

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

Re: Stokes Communication
Application #3R0703-EB

MEMORANDUM OF DECISION

This decision pertains to an objection filed by Stokes Communication (the Applicant) to any testimony of the Appellants' witnesses, Kathleen Ryan and Robert Cham, that refers to alternative sites for the location of the Applicant's tower. For the reasons explained below, the Board has determined to sustain the objection.

I. BACKGROUND

This appeal concerns a permit issued by the District #3 Environmental Commission **authorizing** the Applicant to replace a 120-foot radio tower with a **300-foot** tower at a site in Randolph. In preparation for the Environmental Board hearing, the Appellants submitted prefiled testimony for witnesses who discuss the potential for mitigating the visual impact of the tower by locating the tower in an alternate location. On May 12, 1993, the Applicant filed objections to the admission of such testimony. On May 18, the Appellants filed a response to the objections.

The Board convened a public hearing on May 19, 1993. The Applicant was represented by John R. Ponsetto, Esq. and the Appellants were represented by Gerald R. **Tarrant**, Esq. During the hearing the Board ruled that testimony on alternate sites would not be admitted. Attorney **Tarrant** requested the Board to reconsider its ruling. Board Chair Elizabeth Courtney stated that the Board would reconsider, and invited the parties to file additional argument on whether the Board should consider alternate sites as mitigation for adverse visual impacts.

On May 27, Attorney **Tarrant** filed a supplemental response to the objections, and on May 28, Attorney Ponsetto submitted a letter to the Board. The Board deliberated on June 3 in **Rutland**.

II. ISSUES

The Appellants argue that the standards established by the Board in Re: Quechee Lakes Corp., #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-19 (Jan. 13, 1986), which provide a basis for the Board's review of the aesthetic effect of projects under Criterion 8, require that an applicant attempt to mitigate adverse effect on aesthetics. They contend that since **the visual impacts** of

[DOCKET #562M5]

a tower essentially cannot be mitigated on site, the Board should require consideration of alternate sites as mitigation.

The Applicant argues that the Board does not have the authority to require an applicant to consider alternate sites under Criterion 8, and that in Re: Vermont Electric Power Company, Inc. (VELCO), #7C0565-EB, Findings of Fact, Conclusions of Law, and Order (Dec. 12, 1984), the Board properly interpreted the intent of the legislature as not authorizing such consideration. The Applicant also argues that it is possible for the aesthetic impact of towers to be mitigated on site. Finally, the Applicant contends that even if the Board has the authority to require applicants to consider alternate sites, it would violate due process to require the Applicant to do so at this stage in the proceedings.

III. DECISION

The Board has considered the arguments of the parties and has decided to sustain the objections against the admission of testimony on alternate sites. While the Board believes that there is some merit to the Appellants' arguments, it would not be fair to change, during a pending appeal, the Board's previous policy, as articulated in the VELCO decision in 1984, of not considering alternate sites under Criterion 8. Rather, the Board will consider whether it will establish a policy for the siting of towers in an appropriate forum, such as rule-making, outside of the context of a particular case.

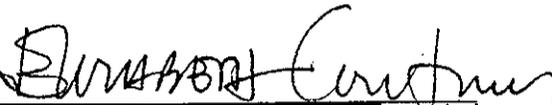
IV. ORDER

1. The Applicant's objections to testimony concerning alternate sites for the location of the Applicant's tower are sustained. All prefiled testimony and exhibits relating to alternate sites will be stricken from the record.
2. The hearing will be reconvened on Wednesday, July 14, 1993, in Randolph. The time and location of the hearing will be announced at a later date.
3. Additional testimony to be presented must be prefiled on or before Wednesday, June 30, 1993. Any rebuttal testimony and objections must be prefiled on or before Wednesday, July 7, 1993.

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Dated at Montpelier, Vermont this 9th day of June, 1993.

ENVIRONMENTAL BOARD


Elizabeth Courtney, Chair
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Arthur Gibb
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