

2. The Commission held hearings on December 16, 1997 and June 13, 2000. Recess memoranda requesting additional information were sent out on December 19, 1997 and June 16, 2000. The Applicant completed his response to these requests on September 13, 2000. The Commission completed deliberations and adjourned the hearing on February 14, 2001.
3. The Commission issued the Decision denying the Application on February 20, 2001.
4. On March 9, 2001, Applicant filed a Notice of Appeal with the Board, addressed to the Commission. This notice states, in relevant part:

In Response to the letter of denial of the Land Use Permit I would like to submit an appeal. I will be down sizing my business in the near future.
5. On March 14, 2001, Board General Counsel John Hasen wrote the Applicant to notify him that several required items had been omitted from the Notice of Appeal, specifically a filing fee of \$100, and an original plus ten copies of the following: a statement of issues to be addressed on appeal; a statement of the reasons why the appellant believes the Commission was in error; a summary of the evidence to be presented; a preliminary list of witnesses to testify on appellant's behalf; and the Decision.
6. On March 21, 2001, the Applicant notified the Board that he wished to withdraw the Notice of Appeal, and that he would instead file an application with the Commission "for reconsideration of permit denial when the deficiencies are corrected."
7. Applicant has not completed the Appeal to date.

III. PRELIMINARY RULING

The Chair is authorized by EBR 16(B) to make such preliminary rulings on procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any interested party. EBR 16(B). Should any party object to the ruling, it "shall be reviewed and the matter resolved by the board." *Id.*; see also, *Re: Eaglewood XI, Ltd.*, #9A0151-EB, Notice of Dismissal, at 1 (Feb. 18, 1986)(the Board will approve or reject a preliminary decision without hearing where no party makes a timely request for a hearing).

IV. CONCLUSIONS OF LAW

The Applicant seeks to withdraw his appeal. An administrative agency has discretion to reject a withdrawal or dismissal of an appeal if it would prejudice the public interest that the agency is charged to protect. *Vermont Agency of Transportation*, #4C1010-EB, Dismissal Order (May 17, 2000)(citing *Ronald L. Saldi*, #5W1088-1-EB, Memorandum of Decision at 3 (Oct. 1, 1996); *Rockwell Park Associates and Bruce J. Levinsky*, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994)). Under Act 250, the Board and district commissions are charged to protect and conserve the lands and environment of the state. 10 V.S.A. §§ 6001-6092 (Findings and Declaration of Intent). Allowing dismissal of this appeal will not prejudice these public interests because they are protected by the Commission's decision.

In addition, dismissal is appropriate because this appeal is incomplete. Appeals are governed by 10 V.S.A. § 6089(a) and EBR 40. EBR 40(A) requires that the appealing party submit a filing fee with the Notice of Appeal. The fee is set by statute at \$100. 10 V.S.A. § 6083a. Applicant did not submit the requisite fee. EBR 40(A) also requires that the appealing party file an original and ten copies of the decision of the commission, a statement of reasons why the appellant believes the commission was in error, a statement of the issues to be presented in the appeal, and a preliminary list of witnesses. Failure to complete the appeal may result in dismissal. EBR 40(A).

As set forth above, Applicant has not completed this appeal. Instead, he intends to apply for reconsideration by the Commission.

The Board has the general authority to dismiss a matter in which a party has failed to comply with the Board's rules:

The Board may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before the board for reasons provided by these rules, by statute, or by law.

EBR 18(D). The rule also provides an opportunity for oral argument, upon request of a party, prior to consideration of dismissal. *Id.*

The Board is reluctant to dismiss an appeal for failure to comply with procedural requirements. See, *Re: Kapitan Gravel Pit*, Declaratory Ruling #388, Dismissal Order, at 3 (Sept. 8, 2000)(citing *Constantino Antique Business*,

Declaratory Ruling #262, Memorandum of Decision at 2-3 (May 12, 1992); *John v. Medical Center Hospital of Vermont, Inc.*, 136 Vt. 517, 519 (1978)); *Re: Ruby Iantosca*, #2S1085-EB, Chair's Proposed Dismissal Order, at 2-3 (Sept. 1, 2000). However, the Applicant has declined to complete his appeal despite ample opportunity to do so, opting instead to request withdrawal.

IV. ORDER

1. The Board takes official notice of the official files kept by the Board in this matter as stated above in Section I, Official Notice.

2. This Petition shall be dismissed unless completed, or an objection to this Order or request for oral argument is filed, by **Wednesday, April 11, 2001**.

3. This Order is issued pursuant to EBR 16(B) and EBR 18(D) and is binding on all parties unless a written objection to it, in whole or in part, is filed in accordance with this paragraph. Any party who objects to this Order shall file a written objection and supporting memorandum with the Board on or before **Wednesday, April 11, 2001**. Any request for oral argument, pursuant to EBR 18(D), shall be filed on or before **Wednesday, April 11, 2001**, or the right to request oral argument shall be deemed to have been waived.

4. Any reply to an objection to this Order may be filed on or before **Wednesday, April 18, 2001**.

5. Should any objection or request for oral argument be filed, the Board will deliberate on this matter on **Wednesday, May 16, 2001**. The Board will also hear oral argument if any is timely requested, on **Wednesday, May 16, 2001, at 1:00 p.m.** at the Environmental Board's Conference Room, National Life Records Center Building, National Life Drive, Montpelier, Vermont. (Take Exit 8 off I-89 onto Memorial Drive, then right at the first set of lights onto National Life Drive. The Records Center Building is at the east end of the parking lot, separate from the main National Life buildings.) If you have a disability for which you need an accommodation, please notify the Board in advance.

6. Jurisdiction is returned to the Commission.

Ralph G. Winchester, d/b/a R.G. Winchester Auto
#2W1058-EB
Chair's Proposed Dismissal Order
Page 5

Dated at Montpelier, Vermont this 28th day of March 2001.

ENVIRONMENTAL BOARD

/s/ Marcy Harding
Marcy Harding, Chair