

Adum

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

**RE:** Puppy Acres Boarding Kennel by  
Timothy J. O'Connor, Jr., Esq.  
O'Connor & Morse  
P.O. 532  
Brattleboro, VT 05301

MEMORANDUM OF DECISION  
Application #2W0568-2-EB

This decision pertains to an appeal filed with the Environmental Board ("the Board") on August 29, 1985, by Applicant Puppy Acres Boarding Kennel from the June 10, 1985 decision of the District #2 Environmental Commission issuing Land Use Permit Amendment #2W0568-2 and the Commission's July 29 decision in reconsideration of its June decision. A cross-appeal was filed in this matter on September 23, 1985, by John and Ann Dixon. Finally, on September 23, the Dixons filed a Petition for Revocation of Land Use Permits #2W0568, 2W0568-1 and 2W0568-2.

By notice dated September 10, 1985, the Board informed the parties of its intention to hear oral argument with regard to the timeliness of the Applicant's appeal. On September 23, the Dixons filed a motion to dismiss the appeal raising the timeliness issue. On October 2, 1985, the Board convened the public hearing in this matter and the following participated as parties at that hearing:

Applicant/Appellant by Timothy J. O'Connor, Jr., Esq.;  
John and Ann Dixon by Mr. Dixon.

In addition, on October 1, 1985, William Jewell entered his appearance in the appeal.

The hearing was recessed on October 2, pending a determination by the Board concerning its jurisdiction to hear this appeal.

I. TIMELINESS OF APPEAL

A. Findings of Fact

1. On June 10, 1985, the District #2 Environmental Commission ("the Commission") issued Land Use Permit #2W0568-2 to Puppy Acres Boarding Kennel authorizing certain additions to a kennel located in Guilford, Vermont. On June 26, the Applicant filed with the Commission a request that it reconsider its June 10 decision. On July 29, 1985, the Commission issued its written decision concerning the reconsideration request. Appellant received this decision on July 31.

2. On August 28, 1985, counsel for Applicant deposited in the U.S. Mails a Notice of Appeal from the Commission's June 10 and July 29 decisions. The Notice of Appeal was received by the Board at its Montpelier offices on August 29, 1985.

3. Appellant's current counsel was first contacted by the **Appellant** with regard to this case on August 16 or 17. Counsel visited the project site on August 17 and then left on a two-week vacation. Counsel returned early from vacation especially to file the appeal in this case.

4. The Appellant did not contact the Board prior to the expiration of the 30 day appeal period nor did the Appellant request an extension of the 30 day limit until doing so orally on October 2.

B. Conclusions of Law

10 V.S.A. § 6089(a) provides, in part:

An appeal from the district commission shall be to the Board ....  
Notice of appeal shall be filed with the Board within 30 days.

EBR 40 pertaining to appeals states, in part:

Any party aggrieved by an adverse determination by a district commission may appeal to the board ....**An** appeal shall be filed with the board within 30 days after date of the decision of the commission.

The notice of Appeal filed in this case was not received at the Board's offices until more than 30 days had elapsed after the Commission's issuance of its July 29 decision. The Board must, therefore, decide whether or not it has the legal authority to entertain the appeal.

We have previously concluded that the 30 day limit fixed by § 6089 is jurisdictional: a failure to comply with the 30 day limit eliminates this Board's authority to entertain the appeal. See Re: Mad River Valley Enterprises, Inc., #5W0549-8-EB, January 11, 1984 Memorandum of Decision; Northfield v. Chittenden Trust Co., 128 Vt. 240 (1969); Shortle v. Board of Zoning Adjustment of Rutland, 136 Vt. 202 (1978). § 6089 and EBR 40 make clear that an appeal notice must be filed no later than 30 days after issuance of the Commission decision. The Appellant having failed to do so, we have no jurisdiction to hear the appeal.

Appellant argues by analogy to V.R.C.P. 6(b) that we should **enlarge the 30 day period based upon alleged excusable neglect** on the part of Appellant's counsel. We cannot agree with this approach for two reasons. First, the Rules of Civil and Appellate Procedure are not applicable to the Board's proceedings

See Reporter's Notes to V.R.C.P. 1; Int. Assoc. of Firefighters v. Montpelier, 133 Vt. 175, 177 (1975). Second, if the Civil Rules were applied by analogy, it is V.R.A.P. 4 which is parallel to the circumstances of this case and that rule requires any request for extension of an appeal period to be made within 60 days of the issuance of the decision appealed from; Appellant's oral request for extension came during the Board's October 2 meeting, more than 60 days from the Commission's July 29 decision. See The Union Bank v. Jones, 138 Vt. 115, 125 (1980).

The Permittee's appeal must be dismissed.

## II. PETITION FOR REVOCATION OF PERMIT

The Dixon's Petition for Revocation of Permit alleges that the Permittee has failed to comply with Condition #9 pertaining to the confinement of dogs to the kennel, and Condition #5 regarding erosion control measures. The Permittee has apparently completed (or nearly completed) the improvements authorized in Land Use Permit Amendment #2W0568-2. Having acted in reliance upon the benefits of the permit, the Permittee must also comply with the terms and conditions of that permit. A failure to comply with the permit's terms and conditions can result in revocation of the permit (see 10 V.S.A. § 6090) and the imposition of civil and criminal penalties on the violator. See 10 V.S.A. §§ 6003 and 6006.

We will postpone further proceedings in relation to the Revocation Petition for a period of 30 days. We will direct the staff of the Board's Springfield office to inspect the site and prepare a report at the end of said 30 day period concerning the **Permittee's** compliance with Conditions #5 and #9. The report will be submitted to the Board and to the parties concurrently. All parties will be given an opportunity to respond to the report and the Board will then determine whether further proceeding on the revocation request are necessary.

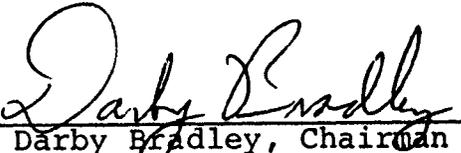
## III. ORDER

Appeal #2W0568-2-EB is hereby dismissed. Further proceedings with regard to the Dixon Petition for Revocation are continued pending the inspection described in part II of this decision.

Dated at Montpelier, Vermont this 11th day of October, 1985.

VERMONT ENVIRONMENTAL BOARD

By:

  
Darby Bradley, Chairman