

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

Re: Mount Snow, Ltd.
Land Use Permit Application #2WO359-35N-EB

DISMISSAL ORDER

As explained in more detail below, at the request of appellant Mount Snow Ltd. ("Appellant"), the Vermont Environmental Board ("Board") hereby dismisses the Appellant's December 16, 1999 appeal in this matter.

1. PROCEDURAL SUMMARY

On June 6, 1997, the District #2 Environmental Commission ("Commission") issued Land Use Permit #2WO359-35 ("Permit") to Appellant pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250"). The Permit authorized the construction of a 203 room hotel, restaurant, cafe, grand ballroom, meeting rooms, health club, day care facility, retail space and parking spaces at the Mount Snow resort in the Town of Dover. Pursuant to Condition #29, the Appellant was required to submit an Act 250 permit application by August 15, 1997 to build an affordable housing development known as the Riverbend Project. The Commission has extended the original deadline several times.

On July 19, 1999, the Commission issued a Hearing Recess Order requiring the Appellant to expend the funds for the affordable housing project in the towns of Dover, Wilmington, or Wardsboro. The Order also invited the Appellant to submit a new plan concerning the number of units necessary to meet its affordable housing responsibilities.

On November 16, 1999, the Commission issued a Memorandum of Decision reaffirming its requirement that the Appellant expend the funds for the affordable housing project in the three towns. The Commission issued a new deadline of February 29, 2000 for the Appellant to submit its plan to provide sufficient units of affordable housing to meet its responsibilities.

On December 16, 1999, Appellant filed an appeal with the Board concerning the number of affordable housing units it is required to build and the venue of the project. Appellant simultaneously filed a Motion to Stay the Appeal.

On December 22, 1999, Appellant filed a request with the Commission to amend the required number of affordable housing units.

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On January 10, 2000, Appellant filed a Motion to Withdraw its appeal.

On January 12, 2000, the Board deliberated concerning the Motion to Withdraw.

II. DISCUSSION

Both Appellant's appeal to the Board and motion in front of the Commission concern the required number of affordable housing units to be built. Since the Commission has not yet issued a final ruling on the subject matter and the Appellant did not file its appeal pursuant to Environmental Board Rule 43, this issue is not properly before the Board. Burlington Broadcasters, Inc., #4C10004-EB, Chair's Preliminary Ruling (April 23, 1997); Circumferential Highway, #4CO718-1-EB, Dismissal Order (April 26, 1990). Once the Commission has issued a final ruling on the number of units of affordable housing that Appellant must provide, Appellant can then file an appeal with the Board.

Appellant's appeal also concerned the venue for the affordable housing development which the Commission has already considered and ruled upon. While the Board could accept jurisdiction over this issue, such a piecemeal approach examining one issue at a time rather than the entire project would be inefficient. The Board therefore, declines to engage in piecemeal review. Vermont Agency of Transportation-Shelburne Road Reconstruction, #4C 10 1 0-EB, Memorandum of Decision May 5, 1998; Circumferential Highway, Id.

Before the Board can grant Appellants Motion to Withdraw, the Board must conclude that dismissing the appeal will not harm the public interest. The Board and district commissions are charged to protect and conserve the lands and environment of the state. 10 V.S.A. Ch 151. An administrative agency has discretion to reject a stipulation to dismiss or a request to withdraw an appeal if dismissal would prejudice the public interest the agency is charged to protect. Cf., Rockwell Park Associates and Bruce J. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corp., Declaratory Ruling #247 (Dec. 13, 1991). The Board concludes that allowing withdrawal of Appellant's appeal will not prejudice the public interest that the Board is charged to protect. Therefore, Appellant's Motion to Withdraw is granted.

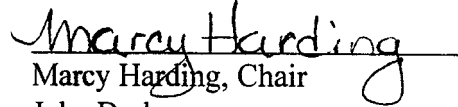
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III. ORDER

The Appellant's December 16, 1999 appeal is dismissed without prejudice. Jurisdiction is returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont this 13th day of January 2000.

ENVIRONMENTAL BOARD


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