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

RE: Leonard R. Lemieux Land Use Application
Rose T. Lemieux #3R0717-EB
d/b/a Chelsea Ledge Pit
P.O. Box 28
Washington, VT 05675

MEMORANDUM OF DECISION

This Memorandum of Decision pertains to a cross-appeal filed by Edward and Linda Kuban (the Kubans) from the District #3 Environmental Commission's denial of their party status request on Criteria 8(A), 9(B), 9(C), and 10 under Rule 14(A) (3), and a request by Albert Collins to intervene in this appeal on Criterion 8 under Rule 14(B). For the reasons discussed below, the Board denies the Kubans' cross-appeal and Mr. Collins' party status request.

I. BACKGROUND

On February 29, 1993, Leonard R. Lemieux and Rose T. Lemieux (the Applicants) filed an application for an Act 250 permit for the extraction of 10,000 cubic yards of ledge material per year for 30 years at a location off Route 110 in Chelsea, Vermont (the Project).

On March 31, 1993, the District Commission held an evidentiary hearing. Before the District Commission, the Kubans requested party status on Criteria 1 (Air Pollution), 8 (Aesthetics), 8(A) (Wildlife), 9(B) (Primary Agricultural Soils), 9(C) (Forest and Secondary Agricultural Soils), and 10 (Town and Regional Plan). The Kubans' property adjoins the southerly edge of the Project. The District Commission granted the Kubans party status on Criteria 1 and 8, and denied their request for party status on Criteria 8(A), 9(B), 9(C), and 10.

On April 13, 1993, the District Commission denied Land Use Application #3R0717. The District Commission concluded that the Project would have an undue adverse aesthetic affect under Criterion 8, and that the Project does not conform to the Chelsea Town Plan or to the Two Rivers-Ottauquechee Regional Plan under Criterion 10.

On May 11, 1993, the Applicants filed an appeal from the District Commission's denial of Land Use Application #3R0717 and the supporting Findings of Fact and Conclusions of Law, but did not send a copy to the other parties as required by Board Rule 40(B). The Applicants served a copy of their appeal on the other parties of record on June 18, 1993. The Applicants appeal the denial of their permit application on Criteria 8 and 10.

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On June 22, 1993, Board Chair Elizabeth Courtney convened a prehearing conference. At the prehearing, the Kubans stated that they intended to participate in the appeal on Criterion 8 (Aesthetics), and to appeal the District Commission's denial of their party status request on Criteria 8(A), 9(B), 9(C), and 10. In addition, Mr. Collins sought to intervene in this appeal as a party on Criterion 8 (Aesthetics). Mr. Collins lives within a quarter mile from the Project. Mr. Collins stated that the Project would adversely affect his property.

On July 8, 1993, a Prehearing Conference Report and Order was issued in which Mr. Collins and the Kubans were required to submit written statements in support of their requests for party status.

On July 14, 1993, the Kubans submitted a written statement in support of their request for party status.

On July 28, 1993, the Board deliberated on the party status requests made by Mr. Collins and the Kubans.

II. PARTY STATUS

A. Albert Collins

Mr. Collins did not submit a written statement in support of his party status request, as required by the Prehearing Conference Report and Order. Therefore, the Board denies Mr. Collins' party status request.

B. The Kubans

The general rule is that to appeal a criterion, one must have party status on that criterion before the district commission. There are two exceptions to this rule, one of which is applicable to the Kubans' appeal of the District Commission's denial of their request for party status on Criteria 8(A), 9(B), 9(C), and 10. An appeal may be taken on a criterion by an individual who requested and was denied party status on the criterion. If the individual can persuade us that he or she should have party status, it will be granted. Re: Okemo Mountain, Inc., #2S0351-10B-EB, Memorandum of Decision at 3 (Jan. 15, 1993). Under Rule 14(A)(3), the Kubans may participate to the extent that they demonstrate that the Project may have a direct effect on their property under Criteria 8(A), 9(B), 9(C), and 10.

1. Criterion 8(A)

The Kubans contend that the District Commission's findings on Criterion 8(A) are "incomplete and require a de novo inquiry into the extent of the proposed project's impact on wildlife habitat in the vicinity of the adjoining's premises, and in the vicinity of the town's mapped conservation area." The Kubans take the position that the "proposed project could indeed directly impact[sic] their property and its value given its proximity to the town's conservation area and the proposed project's intentions."

The District Commission found that the Project site does not contain necessary wildlife habitat. The Kubans have not alleged that the Project site does contain necessary wildlife habitat and, if it does, how their property would be affected by the loss or imperilment of such habitat.

The Kubans' reference to their property value is not relevant, as the effect of a project on the value of a neighboring property is not included in the Act 250 criteria. Therefore, the Board denies the Kubans' request for party status under Criterion 8(A).

2. Criteria 9(B) and 9(C)

The Kubans contend that although they "are not currently involved in active agricultural practices, more inquiry and findings are necessary with respect to the extent of adjacent property erosion and runoff possible during the project's contemplated 30-year life span."

The Kubans have not provided information on the potential effect of the Project on their property with respect to agricultural or forestry soils. Therefore, the Board denies the Kubans' request for party status under Criteria 9(B) and 9(C).

3. Criterion 10

The Kubans state that they were denied party status under Criterion 10 based on the conclusion that there would be no direct effect on their property. The Kubans contend, however, that this conclusion ignores the "Private Techniques" of land conservation encouraged within the Chelsea Town Plan. The Kubans claim that "individual action is emphasized in achieving land conservation and town objectives, two of which are to protect soil, forests, water and natural resources, and to preserve open space." The Kubans request party status on

Criterion 10 "to enforce these objectives as citizens and taxpayers of the Town of Chelsea." The Kubans claim that the Project could affect "their property as beneficiaries of the goals and objectives of the town plan."

The Kubans have failed to demonstrate how the Project will have a direct effect on their property in relation to the Chelsea Town Plan. Therefore, the Board denies the Kubans' request for party status under Criterion 10. The Board notes that both the Chelsea Board of Selectmen and the Chelsea Planning Commission participated in the prehearing conference, and indicated their intention to participate in this appeal on Criterion 10 as it relates to the conformity of the Project with the Chelsea Town Plan.

III. ORDER

1. Mr. Albert Collins' request for party status is denied.

2. The Kubans' cross-appeal of the District Commission's denial of party status under Criteria 8(A), 9(B), 9(C), and 10 is denied. The Kubans' party status on Criteria 8 (Aesthetics) remains in effect.

3. The parties and issues in this appeal shall be those identified in the Prehearing Conference Report and Order dated July 8, 1993.

Dated at Montpelier, Vermont, this 12th day of August, 1993.

ENVIRONMENTAL BOARD

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