

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. §§ 6001-6092

RE: Patt and Mary Taylor  
Land Use Permit #3 W0344-B-EB  
[REDACTED]

ORDER OF DISMISSAL

This proceeding concerns a permit issued by the District #3 Environmental Commission amending a prior permit that authorized the subdivision of land on Hillside Road in the Town of Hartford, Vermont to include a mound-type sewage disposal system. As explained in more detail below, this proceeding is dismissed with prejudice.

I. PROCEDURAL SUMMARY

On February 6, 1980, the District #3 Environmental Commission ("District Commission") issued land use permit #3 W0344 ("Original Permit") to the Quechee Lakes Corporation pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250"). The Original Permit authorizes the subdivision of land on Hillside Road in the Town of Hartford, Vermont into 15 ten-acre residential parcels and one eight-acre lot for riding stables and a cow barn.

On July 15, 1998, the District Commission issued land use permit #3 W0344-B ("Dash B Permit") to Patt and Mary Taylor ("Permittees") as an administrative amendment to the Original Permit. By its terms, the Dash B Permit voids Administrative Amendment #3 W0344-A ("Dash A Permit"), which had incorporated the conditions of Subdivision Permit #EC-3-1 9 15 issued by the Wastewater Management Division, Department of Environmental Conservation, Agency of Natural Resources ("DEC") on December 9, 1997 ("1997 DEC Permit"). The Dash B Permit incorporates the conditions of Subdivision Permit #EC-3-1926 issued by the DEC on June 8, 1998 ("1998 DEC Permit").

On August 13, 1998, Richard P. and Barbara Levy ("Appellants") filed an appeal from the Dash B Permit with the Environmental Board ("Board") contending that Permittees' application for the Dash B Permit failed to list the names of all persons who have a substantial interest in the involved land and to describe the extent of that interest in violation of Board rules. In addition, Appellants allege that Permittees cannot comply with the 1998 DEC Permit conditions incorporated by the Dash B Permit due to privately held, deeded restrictions.

On September 18, 1998, Board Chair Marcy Harding convened a prehearing conference. No parties attended. No individuals or entities seeking party status attended.

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On September 21, 1998, the Chair issued a Chair's Preliminary Ruling which, at the parties' request, continued this proceeding until November 23, 1998.

On November 3, 1998, Permittees filed a Stipulation to Dismiss executed by their attorney. The Stipulation was not signed by Appellants or their representative.

On November 4 and 24, 1998, the parties filed copies of correspondence relating to this matter.

On November 25, 1998, Appellants filed a Motion requesting the Board to convene a status conference and to proceed with the appeal.

On December 1, 1998, the Chair issued an Order scheduling a status conference in this matter.

On December 10, 1998, the Chair convened a status conference with the following parties participating by telephone:

Permittees by John C. Candon Esq.  
Appellants by Peter J. DesMeules, Esq.

On December 11, 1998, the Chair issued a Status Conference Report and Order.

On February 16, 1999, Appellants filed a letter forwarded to Permittees' attorney together with a stipulation of dismissal executed by Appellants.

On February 22, 1999, the parties filed a Stipulation to Dismiss executed by Permittees and Appellants.

On February 24, 1999, the Board deliberated concerning the Stipulation to Dismiss.

## II. DISCUSSION

At the status conference convened in this matter, Permittees orally requested that this appeal, including all pending motions, be continued. At that time, Permittees anticipated that they would file an application for an amendment to the 1998 DEC Permit that would make it unnecessary to construct the mound-type sewage disposal system at issue in this appeal. The parties agreed that if the DEC issued the contemplated amendment, then the parties would file a joint motion to dismiss the instant appeal. Upon

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dismissal, jurisdiction over the Dash B Permit would return to the District Commission and Permittees could request an amendment to reflect the new plan for sewage disposal.

The parties have filed a Stipulation to Dismiss, stating: "[i]t is the intention of the parties that by requesting, stipulating and agreeing to this withdrawal that Julia Schmitz [District Coordinator of the District Commission] shall proceed to administratively revoke Land Use Permit No. 3 W0344-B."

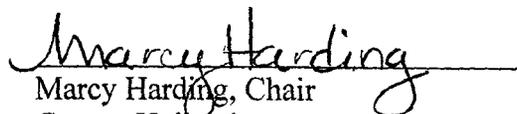
An administrative agency has discretion to reject a stipulation to dismiss and a request to withdraw an appeal if dismissal would prejudice the public interest the agency is charged to protect. E.g., Rockwell Park Associates and Bruce J. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corp., Declaratory Ruling #247 (Dec. 13, 1991). The Board and district commissions are charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 § 1 (Adj. Sess.). Allowing withdrawal of the appeal from the Dash B Permit will not prejudice the public interest that the Board is charged to protect. Therefore, the parties' Stipulation to Dismiss and their implicit motion to withdraw the appeal is granted.

### III. ORDER

Appellants' appeal from the Dash B Permit is dismissed with prejudice. Jurisdiction over the Dash B Permit is returned to the District Commission.

Dated at Montpelier, Vermont this 25th day of February, 1999.

ENVIRONMENTAL BOARD

  
Marcy Harding, Chair

George Holland

Samuel Lloyd

W. William Martinez

Rebecca M. Nawrath

Alice Olenick

Board Members John T. Ewing, Arthur Gibb, and Robert H. Opel did not participate in the consideration of this matter.