

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

**Re: Birgit Cooper  
and William Meub**

**Land Use Permit Amendment  
#2 W0848-1-EB**

**MEMORANDUM OF DECISION AND DISMISSAL ORDER**

This proceeding concerns an appeal of a permit amendment issued by the District #2 Environmental Commission ("Commission") directing, in part, that certain transfers of land be made to bring the subject subdivision into conformance with a previously issued Act 250 permit. For the reasons explained below, the Environmental Board ("Board") dismisses this appeal.

**I. PROCEDURAL SUMMARY**

Land Use Permit #2W0848 ("Permit") was issued on May 18, 1993, for the redesign of 20 lots which are part of an existing 55-lot subdivision known as Deer Meadow, located in the Town of Dover, Vermont ("Project"). On June 16, 1997, application #2W0848-1 ("Amendment Application") was filed by Birgit Cooper ("Permittee") to extend the construction completion date for Land Use Permit #2W0848. The Amendment Application also sought a declaration from the Commission that the transfer of various lots by two of the original co-permittees, Litchfield Financial Corporation and Green Mountain Bank, to William Meub, Esq., ("Co-Penn&tee") is void.

The Commission issued a Memorandum of Decision on August 7, 1997, in which it directed the Co-Permittee to prepare deeds, property transfer forms and other documents to effectuate the land transfers between the Permittee and the Co-Permittee to bring the subdivision into conformance with the Permit as a precondition to issuing the requested extension of construction completion deadline. The Commission did not declare the transfer of lots to the Co-Permittee void.

The Permittee filed an interlocutory appeal on August 18, 1997. The Board denied this appeal. See Memorandum of Decision and Order, Application #2W0848- 1 -EB (Interlocutory Appeal) (Sept. 24, 1997).

On March 19, 1998, the Commission issued Land Use Permit #2W0848-1 ("Permit Amendment") and supporting Findings of Fact and Conclusions of Law and Order ("Decision"). The Decision granted the requested extension of construction completion deadline but required the transfer of land between the Permittee and the Co-Permittee to bring the subdivision into compliance with the Permit. Condition 5 of the Permit Amendment set forth the deadlines for making the transfers and for providing the Commission with new deed references to reflect the transfers.

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On April 17, 1998, the Permittee, by and through her attorney, Gerald R. Tarrant, Esq., of the firm Tarrant, Marks & Gillies, filed with the Board an appeal from Land Use Permit #2W0848-1 and the supporting Decision. On April 24, 1998, an Act 250 Notice of Prehearing Conference was issued. This was published in the Brattleboro Reformer on April 29, 1998.

On April 24, 1998, the Co-Permittee entered his appearance in this matter through counsel Michael E. Zeliger, Esq., of the firm Keyser, Crowley, Carroll, George & Meub, P.C.

A prehearing conference with respect to this matter was convened by Board Chair Marcy Harding on May 18, 1998, in Montpelier, Vermont. Those participating in the prehearing conference were the Permittee and the Co-Permittee, both represented by counsel. The Chair issued a Prehearing Conference Report and Order on May 21, 1998, making certain party status determinations and other rulings. This Prehearing Conference Report and Order is herein incorporated by reference.

At the request of the Permittee and Co-Permittee, the Chair granted continuances in this matter on June 15, June 30, July 27, and September 23. These continuances were granted to enable the parties to resolve through settlement the property transfer dispute central to this appeal.

On November 17, 1998, the parties filed a copy of their Settlement Agreement, but requested an additional continuance to complete certain transactions. The Chair granted an additional continuance on November 18, 1998.

On February 23, 1999, the parties jointly filed a Motion to Dismiss, as provided in their Settlement Agreement.

On March 24, 1999, the Board deliberated concerning the Motion to Dismiss.

## II. **DISCUSSION**

The Permittee appealed the Permit Amendment, challenging the Commission's extension of the construction completion deadline contingent upon the transfer of certain property from the Permittee to the Co-Permittee and vice-versa. In settling this appeal, the parties agreed to make the transfers required by the Commission, thereby resolving the central issue in this appeal and

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bringing the subject subdivision into substantive compliance with the Permit.<sup>1</sup> The Board has been advised that such transfers have been made. See Letter from the Permittee, filed February 5, 1999.

An administrative agency has discretion to grant or reject a stipulation to dismiss or a request to withdraw an appeal depending on whether dismissal would prejudice the public interest the agency is charged to protect. E.g., Patt and Marv Taylor, #3 W0344-B-EB, Order of Dismissal (Feb. 25, 1999); Rockwell Park Associates and Bruce Levinsky, #5 W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corn., Declaratory Ruling #247 (Dec. 13, 1991). The Board and district commissions are charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 § 1 (Adj. Sess.). Allowing withdrawal of the present appeal from the Permit Amendment will not prejudice the public interest that the Board is charged to protect. Although **the** parties were not able to make the required transfers by the deadlines established in Condition 5 of the Permit Amendment, the Board nonetheless believes that the parties have reached an agreement to effectuate the substantive requirements of Condition 5. Therefore, the **Board** concludes that the parties' joint Motion to Dismiss should be granted.

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<sup>1</sup> Condition 5 of the Permit states:

The permittees shall complete the land transfers between each other in conformance with the corrective Quit Claims Deeds (Exhibit 8). Mr. Meub shall accomplish all necessary transfer recordings by April 6, 1998. Mr. Meub shall provide the District 2 Environmental Commission with the new deed references, as recorded in the Dover Town Records, by May 30, 1998.

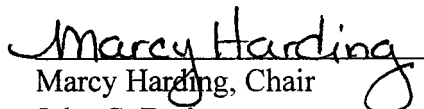
Although the parties have represented that they've made the transfers required to bring the subject subdivision into compliance with the Permit, they have not made these transfers by the deadlines set forth above. It also is not known whether they have provided new deed references to the Commission. Accordingly, upon remand of this matter, the parties should discuss with the District Coordinator whether an administrative amendment should be filed to modify Condition 5 to reflect actual execution of the transfers and provision of the new deed references. See Environmental Board Rule 34(D).

**III. ORDER**

1. The Permittee's appeal from Land Use Permit Amendment #2W0848-1 is dismissed with prejudice.
2. Jurisdiction over the Permit Amendment is returned to the District #2 Commission.

Dated at Montpelier, Vermont, this 25th day of March, 1999.

ENVIRONMENTAL BOARD

  
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