

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

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

SUPPLEMENTAL MEMORANDUM OF DECISION

This decision pertains to a motion for a stay of decision filed by the appellants in this appeal. For the reasons explained below, the Board has determined to deny the motion for a stay.

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.

Apparently, on January 18 the Applicant began construction. On January 20, 1993, the Appellants filed a motion for a stay of the permit. The Appellants argue that the construction taking place on the site is causing irreparable damage and should be stopped until the Board has reviewed the application and reached a decision on the appeal. On January 29 the Applicant filed a memorandum in opposition to the motion for a stay.

II. ISSUE

Whether to grant the stay of Land Use Permit #3R0703 as requested by the Appellants.

III. DECISION

Board Rule 42, which provides the standards for the Board's decision on whether to grant a stay, states, in pertinent part:

In deciding whether to grant or deny a stay, the board may consider the hardship to parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare.

The opponent to a project bears the burden before the Board in a request for a stay of a permit. Re: Richard Cooper, #5L0590-EB, Findings of Fact, Conclusions of Law,

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and Order at 7 (July 11, 1980). The Board has reviewed the documents filed in support of the motion for a stay, and does not believe that the Appellants have met their burden. It is not clear what hardship is caused to the Appellants by virtue of the construction. With respect to the impact on the values sought to be protected by Act 250 and the effect on public health, safety, or general welfare, there does not appear to be any construction taking place that will have irreversible effects on the values protected by Act 250.

Since the Board is not persuaded that the standards for imposing a stay are met, the Board denies the motion.

Nonetheless, the Applicant proceeds at his own risk. If, after hearing, the Board denies or modifies the permit, the Applicant will have to restore the site to its preconstruction condition.

#### IV. ORDER

The Appellants' motion for a stay is hereby denied.

Dated at Montpelier, Vermont this 26th day of February, 1993.

ENVIRONMENTAL BOARD

/s/Elizabeth Courtney  
Elizabeth Courtney, Chair  
Ferdinand Bongartz  
Terry Ehrich  
Lixi Fortna  
Arthur Gibb  
Samuel Lloyd