefore, the court held the Amendments were facially valid.

Kathryn S. Kanda

FLORIDA

Barley v. S. Fla. Water Mgmt. Dist., 766 So. 2d 433 (Fla. Dist. Ct. App. 2000) (holding a constitutional amendment ("Amendment 5"), which required polluters to pay for water pollution abatement, did not make it unconstitutional to tax non-polluter property owners under the Everglades Forever Act because Amendment 5 lacked enabling legislation, and thus could not be implemented).