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Fore River Residents Against Compressor Station v. Office of Coastal Zone Management

Appeals Court of Massachusetts, Norfolk - December 16, 2021 - N.E.3d - 2021 WL 5969793

City mayor sought judicial review of decision by Massachusetts Office of Coastal Zone Management (MCZM) that construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program. Community advocacy organization intervened on plaintiff's side.

The Superior Court Department dismissed action. Organization appealed.

The Appeals Court held that:

- Determination was not subject to review under statute authorizing judicial review to a person aggrieved by a final agency decision;
- Determination was not subject to certiorari review; and
- Organization lacked standing to seek judicial review of determination by claim for declaratory judgment.

Judicial review of determination by Massachusetts Office of Coastal Zone Management (MCZM) that construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program was not available under statute authorizing judicial review to a person aggrieved by a final agency decision in an adjudicatory proceeding; an adjudicatory proceeding was one in which someone had right to agency hearing, community advocacy organization did not have right to any agency hearing, and any discretion on part of MCZM to hold a hearing did not render proceeding an adjudicatory proceeding.

Proceeding before Massachusetts Office of Coastal Zone Management (MCZM) to determine whether construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program was not judicial or quasi-judicial, and thus, MCZM's consistency determination was not subject to certiorari review on such basis; regulatory scheme required MCZM to provide opportunity for public participation only through public notice and comment, proceeding was not preceded by any specific charges, MCZM was not required to hold a hearing, much less hear sworn testimony, it was federal government, not MCZM, that ultimately decided whether station could be constructed, and MCZM's determination contained no formal findings of fact.

Community advocacy organization lacked standing to seek judicial review of determination by Massachusetts Office of Coastal Zone Management (MCZM) that construction of natural gas compressor station would be consistent with enforceable policies of Massachusetts' coastal zone management program by claim for declaratory judgment invalidating determination; while an applicant had right to appeal to federal Secretary of Commerce from a determination that a project would be inconsistent with enforceable policies of a State's coastal zone management program, no

similar right was given to the public under the CZMA or state statute establishing MCZM, if standing were recognized, it would have adverse effect in form of unnecessary delays, and there were other remedies available.