

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

Re: Mark Curran and Stephen Birge
#2S0785-EB (Revocation)

CHAIR'S PRELIMINARY RULING

I. BACKGROUND

On April 7, 1995, Mr. James C. McNulty filed a petition ("Petition") with the Environmental Board to revoke Land Use Permit #2S0785 ("Permit") issued to Mark Curran and Stephen Birge ("Permittees") by the District #2 Environmental Commission ("District Commission") on October 13, 1988. The Permit authorizes the construction of a 9,600 square foot building on a three acre tract of land to be used for the distribution and retail sale of fresh produce ("Project").

On June 5, 1995, Chair John T. Ewing convened a prehearing conference and, on June 21, 1995, issued a Prehearing Conference Report and Order ("Prehearing Order").

II. PRELIMINARY RULING

Pursuant to the Prehearing Order, the Permittees were required to file an application for a permit amendment with regard to the Petition's alleged grounds for revocation.

On December 21, 1995, the District Commission issued permit amendment #2S0785-5 to the Permittees ("Dash Five Amendment"). The Dash Five Amendment authorizes the Permittees to make the following improvements to the Project: pave the access and front parking area, add on a bay to the garage, move compressors to the rear of the building, and winterize the porch retail area. There has been no appeal from the Dash Five Amendment and, therefore, such permit is final.

Based upon a review of the Petition and the construction and activity authorized by the Dash Five Amendment, the issues in the Petition are now moot. See In re Moriarty, 156 Vt. 160, 163 (1991); Re: New England Kurn Hattin Homes, #2W0082-4-EB, Memorandum of Decision at 4 (May 3, 1995).

Accordingly, pursuant to Environmental Board Rule 16, it is hereby **ORDERED**:

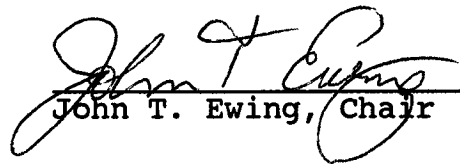
1. The Petition is dismissed with prejudice unless an objection to this Chair's Preliminary Ruling is filed on or before **Friday, February 23, 1996**. Any such objection must be accompanied by a memorandum stating why the Petition is not moot.

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2. If no objection is filed as required by paragraph #1, then this Chair's Preliminary Ruling shall become final and the Petition shall be dismissed with prejudice.

Dated at Montpelier, Vermont, this 8th day of February, 1996.

ENVIRONMENTAL BOARD



John T. Ewing, Chair

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