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

Re: Stokes Communication Corporation and Idora Tucker  
Land Use Permit #3R0703-EB (Appeal and Revocation)

MEMORANDUM OF DECISION

This decision pertains to objections filed by Stokes Communications Corporation (the Applicant) to the prefiled testimony of Kathleen Ryan and Robert Cham. For the reasons explained below, the Board has decided to allow the testimony.

I. BACKGROUND

On May 19, 1993, the Environmental Board convened a hearing on the appeal of, and petition to revoke, Land Use Permit #3R0703 filed by Pierre LaFrance, Richard Theken, Bryant Smith; Elizabeth LaFrance, and Joan Sax (the Appellants). Testimony was presented by the Applicant; the hearing was recessed pending reconvening at a later date. In response to an objection filed by the Applicant to the testimony of the Appellants' witnesses concerning alternative sites, the Board provided an opportunity for parties to file additional legal argument. On June 28, 1993, the Board issued a decision sustaining the objection. In its decision, the Board established a deadline for parties to file additional prefiled testimony and a deadline for responses to any prefiled testimony, and scheduled a reconvened hearing for July 14.

Also at the May 19th hearing, a question was raised by a Board member concerning the possibility of shielding the lights on the tower. The Applicant stated it would investigate this possible method of mitigating the lights.

On June 30, 1993, the Appellants filed supplemental prefiled testimony of Kathleen Ryan and Robert Cham. The Applicant did not submit information concerning the possibility of shielding the lights. On July 7, the Applicant filed an objection to the introduction of the Appellants' supplemental prefiled testimony. On July 9, the Chair of the Board made a preliminary ruling that the Appellants' prefiled testimony would be admitted. On July 9 and July 12, parties were orally informed of the Chair's ruling. In response, the Applicant requested that the hearing scheduled for July 14 be continued in order to allow for preparation of testimony in response to the Appellants' supplemental prefiled testimony. Over the objections of the Appellants' attorney, the Chair ruled that the hearing would be cancelled and that the full Board would consider the Applicant's objections to the Appellants' supplemental prefiled testimony.

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On July 13, the Applicant filed objections to the Chair's preliminary ruling to admit the Appellants' supplemental prefiled testimony. On July 14, the Appellants filed an objection to the cancellation of the hearing.

The Board deliberated on July 14 in Randolph Center.

## II. DECISION

The Board will accept the supplemental prefiled testimony of Kathleen Ryan and Robert Cham. Mitigation of potential undue adverse effects on aesthetics is an issue under Criterion 8 and evidence on the feasibility of a shorter tower as mitigation is relevant.

The Board believes that the Applicant's request for additional time to prepare testimony in response to the new **prefiled testimony** was reasonable, given that only one week's response time was provided in the **Board's order** and the supplemental prefiled testimony is technical and requires expert testimony in response.

The Board would like the Applicant to submit testimony concerning the feasibility of shielding the lights on the tower. Station WEQX in Manchester, Vermont was required by the local planning commission to shield the lights on its tower. Brooks Brown is the name of the person at the station who was involved in this. Any information or testimony concerning the possibility of shielding the lights on the Applicant's tower shall be prefiled in accordance with the schedule established in the order below.

## III. ORDER

1. The **Applicant's objection** to the supplemental prefiled testimony of Kathleen Ryan and Robert Cham is overruled.

2. The hearing in this matter will be reconvened on **September 1, 1993**, at 9:30 a.m., in the Morey Lounge, Vermont Technical College, Randolph Center, Vermont.

3. Additional testimony to be presented at the hearing must be prefiled on or before August 13, 1993. The Applicant's prefiled testimony in response to the Appellants' supplemental prefiled testimony filed on June 30 shall be filed on or before August 13, 1993. Any rebuttal testimony to August 13 filings and all objections must be filed on or before **August 25, 1993**.

4. No individual may be called as a witness in this matter if he or she has not been identified in a witness list filed in compliance with this order. All reports and other documents that constitute substantive testimony must be filed with the prefiled testimony. If prefiled testimony has not been submitted by the date specified, the witness will not be permitted to testify. Instructions for filing prefiled testimony are attached.

5. The Board or its delegate may waive the filing requirements upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.

6. Parties shall file an original and ten copies of prefiled testimony, legal memoranda, all exhibits which are 8½ by 11 inches or smaller, and any other documents with the Board, and mail one copy to each of the parties listed on the attached Certificate of Service.

Parties are required to file only lists identifying exhibits which are larger than 8½ by 11 inches that they intend to present, rather than the exhibits themselves. Exhibits must be made available for inspection and copying by any parties prior to the hearing.

7. To save time at the evidentiary hearing, the Board will require that parties label their prefiled testimony and exhibits themselves and submit lists of exhibits which the Board can use to keep track of exhibits during the hearing. With respect to labeling, each person is assigned a letter as follows: S for the Applicant, A for the Appellants, T for the Town of Randolph. Prefiled testimony and exhibits shall be assigned consecutive numbers: for example, the Applicant will number its exhibits S1, S2, S3, etc. If an exhibit consists of more than one piece (such as a site plan with multiple sheets), letters will be used for each piece, i.e. S2A, S2B, etc. The labels on the exhibits must contain the words ENVIRONMENTAL BOARD, Re: Stokes Communication Corp., #3R0703-EB, the number of the exhibit, and a space for the Board to mark whether the exhibit has been admitted and to mark the date of admission. Label stickers which can be used by the parties are available from the Board on request; parties must complete the information sought on the stickers prior to the hearing.

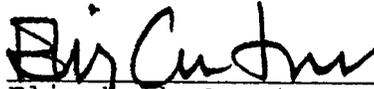
Concerning preparation of lists of exhibits, each list must state the full name of the party at the top and the Board's case number. There must be three columns, from left to right: NUMBER, DESCRIPTION, and STATUS. The list must include exhibits and prefiled testimony. The Board will use the status column to mark whether the exhibit has been admitted.

8. The hearings will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing to have a stenographic reporter present or a transcript of the proceedings must submit a request by August 6, 1993. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

9. Pursuant to Board Rule 16, this order will be binding on all parties who have received notice of the prehearing conference, unless there is a timely objection to the order, or a showing of cause for, or fairness requires, waiver of a requirement of this order.

Dated at Montpelier, Vermont this 22nd day of July, 1993.

ENVIRONMENTAL BOARD

  
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