

disposition of the action may impair or impede their ability to protect those interests. DIOA and BWATER also allege that their claim or defense and the pending action have a question of law or fact in common.

LAW

Intervention of right is authorized 1) “when a statute confers an unconditional right to intervene” or 2) “when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” S.C. R. Civ. P. 24(a). Permissive intervention is authorized 1) “when a statute confers a conditional right to intervene” or 2) “when an applicant’s claim or defense and the main action have a question of law or fact in common.” S.C. R. Civ. P. 24(b).

When allowing intervention pursuant to Rule 24(a)(2), the South Carolina Supreme Court considered whether the proposed intervenors 1) filed a timely application, 2) asserted an interest relating to the property or transaction that is the subject of the action, 3) demonstrated that the proposed intervenors are in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest, and 4) demonstrated that its interest is inadequately represented by other parties. *See Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990) (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983)).

There is no statute that confers an unconditional right to DIOA or BWATER. Thus, this Court must look to whether to allow intervention pursuant to Rule 24(a)(2). First, the timeliness of DIOA and BWATER’s application to intervene is not at issue. Second, this Court must

consider whether DIOA and BWATER assert an interest that would warrant intervention. The question of DIOA and BWATER's interest must be determined regarding the overall subject matter of the action, not the particular issue before the Court. *See id.* at 189-90, 394 S.E.2d at 714 (citing *Sagebrush Rebellion*, 713 F.2d 525).

The issue raised by Plaintiffs' complaint involves Defendant's adoption of a zoning ordinance specific to jelly ball harvesting. Plaintiffs argue that this ordinance impairs its substantive due process rights, constitutes a taking of vested rights possessed by Plaintiffs, and denies Plaintiffs of equal protection. DIOA and BWATER's members assert that their aesthetic and recreational use and enjoyment of this area will be harmed if the ordinance is found unconstitutional. Our courts have recognized that aesthetic interests provide a basis for challenging an activity. *See Friends of the Earth v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). This Court finds that DIOA and BWATER do have an interest relating to the property that is the subject of this action because members of DIOA and BWATER own property connected to the jelly ball harvesting port.

The *Sagebrush* test further requires that the proposed intervenors demonstrate that without its intervention, the disposition of the case may impair or impede its ability to protect its interest. *See Sagebrush*, 713 F.2d at 527. To meet that requirement, the proposed intervenors need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interest if not allowed to intervene. *See Berkeley*, 302 S.C. at 191, 394 S.E.2d at 715 (citing *Spring Constr. Co., Inc. v. Harris*, 614 F.2d 374 (4th Cir. 1980)).

DIOA and BWATER argue that neither will be able to protect its members' aesthetic and recreational interests in the marshes and waters of Jenkins Creek if not allowed to intervene.

DIOA also argues that if the ordinance is invalidated and the jelly ball plant proceeds without water quality protections, its members' property values would suffer. Thus, DIOA argues that it will not be able to protect its members' property values unless it becomes a party to the case.

BWATER also argues that it will not be able to protect its members, whose livelihoods depend upon clean water and healthy estuarine systems, unless it becomes a party to the case.

This Court finds, however, that denying DIOA and BWATER's Motion to Intervene will not impair or impede on its ability to protect its asserted interests. Specifically, even if the current zoning ordinance is determined to be unconstitutional, a new zoning ordinance that is constitutional can take its place. DIOA and BWATER can also file suits on behalf of its members if the jelly ball harvesting ports cause any harm that infringes upon its members' rights. Thus, both DIOA and BWATER still have the ability to protect its asserted interests, no matter the outcome of the case.

The last factor of the *Sagebrush* test requires that DIOA and BWATER demonstrate that the asserted interests will not be adequately represented by Beaufort County. The court, in determining whether the asserted interests will be adequately represented, must consider 1) whether the existing parties will undoubtedly make all of the proposed intervenors' arguments, 2) whether the existing parties are capable and willing to make such arguments, and 3) whether the intervenors offer different knowledge, experience or perspective on the proceedings that would otherwise be absent. *See id.* This Court finds that the DIOA and BWATER organizations do offer different knowledge, experience, and perspective on the proceedings that would otherwise be absent because DIOA and BWATER have members who personally own property physically connected to the jelly ball harvesting port.

Plaintiffs, however, are challenging the constitutionality of the ordinance. Therefore, I do

not find it necessary for DIOA and BWATER to intervene under Rule 24(a) or (b) because their specific environmental knowledge is not needed and Beaufort County can adequately represent any interests DIOA or BWATER may have.

CONCLUSION

For the foregoing reasons and for good cause shown, it is hereby ORDERED, ADJUDGED AND DECREED that Dataw Island Owners Association and Beaufort Waterman Association to Enhance Rivers' Motion to Intervene is respectfully DENIED.

AND IT IS SO ORDERED.



Carmen T. Mullen
Fourteenth Judicial Circuit

September 29, 2015
Beaufort, South Carolina