

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

RE: Richard and Jean Wilson by Memorandum of Decision
Kenneth Fisher, Jr., Esq. Application #2W0585-A-EB
P.O. Box 621
Brattleboro, VT 05301-0621

On February 11, 1988, an appeal was filed with the Environmental Board by Richard and Jean Wilson from a decision of the District #2 Environmental Commission dated January 22, 1988. In that decision, the Commission denied the Applicant's application for an extension of its construction completion date and permit expiration date for its sand and gravel borrow area until October 15, 1988. Land Use Permit #2W0585, which was issued on July 15, 1984, expired on October 15, 1987. On September 11, the Applicant requested that its expiration date be extended.^{/1/} The Commission held a hearing on January 5, 1988. At the hearing, the Commission reviewed the application under Rule 35 to determine whether the permit should be renewed, and addressed the problems of noncompliance by the Applicant with Land Use Permit #2W0585. Based upon its determination that permit conditions have been violated, on January 22 the Commission denied the application for an extension.

The Board believes the District Coordinator and the Commission incorrectly interpreted and applied Rule 35 and that this appeal must be remanded to the Commission for a hearing on the substantive criteria at issue. Rule 35(B) provides that upon receipt of a request for renewal of a permit, the Coordinator shall review the proposal and determine whether it would involve significant impacts under the criteria and upon the values sought to be preserved by the Act. Section (C)(1) provides that if, in the judgment of the Coordinator, the proposed renewal does not involve significant impacts, and the application for renewal was made before expiration of the permit, the renewal shall be treated as a minor amendment pursuant to Rule 34(C). Section C(2) provides that if, in the judgment of the Coordinator, the proposed renewal does involve significant impacts, or if the application for renewal was made after expiration of the permit, the renewal shall be treated as a new application and comply with sections 6083, 6084, and 6085.

The Coordinator apparently determined that the application should be treated as a minor, and scheduled a hearing upon the request of an adjoining landowner. At the

^{/1/}The Commission's January 22 decision incorrectly states that the Wilsons filed their application for an extension on November 17, 1987.

hearing, the Commission addressed the issue of past noncompliance by the Applicant with the existing land use permit. Consideration of compliance with the permit, however, is not authorized by statute or by rule. At the hearing, the Commission apparently considered the factors enumerated in Rule 35(B). A careful reading of that provision, however, indicates that those factors are for the Coordinator's consideration when determining whether a renewal application should be treated as a minor or as a new application. Once that determination has been made, the application proceeds as any other application. The Commission reviews the substantive criteria of the Act; compliance with the permit is not an issue for consideration by the Commission.

ORDER

This appeal is hereby remanded to the Commission for a hearing on the substantive criteria at issue.

Dated at Montpelier, Vermont this 7th day of March, 1988.

ENVIRONMENTAL BOARD



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