

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

Re: *Village of Ludlow*

Land Use Permit Amendment
Application #2S0839-2-EB

MEMORANDUM OF DECISION

Mount Holly Mountain Watch (MHMW) objects to the Continuance Order issued by the Chair on June 3, 2003, and requests that the deadline for prefilng direct evidence be continued further. As provided below, the Board denies MHMW's objection and leaves the deadlines from the Continuance Order in place.

I. PROCEDURAL SUMMARY

A complete procedural summary through May 24, 2003 is set forth in the Memorandum of Decision (MOD) issued on that date.¹

On June 2, 2003, MHMW filed a Motion to Continue the June 4, 2003 deadline for prefilng direct evidence to June 24, 2003. The Village of Ludlow informed Board counsel that it would agree to a continuance to June 18, 2003 but no later, as long as the hearing date was not delayed. On June 3, 2003, the Chair issued the Continuance Order, continuing the June 4, 2003 deadline to June 20, 2003, and adjusting other prehearing deadlines, but keeping the July 23, 2003 hearing as originally scheduled.

On June 9, 2003, MHMW objected to the Continuance Order, again asking that the deadline for prefilng direct evidence be continued to June 24, 2003. The Village of Ludlow opposes MHMW's objection.

The Board deliberated on June 18, 2003.

II. DISCUSSION

The June 2, 2003 Continuance Order continued the prefilng deadline by nearly three weeks, from June 4 to June 24, 2003. MHMW objects, claiming it needs four more days, until June 24, 2003, to obtain information from ANR and to prepare its case. The Village of Ludlow opposes MHMW's request. The Board considers this objection pursuant to EBR 16(B), which governs orders of the Chair.

As the Village of Ludlow points out, MHMW has been involved in the permitting of this facility for some time now, so the issues presented in this appeal are not new to the group, and the Chair noted at the prehearing conference that MHMW should start preparing its case before the party status rulings were made.

¹

Terms defined in the MOD are used herein without definition.

MHMW claims it will need to subpoena ANR employees without the extra time, but the group fails to explain why four days will make the difference. Also, MHMW fails to state what information it needs from ANR, why this information is necessary to its case, and does not claim that MHMW cannot obtain this information without the additional continuance. In short, MHMW has not demonstrated that it would be prejudiced by a continuance to June 20, as opposed to June 24, 2003.

The prehearing schedule in this matter already was compressed in the Continuance Order, to allow the deadline for prefilings direct testimony to be continued for twenty days. As a result, a further continuance would delay the hearing date. While flexibility in scheduling to accommodate the parties' reasonable needs is desirable, the hearing date should not be delayed without a compelling reason. MHMW has not provided a good reason to delay the prefilings deadline by four days, and certainly has not provided a sufficient reason to delay the hearing.

MHMW's objection is denied.

III. ORDER

1. MHMW's Objection to the Continuance Order is DENIED.
2. The Continuance Order remains in force.

DATED at Montpelier, Vermont this 18th day of June, 2003.

ENVIRONMENTAL BOARD

/s/Patricia Moulton Powden
Patricia Moulton Powden, Chair
George Holland
Samuel Lloyd
Donald Marsh
Patricia Nowak
Richard C. Pembroke, Sr.
Jean Richardson