

Advisory Decision:

**This decision is provided for informational and research purposes only.
This decision is not a final order and did not fully dispose of all the issues in the case.
For those who are not parties to this specific case, this decision is not binding precedent
and may not be binding authority on other cases.**

TOPICS:

Motion to Dismiss
notice

service territory dispute
appeal

sanitary sewer
financial interest

collect tax

de novo review

water pollution/control facility

intervener

substantial evidence

same action

different courts

law of the case

permit revocation

IC 4-21.5-3-5(b)

IC 4-21.5-3-21

315 IAC 1-3-18

327 IAC 3-2-2

Trial Rule 12(b)(6)

Trial Rule 12(b)(8)

Appellate Rule 39(A)

Huffman

PRESIDING JUDGE:

Daidsen

PARTY REPRESENTATIVES:

Petitioner: Catheron A. Paras, Esq.—Independence Hill Conservancy District

Respondent/Permittee: Kenneth D. Reed, Esq.—GCC Merrillville Venture, LLC

Intervener: William L. Touchette, Esq.—Merrillville Conservancy District

IDEM: April D. Lashbrook, Esq.

ORDER ISSUED:

April 17, 2007

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

RELATED CASE ACTIVITY:

Lake County Circuit Court Cause No. 45C01-6204-CV-00509

Indiana Court of Appeals Cause No. 45A03-0610-CV-00467

**In the Matter of: Objection to Issuance of Sanitary Sewer Construction Permit No. 18375R,
Proposed Foxmoor Unit 2 and Phase 1 Subdivision, Merrillville, Lake County, Indiana.
2007 OEA-NFO 0417 (07-W-J-3852)**

STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	

IN THE MATTER OF:)	
)	
OBJECTION TO THE ISSUANCE OF)	
SANITARY SEWER CONSTRUCTION PERMIT NO. 18375R)	
PROPOSED FOXMOORE UNIT 2 and PHASE 1 SUBDIVISION))	
MERRILLVILLE, LAKE COUNTY, INDIANA.)	
)	CAUSE NO. 07-W-J-3852
)	
Independence Hill Conservancy District,)	
Petitioner,)	
GCC Merrillville Venture, LLC,)	
Respondent/Permittee,)	
Merrillville Conservancy District,)	
Petitioner for Intervention,)	
Indiana Department of Environmental Management,)	
Respondent.)	

**ORDER GRANTING MERRILLVILLE CONSERVANCY DISTRICT’S
MOTION TO INTERVENE**

This matter came before the Court on the March 15, 2007 Merrillville Conservancy District’s (“MCD”) Motion to Intervene,¹ filed by its counsel William L. Touchette, Esq.; on March 28, 2007 on Petitioner Independence Hill Conservancy District’s (“IHCD”) Objection to Merrillville Conservancy District’s Motion to Intervene, filed by its counsel Catheron A. Paras, Esq.; and on April 5, 2007 on MCD’s Reply to Petitioner IHCD’s Objection to MCD’s Motion to Intervene, which documents are a part of the Court’s record.

Matters brought before the Office of Environmental Adjudication (“OEA”) are subject to Ind. Code § 4-21.5² (“AOPA”); when AOPA provides statutory guidance, administrative agencies such as OEA are mandated to follow AOPA provisions in lieu of Indiana Trial Rules. The parties’ reference to Ind. Tr. R. 24 and rule-interpretive cases is supplanted by relevant provisions of AOPA, specifically IC § 4-21-5-3-21. MCD’s Petition to Intervene is timely filed. IC § 4-21.5-3-21(d) requires this Court to “briefly state the reasons for the order” on a Motion to Intervene. As MCD does not indicate specific statutory authority conveying an unconditional right to intervene under Ind. Code §4-21.5-3-21(a)(1), petitioner MCD “must state facts demonstrating that [it] is aggrieved or adversely affected”, Ind. Code 4-21.5-3-21(a)(2), in order for this Court to grant a Petition to Intervene. The Indiana Supreme Court held in Huffman v.

¹ MCD’s Exhibits 1 through 3 were attached to its March 15, 2007 Motion; Exhibit 4 was filed separately. All exhibits are considered incorporated into MCD’s March 15, 2007 Motion.

² Ind. Code 4-21.5, *et seq.*, is sometimes referred to as the Administrative Orders and Procedures Act, or AOPA.

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Indiana Office of Environmental Adjudication, et al., 811 N.E.2d 806 (Ind. 2004), that “whether a person is entitled to seek administrative review depends upon whether the person is “aggrieved or adversely affected” . . . and that the rules for determining whether the person has “standing” to file a lawsuit do not apply.” *Id.* at 807. The Huffman Court further held that in order for a person to be “aggrieved or adversely affected,” they “must have suffered or be likely to suffer in the immediate future harm to a legal interest, be it pecuniary, property or personal interest.” *Id.* at 810. The Court further interpreted the language of IND. CODE § 4-21.5-3-7 as not allowing administrative review based upon a generalized concern as a member of the public. *Id.* at 812.

MCD’s Petition to Intervene asserts the following facts intended to demonstrate that it is aggrieved or adversely affected:

1. This case in controversy concerns IHCD’s challenge to an IDEM permit issued to GCC Merrillville Venture, LLC (“GCC”). GCC owns the real estate and seeks to construct a sanitary sewer on the real estate.
2. The sewer facility in dispute in this cause is alleged to be located in MCD’s territory.
3. MCD will be bound by all lawful stipulations, rulings, and other matters of record made prior to its intervention
4. MCD’s interest in the subject matter of this cause of action includes:
 - a. MCD’s financial interest in special benefits taxes, to be collected once GCC’s property is improved with the sewer and other development;
 - b. When constructing MCD’s West Side Interceptor Sewer Project, MCD expended additional funds to allow the Interceptor to serve GCC’s real estate at controversy in this cause.
 - c. Construction costs for MCD’s West Side Interceptor Sewer Project may be recouped if the permit at issue is approved.
5. MCD’s interest in these proceedings are not adequately protected by any other party to this cause.

AND THE COURT, being duly advised, hereby **FINDS** that the above-listed facts support MCD’s contention that it is aggrieved or adversely affected so as to be able to intervene in this matter, and **GRANTS** MCD’s Petition to Intervene in this cause.

IT IS SO ORDERED this 17th day of April, 2007 in Indianapolis, IN.

Hon. Mary L. Davidsen
Chief Environmental Law Judge