

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

Re: Stokes Communication Corp. and Idora Tucker
Land Use Permit Application #3R0703-EB

MEMORANDUM OF DECISION

This decision pertains to a motion to stay the appeal filed by the Appellants, Bryant S. Smith, Elizabeth LaFrance, Pierre LaFrance, Joan Sax, and Richard T. Theken, by their attorney, Gerald R. Tarrant, Esq. on March 30, 1993, and a motion to quash a subpoena filed by Stokes Communication Corp. (the Permittee) on February 11, 1993. For the reasons explained below, the Board has determined to deny the motion to stay the appeal and to require the Permittee to comply with the subpoena.

I. BACKGROUND

This appeal was filed on September 22, 1992. A prehearing conference was held and several preliminary issues were decided by the Board. A hearing on the appeal is scheduled for May 19, 1993.

On March 3, 1993, the Appellants filed a petition to revoke Land Use Permit #3R0703. The Appellants now seek to stay the hearing on the appeal pending a hearing on their petition to revoke the permit.

On December 28, 1992, a subpoena for certain records of the Permittee was issued to the Permittee by Attorney Tarrant. The Permittee responded by filing a motion to quash the subpoena with the Board, stating that it was premature in light of the Permittee's motion to dismiss the appeal filed with the Board.

On March 31, 1993, the Board issued a decision denying the Permittee's motion to dismiss the appeal.

II. DECISION

1. Motion for Stay

The Appellants argue that if the Board revokes the permit, then the appeal would be moot and preparation of testimony for the appeal would have been unnecessary. The Appellants are also concerned that they will have insufficient time to prepare the prefiled testimony.

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The Board has reviewed the arguments filed by the Appellants, along with their revocation petition. The Board believes it would be most efficient to consolidate the two proceedings and hold a hearing on the revocation petition and the appeal on the same date. The Board understands that its General Counsel has already revised the filing dates to allow parties sufficient time to prepare their testimony. According, the motion for stay will is denied.

2. Motion to Quash the Subpoena

The Appellants are seeking certain documents pertaining to the Permittee's application to the Federal Communication Commission (FCC) for a license to increase the height of its tower and other information relevant to the issues raised in this appeal. The Board believes that the requested documents appear to be relevant and that the Appellants have a right to review these documents in sufficient time to prepare their case.

10 V.S.A. § 6087(a) states: "The board and district commissions shall have the power to compel the attendance of witnesses, and require the production of evidence." It is not clear whether this authority extends to ruling on motions to quash subpoenas. To the extent that it does, the Board denies the motion to quash and will order the Permittee to comply with the subpoena issued by Attorney Tarrant within one week from the issuance of this decision. The Board notes that 3 V.S.A. § 809(h) authorizes an attorney to institute an action in court to compel the production of documents. The Board also reminds the Permittee that 3 V.S.A. § 809a authorizes the Board to institute an action to compel compliance with a subpoena issued by the Board.

III. ORDER

1. The Appellants' motion for stay of the appeal is denied.

2. On or before Monday, April 12, 1993, the Permittee shall comply with the subpoena issued to the Permittee by Attorney Tarrant.

3. The filing dates for documents are revised as follows:

a. On or before Wednesday, April 26, 1993, parties shall file final lists of witnesses and exhibits and prefiled testimony for all direct witnesses they intend to present.

b. On or before Monday, May 10, 1993, parties shall file prefiled rebuttal testimony and revised lists showing rebuttal witnesses and exhibits.

c. On or before Monday, May 17, 1993, parties shall file in writing all objections to the prefiled testimony and exhibits previously identified, or such objections shall be deemed waived.

All other requirements of the rehearing conference report and order remain-in effect.

Dated at Montpelier, Vermont this 5th day of April, 1993.

ENVIRONMENTAL BOARD



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