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VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

Re: Okemo Mountain, Inc.
Land Use Permit #2S0351-7A-EB (Mid-Mountain Lodge)

MEMORANDUM OF DECISION

This decision, dated August 31, 1992, pertains to the allocation of stenographic service and transcript costs in an appeal concerning non-skiing season use of the **Mid-Mountain Lodge** at the Okemo Mountain Ski Resort in Ludlow. As is explained below, the Environmental Board concludes that, pursuant to Board Rule 18(E), Okemo Mountain, Inc. must-reimburse **adjoiner** John Lysobey "**on a pro rata basis**" for the cost of obtaining an original transcript.

I. BACKGROUND

On May 29, 1992, John Lysobey, a party to this proceeding, wrote a letter to the Board requesting that it resolve a dispute that had arisen between himself and the Applicant's attorney. Specifically, Mr. Lysobey asked that he be reimbursed by the Applicant for one-half the cost of obtaining a stenographic record and transcript of the Board's hearings in the -Mid-Mountain Lodge appeal.

Prior to evidentiary hearings in this matter, Mr. **Lysobey** had written to Cindy Benson of North Country Court Reporters, Inc., requesting that she make a stenographic recording and transcript of the Board's hearing. Mr. Lysobey filed a copy of his request with the Board. Board hearings were held in Ludlow on April 22 and May 6, 1992, and Ms. Benson prepared a stenographic recording and transcript **of the** proceedings. Ms. Benson billed Mr. Lysobey \$810.00 for the April 22 hearing (consisting of a \$110.00 appearance fee and \$700.00 for a **200-page** transcript) and \$825.00 for the May 6 hearing (consisting of a \$125.00 appearance fee and \$700.00 for a **200-page transcript**).

Sometime in mid-May, the Applicant asked Mr. Lysobey whether he had de-livered a copy of the transcript to the Board so that the Applicant might obtain a copy from the public record. Mr. **Lysobey** informed him that a copy of the transcript could be obtained upon reimbursement for costs. The Applicant subsequently obtained a copy of portions of the transcript directly frpm Ms. Benson at a nominal-copying charge. Specifically, the Applicant asserts that it ordered

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only that portion of the transcript for the April 22, 1992, hearing containing testimony of witnesses Jay Maciewjowski and Ed Leary.

Mr. Lysobey requests that he be reimbursed by the Applicant for one-half of his costs of obtaining an original transcript. Since Ms. Benson's bills totalled \$1,635.00, Mr. Lysobey seeks reimbursement of \$817.50.

Mr. Lysobey provided a copy of the transcript, at no cost, to Mount Holly Concerned Citizens on Public Issues (MHCCPI), another party to this proceeding. The State of Vermont, Agency of Natural Resources, also was a party to the proceeding, but does not appear to have requested or received a copy of the transcript. Mr. Lysobey, MHCCPI and the Applicant each filed proposed findings and conclusions of law, referencing specific pages or testimony from the transcript.

Subsequent to Mr. Lysobey's May 29, 1992, request, the Board received correspondence on this matter from the Applicant and again from Mr. Lysobey. On June 15, 1992, the Conservation Law Foundation (CLF) asked that it be given an opportunity to address the cost issue in the Mid-Mountain Lodge case. CLF expected that the same issue would arise in a related proceeding, the Okemo Water Withdrawal appeal, #2S0351-12A-EB, in which it is a party. By letter dated June 17, 1992, CLF requested party status in the Mid-Mountain Lodge appeal pursuant to Board Rule 14(B)(1)(b).

On June 25, 1992, a memorandum was sent by Acting Chair Charles Storrow to the parties in both the Mid-Mountain Lodge and Water Withdrawal appeals requesting that any written submissions regarding the cost allocation issue be filed on or before July 22, 1992. On July 23, the Board received additional comment from Mr. Lysobey. The Board deliberated with respect to this matter on July 29, 1992.

II. PRELIMINARY MATTER: CLF'S PARTY STATUS

The Board denies CLF's request for party status pursuant to Board Rule 14(B)(1)(b). CLF may properly address its policy arguments and analyses to the Board if and when a cost allocation issue arises in the Water Withdrawal appeal.

III. ISSUE

Whether a party who acquired a copy of a portion of the transcript in a Board proceeding must reimburse the party who requested, obtained, and paid for stenographic and transcript services, one-half the total cost of those services.

IV. DISCUSSION

This dispute requires an analysis of the language and purposes of Board Rule 18(E). Rule 18 governs the conduct of hearings and section (E) states in relevant part:

Any party intending to stenographically record a **hearing shall** so notify the commission or board not less than one working day prior to hearing. The party requesting this method of recording shall be responsible for arranging the appearance of, and payment to, the stenographer. A copy of any transcript shall be provided to the board or district commission without cost; other parties wishing a copy shall reimburse the requesting party on a pro rata basis. Disputes over sharing of costs shall be resolved by the board or district commission.

The issue before the Board requires an interpretation of that portion of the rule which refers to reimbursement of **"the** requesting party on a pro rata basis."

Mr. Lysobey argues that Rule 18(E) is clear in its meaning: That a party who has requested and obtained stenographic and transcript services is entitled to reimbursement **"on a pro rata basis"** for the costs of those services by any party who subsequently obtains a copy of the transcript.

This case appears to be one of first impression. The Board believes that the matter of securing and paying for stenographic services should be left to the parties and the stenographer. Nonetheless, Rule 18(E) supports Mr. **Lysobey's** argument.

However, Rule 18(E) is not entirely clear as to how the cost of stenographic services should be pro-rated. The Board therefore decides to allocate the cost as follows: First, the party who arranges for the appearance of a **steno-**

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grapher should bear the full cost of the stenographer's appearance fee. Second, any party who subsequently requests a copy of the transcript must reimburse the party that retained the stenographer that portion of the charge per page for each page obtained that results from dividing the charge by the number of parties.

Thus, the Applicant must reimburse Mr. Lysobey for a share of the \$1,400 billed for transcript costs (\$1,635.00 minus \$235.00 for appearance fees). The Applicant's share is calculated by dividing the charge for the number of pages ordered at \$3.50 per page by the number of parties in the proceeding, whether or not they actually paid for or used a copy. There were four parties in this appeal: Mr. Lysobey, MHCCPI, the Applicant, and the State of Vermont. Therefore, the Applicant should reimburse Mr. Lysobey \$0.875 for each page of the transcript it obtained.

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IV. ORDER

1. CLF is denied party status pursuant to Board Rule 14(B)(1)(bj).

2. The Applicant shall pay John Lysobey within thirty (30) days, \$0.875 for each page of transcript it obtained. The Applicant shall forward an affidavit to the Board and parties certifying compliance with this order.

Dated at Montpelier, Vermont, this 31st day of August, 1992.

ENVIRONMENTAL BOARD

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