

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. §§ 6001-6092**

Re: Okemo Mountain, Inc.  
Land Use Permit #2S0351-32-EB

**MEMORANDUM OF DECISION AND DISMISSAL ORDER (ALTERED)**

This proceeding involves an appeal to the Vermont Environmental Board ("Board") of Land Use Permit #2S0351-32 ("Permit") issued to Okemo Mountain, Inc. ("Permittee"). For the reasons stated below, pursuant to Environmental Board Rule ("EBR") 18(D), the Board dismisses the appeal as untimely.

**I. Procedural History**

1. On September 12, 2000 the District # 2 Environmental Commission ("Commission") issued the Permit and supporting Findings of Fact, Conclusions of Law, and Order ("Decision") to Permittee. The Permit authorizes the construction of a 5,250 square foot single-story building to house ski area support services including a carpenter shop, building maintenance office, housekeeping and sign shop ("Project"). The Project is located in the Town of Ludlow, Vermont.

2. Mount Holly Mountain Watch's ("Appellant") Notice of Appeal is dated October 6, 2000. The appeal alleges that the Commission erred in waiving of written findings on 10 V.S.A. § 6086(a) (1)(C), (1) (D), (2), (3), (5), (6), (7), (8) (A), (9) (A), (9) (B), (9) (G), (9)(H), (9) (K), (9) (L), and (10) ("Criteria 1(C), 1(D), 2, 3, 5, 7, 8(A), 9(A), 9(B), 9(G), 9(H), 9(K), 9(L) and 10"), in its conclusions concerning Criteria 5, 6, 7, 9(A), 9(H), 9(H), 9(L), and 10, and in its denial of party status to Appellant under 14(B)(1) and 14(B)(2) for Criteria 5, 6, 7, 8, 9 (A), 9(H), 9 (K), and 10.

3. On Wednesday, January 17, 2001, the Board held an evidentiary hearing on the following issue:

Should Appellant's appeal of Land Use Permit #2S0351-32 be dismissed on the basis that the appeal was not timely filed with the Environmental Board?

The following participants attended the evidentiary hearing:

Permittee by Michael Kraatz  
Appellant by Peter Berg  
Ray Manning  
John Lysobey

4. On Wednesday, January 25, 2001, the Board issued a Memorandum of Decision and Dismissal Order.
5. On February 6, 2001, Appellant filed a Motion to Alter the Memorandum of Decision and Dismissal Order.
6. On February 21, 2001 and February 28, 2001 the Board deliberated on Appellant's Motion to Alter.
7. On March 14, 2001, the Board issued a Memorandum of Decision reopening the record. The Board issued a subpoena to John Doon, former postmaster of the Montpelier branch of the USPS to testify at an evidentiary hearing scheduled for April 18, 2001.
8. On April 5, 2001, the Chair issued a Revised Scheduling Order rescheduling the hearing to May 16, 2001 to accommodate Mr. Doon's schedule.
9. On May 16, 2001, the Board held an evidentiary hearing to hear the testimony of Mr. Doon. In addition, Ray Manning, supervisor for the State of Vermont Postal Center provided additional testimony. The following participants attended the hearing:  
  

John Doon  
Permittee by Michael Kraatz  
Appellant by Peter Berg  
Ray Manning  
John Lysobey
10. On May 18, 2001, the Board issued a Memorandum of Decision and Dismissal Order (Altered).
11. On June 1, 2001, Appellant filed a motion to alter the Board's Memorandum of Decision and Dismissal Order (Altered).
12. On June 27, 2001, the Board deliberated on Appellant's motion to alter.

## **II. Discussion**

Pursuant to EBR 31(A), parties may file "one and only one motion to alter with respect to the decision." Appellant filed a motion to alter on the Board's Memorandum of Decision and Dismissal Order issued on January 25, 2001. The Board subsequently reopened the record and held a second evidentiary hearing. Appellant filed a motion to alter on the Board's Memorandum of Decision and

Dismissal Order(Altered) issued on May 18, 2001.

Appellant filed its second motion to alter based on the theory that when the Board reopened the record and held a second evidentiary hearing, it "broke the chain which EBR 31 addresses..."

The Board does not need to reach Appellant's argument concerning whether EBR 31(A) allows a motion to alter in this circumstance because even if the Board considered the merits of the motion to alter, the Board would find that Appellant's appeal was not timely filed.

**III. Order**

1. Appellant's appeal is dismissed.

Dated at Montpelier, Vermont this 28th day of June 2001

ENVIRONMENTAL BOARD

\_\_\_\_\_/s/Marcy Harding\_\_\_\_\_  
Marcy Harding, Chair  
Rebecca Day  
George Holland  
Rebecca Nawrath  
Alice Olenick