

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

Re: Stokes Communication Corp.  
Application #3R0703-EB

MEMORANDUM OF DECISION

This decision pertains to two preliminary issues raised in this appeal. For the reasons explained below, the Board has determined to hold a hearing on the Applicant's motion to dismiss, and defer ruling on the motion to quash the subpoena issued to the Applicant.

I. BACKGROUND

On September 22, 1992, Pierre LaFrance, Richard Theken, Bryant Smith, Elizabeth LaFrance, and Joan Sax, through their attorney, Gerald R. Tarrant, Esq., filed an appeal of a decision of the District #3 Environmental Commission to grant Land Use Permit #3R0703 to the Applicant. The permit authorizes the Applicant to replace a 120-foot broadcasting and communications tower with a 300-foot tower on a 93.5 acre tract of land on the Randolph Road in Randolph.

On January 13, 1993, the Applicant filed a motion with the Board to quash a subpoena that had been served on the Applicant by Attorney Tarrant.

Apparently, on January 18 the Applicant began construction. On January 20, 1993, the Appellants filed a motion for a stay of the permit. On January 22, the Applicant filed a motion to dismiss the appeal for lack of jurisdiction, and on January 29 the Applicant filed a memorandum in opposition to the motion for a stay. On February 1, the Appellants filed a memorandum in opposition to the motion to dismiss.

The Board deliberated on the motions on February 10, 1993 in Stowe.<sup>1</sup>

I. ISSUES

1. Whether to grant the motion to dismiss.
2. Whether to grant the Applicant's motion to quash the subpoena.

II. DECISION

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<sup>1</sup>A decision on the motion to stay will be issued within the next week.

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A. Motion to Dismiss

The Applicant filed a motion to dismiss the appeal, arguing that Act 250 jurisdiction does not apply to the Applicant's project because the Applicant is leasing a tract of land of less than 10 acres and Randolph has permanent zoning and subdivision regulations.

Board Rule 18(D) provides that the Board shall convene oral argument before deciding a motion to dismiss, if requested by a party. The Applicant has requested a hearing **on** the motion to dismiss prior to the Board's decision. From the papers filed with the Board by the Applicant and the Appellants, it appears that there may be no dispute that the tract of land leased by the Applicant is less than 10 acres and that Randolph has permanent zoning and subdivision regulations. If the parties can stipulate to these and any other relevant facts, and the Applicant provides a copy of the lease to the Board and other parties, the Board can decide the question of jurisdiction based upon the stipulation and legal memoranda.

Therefore, the Board will establish a deadline for filing a stipulation of facts and legal memoranda, and will schedule a date for oral argument.

B. Motion to Quash

The Applicant filed a motion to quash the subpoena served on him by the Appellants. The Board will defer a decision on this motion until after the motion to dismiss is **decided**.

ORDER

1. On or **before** February 24, 1993, parties shall file a stipulation of facts and legal memoranda on the issue of whether the replacement of the communications tower is subject to Act 250 jurisdiction, and the Applicant shall file a copy of his lease for the tract.

2. On or before March 3, 1993, parties shall file any reply memoranda.

3. **Oral** argument will be held in March. The time and location of the hearing will be announced at a later date.

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Dated at Montpelier, Vermont this 11th day of February,  
1993.

ENVIRONMENTAL BOARD

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