

**State of Vermont
WATER RESOURCES BOARD**

**In re: Champlain Oil Company (Denial of Conditional Use
Determination #91-351), Docket No. CUD-94-11**

PRELIMINARY ORDER

Party Status and Takings Issues

This order pertains to two preliminary issues: a Petition for Intervention filed by Gerald Bovat and a request by Champlain Oil Company for a ruling on whether the Board has the power to decide a takings claim under the United States and Vermont constitutions. As explained below, the Board denies petitioner Bovat's request for intervention as a party. The Board also declares that it has no authority to decide whether the Secretary's denial of Conditional Use Determination #91-351 constitutes a regulatory taking.

I. BACKGROUND

On August 12, 1994, the Water Resources Board (Board) received a notice of appeal filed by Champlain Oil Company (Champlain) from a decision of the Secretary of the Agency of Natural Resources (the Secretary) denying Conditional Use Determination (CUD) #91-351 to Champlain for the placement of 0.9979 acres of fill in a Class Two wetland to enable the construction of a convenience store, restaurant, gasoline service islands and parking spaces, at Champlain's property on Route 78 in the Village of Swanton, Vermont. Champlain, represented by John R. Ponsetto, Esq., filed its appeal pursuant to 10 V.S.A. § 1269 and Section 9 of the Vermont Wetland Rules.

On August 15, 1994, this appeal was deemed complete and docketed. On September 19, 1994, a Notice of Appeal and Prehearing Conference was sent to persons required to received notice and on September 22, 1994, it was published in the St. Albans Messenger. Rule 18(C) and 20 of the Board's Rules of Procedure. A prehearing conference was held on October 6, 1994, and a Prehearing Conference Report and Order was issued on November 4, 1994.

On October 28, 1994, Gerald Bovat, represented by Scott Michael Mapes, Esq., filed a timely Petition for Intervention as a party pursuant to Rule 22 of the Board's Rules of Procedure. On November 10, 1994, in accordance with the terms of the Prehearing Conference Report and Order, Champlain filed a memorandum in opposition to Mr. Bovat's intervention request. In response to Champlain's filing, Mr. Bovat requested an opportunity to present oral argument to the Board. Oral argument was noticed and held before the Board on December 7, 1994, with counsel for Mr. Bovat and Champlain presenting their respective positions. At oral argument, the Board was presented with a Memorandum in Support of Gerald Bovat's Petition for Intervention. Upon objection by

example, section 8.2 of the Vermont wetland rules requires the applicant for a CUD to provide notice of its request to all persons owning property within or adjacent to the wetland or buffer zone in question. However, a person's ownership of property within or adjacent to a significant wetland or its buffer zone does not per se entitle that person to party status in a CUD appeal.

Rule 22 of the Board's Rules of Procedure sets forth the standards governing the grant of party status as of right or by permission. Party status as of right may be granted to any person entering a timely appearance and "demonstrating a substantial interest which may be adversely affected by the outcome of the proceeding where the proceeding affords the exclusive means by which that person can protect that interest and where the interest is not adequately represented by existing parties." (Emphasis added.) Rule 22(A)(7). The Board may grant permissive party

