

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

Re: Alpine Stone Corporation
and
ADA Chester Corporation
and
Ugo Quazzo by
C. Daniel Hershenson, Esq.
Hershenson, Carter, Scott and McGee, P.C.
P.O. Box 909
Norwich, VT 05055-0909

Land Use Permit
#2S1103-EB

MEMORANDUM OF DECISION ON MOTION TO STAY

I. Introduction

This proceeding concerns an appeal by Alpine Stone Corporation and ADA Chester Corporation and Ugo Quazzo ("Permittees") from Land Use Permit #2S1103 ("Permit") and supporting Findings of Fact, Conclusions of Law, and Order ("Decision") issued by the District 2 Environmental Commission ("Commission").

On October 26, 2000, pursuant to Environmental Board Rule ("EBR") 42, Permittees filed a Motion to Stay Condition 6 of the Permit.

II. Discussion

Condition 6 of the Permit requires that "prior to October 15, 2000, the existing project access and culvert shall be removed and the driveway area covered with topsoil, seed and mulch to re-establish vegetation in this area."

Permittees allege that the purpose of Condition 6 is to effect closure of the access to the site, based on the Commission's Decision which prohibits future extraction and/or removal of mica schist from the site. Permittees have appealed the Decision concerning future extraction. They therefore contend that, should they prevail before the Board, monies that they expend to close - and then reopen - the access will be spent for nought. This, they argue, would be a hardship.

Permittees further contend that the Commission's Findings of Fact demonstrate that the retention of the project access, culvert, and the driveway area will have no adverse impact on the environment or any of the values sought to be protected by Act 250, 10 V.S.A. Ch. 151.

The only discussion of the access road in the Decision appears in Commission's analysis of Criteria 9(D) and (E), 10 V.S.A. §6086(a)(9)(D) and (E), where the Commission states: "We will require removal of the access road and for the site to naturally revegetate, thus returning the site to its former forest land use." Decision at 19.

No party or potential party has filed an opposition to the Motion for Stay within the fifteen-day time period allowed by EBR 12(F), and there is no evidence that granting the stay will adversely impact the public's interests.

Pursuant to EBR 42, the Board must consider three factors in determining whether to grant a request for a stay:

- i) the hardship to the parties,
- ii) the impact on the values sought to be protected by Act 250, and
- iii) the effect on the public health, safety or general welfare

The burden is on the Permittees to address these criteria and prove that a stay is necessary. *Stokes Communication Corp.*, #3R0703-EB, Supplemental Memorandum of Decision (February 26, 1993).

The Board concludes that the Motion meets the requirements of EBR 42.

III. Order

Permittees Motion for Stay is GRANTED.

Dated at Montpelier, Vermont this 17th day of November 2000.

ENVIRONMENTAL BOARD

Marcy Harding, Chair
Jack Drake
George Holland
Alice Olenick
Robert Opel