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

Re: Gary Savoie d/b/a WLPL and Eleanor Bemis
Application #2W0991-EB

MEMORANDUM OF DECISION

On October 11, 1995, the Environmental Board issued Findings of Fact, Conclusions of Law, and Order #2W0991-EB (the Decision), denying an application by Gary Savoie d/b/a WLPL and Eleanor Bemis (the Applicants) to construct and operate a communications tower in Athens and Rockingham (the Project). The purpose of the tower is to broadcast an FM station to be owned and operated by Mr. Savoie. The Decision is incorporated by reference.

On November 9, 1995, the Applicants filed a motion to alter and request for further hearing. Responses were filed on December 6 by parties Sarah Ann Martin and Edmund and Veronica Brelsford.

The Board deliberated on December 20, 1995 and determined to deny the Applicants' motion to alter and request for further hearing. The Decision is based on the evidence and is sound for the reasons stated therein. The Board declines in this memorandum to address all of the Applicants' specific contentions, except for two items discussed immediately below.

The first item is an argument by the Applicants that the Board erred in admitting the testimony of witness Mark Hutchins concerning a tower owned by Warner Communications on Mount Kilburn in New Hampshire. The Mount Kilbum tower is an alternative location for the FM station. The Applicants contend that Mr. Hutchins' testimony is hearsay.

For the following separate and independent reasons, the Board declines to alter the Decision based on the contentions regarding Mr. Hutchins' testimony:

a. The testimony is not hearsay.

b. Regardless of whether the testimony is hearsay, the Board concludes that it is admissible under 3 V.S.A. § 810(1) and under In re Desautels Real Estate. Inc., 142 Vt. 326, 335 (1983).

c. The Applicants "opened the door" because Mr. Savoie offered testimony of a similar type regarding the availability of the Mount Kilburn tower. Accordingly, it would be manifestly unfair to exclude Mr. Hutchins' testimony. See Vermont Rule of Evidence 102.

The second item to which the Board will respond is the Applicants' request for a further hearing. It is clear from the Applicants' request that they seek to present new evidence. However, a motion to alter is a vehicle for reconsideration

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based on the existing record; new evidence is not taken. Re: Taft Corners Associates, #4C0696-11-EB(R), Memorandum of Decision (May 5, 1995).

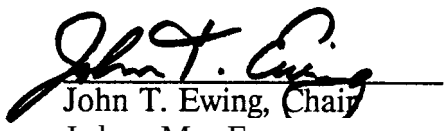
The Board notes that, under 10 V.S.A. § 6087(c) and Environmental Board Rule 31(B), a procedure exists under which the Applicants may within six months file an affidavit with the District #2 Commission and have a hearing at which they submit new evidence. Such affidavit and evidence would be related to whether they have corrected the deficiencies found by the Board and whether such correction is sufficient to cause the Project to conform to the applicable regional plan.

ORDER

The Applicants' motion to alter and request for further hearing are denied.

Dated at Montpelier, Vermont this 3rd day of January, 1996.

ENVIRONMENTAL BOARD



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