

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

RE: NJM Realty Limited Partnership by
Timothy J. O'Connor, Jr., Esq.
P.O. Box 532
Brattleboro, Vermont 05301-0532

Memorandum of
Decision and Order
Land Use Permit
#2W0312-EB
(Revocation)

This decision pertains to a motion to dismiss filed by NJM Realty Limited Partnership (the Permittee) in the above matter. As is explained below, the Environmental Board has determined to grant the motion to dismiss but to proceed on its own motion pursuant to Board Rule 38(A) to initiate revocation proceedings. The Board has also decided to place the revocation proceedings on hold to allow the Permittee to enter into an Assurance of Discontinuance pursuant to 10 V.S.A. § 8007.

I. BACKGROUND

On May 19, 1989, Olin J. Stephens III and Carol D. Stephens (the Petitioners) filed a petition to revoke Land Use Permit #2W0312 (the permit). The permit was issued to Stewart N. Lawrence by the District #2 Environmental Commission on April 21, 1976 for a gravel operation to be located in Newfane. On June 1, the Permittee filed a motion to dismiss the revocation petition. On June 6, the Permittee filed an answer to the allegations contained in the revocation petition. On that date, former Chairman Leonard U. Wilson convened a prehearing conference in Newfane. On June 20, the District Commission issued Land Use Permit #2W0312-1, amending the permit to show a transfer of ownership of the gravel pit from Mr. Lawrence to the Permittee. On June 22, the Board issued a prehearing conference report and order.

Following the prehearing conference, parties were given an opportunity to settle this matter. On March 14, 1990, the Petitioners filed a written notification that settlement negotiations had been unsuccessful and requested a hearing on the petition.

On April 27, 1990, Environmental Board Chairman Stephen Reynes convened a second prehearing conference in Newfane. At the prehearing, the parties agreed that the Board should first consider whether to grant the motion to dismiss.

On May 16, 1990, the Board issued a second prehearing conference report. On May 18, Eileen Houston filed a letter attaching a stipulation concerning this matter signed by her and the Town dated May 16. On May 21, the Permittee filed a copy of an apparently identical

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stipulation signed by the Permittee, the Town, and Ms. Houston dated May 16. The Board deliberated on May 24 in Chittenden, Vermont.

II. DISCUSSION

The issue before the Board is whether the Board should **dismiss** the petition. The Permittee argues that the petition must be dismissed because the Petitioners are not adjoining property owners and were not parties to the original application. The Petitioners assert that they have standing to bring this revocation request, and in the alternative, ask the Board to proceed with revocation on its own motion pursuant to the authority provided in Board Rule 38(A).

10 V.S.A. § 6090(c) provides:

A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.

Rule 38(A) provides:

Revocation for violations. A petition for revocation of a permit . . . may be made to the board by any person who was party to the application, by any adjoining property owner whose property interests are directly affected by an alleged violation, by a municipal or regional planning commission, or any municipal or state agency having an interest which is affected by the development or subdivision. . . . The board may also consider permit revocation on its own motion.

The Board has concluded that the Petitioners do not have standing to bring this revocation request. They were not parties to the permit proceedings, are not adjoining landowners, and do not fit any other category of persons able to file petitions for revocation pursuant to Rule 38(A). Accordingly, the motion to dismiss their petition is granted.

The Board nonetheless has determined pursuant to Rule 38(A) to initiate revocation proceedings on its own motion. As set out in the prehearing conference report, the following violations have been alleged here which warrant examination:

- a. Use of a crusher at the gravel pit. In its answer filed June 6, 1989, the Permittee appears to admit that it used a crusher on-site which was not authorized in any permit, but states that it has ceased using a crusher at the pit and will not use the crusher without first obtaining a permit amendment from the District Commission. Past use of the crusher may have been a violation of Rule 34, which requires permit amendments for any material or substantial changes to approved projects.
- b. The gravel pit operation's exceeding six acres. The permit only authorizes an operation on six acres and this six-acre limitation may have been exceeded. The Permittee denies that its operation exceeds six acres. If the Permittee in fact has exceeded a six-acre limitation, the Permittee may have violated both Rule 34 and the terms of the permit.
- c. Violation of Condition 3 of the permit concerning the creation of a rehabilitation plan and an escrow arrangement to guarantee rehabilitation of the pit. Condition 3 requires the completion of such a plan and escrow arrangement prior to the pit's being opened. The Permittee acknowledges that it is operating the pit and that it has not completed a rehabilitation plan, but states that the findings of fact supporting the permit do not refer to completion of this plan prior to opening of the pit.

The Board notes that the parties have filed stipulations with respect to this case and therefore believes that the avenue of voluntary settlement should be explored. Accordingly, the Board has determined to place these revocation proceedings on hold and to request that the State of Vermont, through the Agency of Natural Resources, Department of Environmental Conservation, Division of Enforcement, negotiate with the Permittee concerning the possibility of entering into an Assurance of Discontinuance pursuant to 10 V.S.A. § 8007. Upon completion of an Assurance which is sufficient to assure that the Permittee's operations are in compliance, the Board will consider dismissal of these revocation proceedings.

III. ORDER

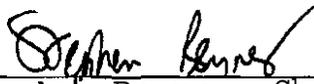
1. The petition for revocation filed by Olin J. Stephens III and Carol D. Stephens is dismissed.

2. The Board on its own motion will initiate revocation proceedings based on the alleged violations enumerated above.

3. The Board stays the revocation proceedings pending an opportunity for the State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, Division of Enforcement, to negotiate with the Permittee concerning entry into an Assurance of Discontinuance pursuant to 10 V.S.A. § 8007.

Dated at Montpelier, Vermont this 29th day of June, 1990.

ENVIRONMENTAL BOARD



Stephen Reyne, Chairman
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