

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

RE: Vermont Institute of Natural Science
Land Use Permit #3W0441-EB (Revocation Petition)

DISMISSAL ORDER

As explained in more detail below, at the request of Donald Gilbert and Imants Vitols ("Petitioners"), the Vermont Environmental Board ("Board") hereby dismisses the Petitioners' Petition to Revoke and for Enforcement ("Petition").

I. PROCEDURAL SUMMARY

In 1984, the District #3 Environmental Commission ("Commission") issued Land Use Permit #3W0441 ("Permit") to the Vermont Institute of Natural Science ("VINS" or "Permittee"), authorizing the Permittee to construct a 24' x 42' building and 30 flight cages for the rehabilitation of injured birds of prey ("Raptor Center Project") at its property off Church Hill Road in Woodstock, Vermont ("VINS's facility").

On August 12, 1998, the Petitioners filed the Petition, pursuant to 10 V.S.A. § 6090(c) and Environmental Board Rule ("EBR") 38(A).

The parties to the revocation proceeding are the Petitioners and VINS.

The Board's Chair granted several continuances to the parties. During this period, on April 30, 1999, VINS filed a minor amendment application ("Amendment Application") with the Commission for certain improvements at the VINS's facility in response to Re: Vermont Institute of Natural Science, Declaratory Ruling #352, Findings of Fact, Conclusions of Law, Order (Feb. 11, 1999).

On May 6, 1998, VINS filed a Motion to Dismiss and Memorandum of Law ("Motion to Dismiss"). On May 28, 1998, Petitioners filed a memorandum in Response to the Motion to Dismiss.

On June 16, 1999, the Board convened oral argument with respect to a Motion to Dismiss. On July 15, 1999, the Board issued a Memorandum of Decision and Continuance Order ("Order"). The Order granted a continuance until such time as the Commission issued a decision with respect to the pending Amendment Application. The Order also required VINS to file with the Board a status report concerning the Amendment Application by October 5, 1999, if the Commission had not issued a decision by that date.

On October 6, 1999, VINS filed a status report with the Board in response to the Order and reported that the parties were selecting a mediator to help them reach a settlement agreement.

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On February 7, 2000, the Petitioners filed a letter with the Board indicating that the parties had reached a settlement agreement and, in accordance with the terms of that agreement, they withdrew their Petition and requested the Board to dismiss the matter ("Motion to Withdraw").

On February 7, 2000, the Chair issued a memorandum to the parties that, in response to the Motion to Withdraw, the Board would consider the dismissal of the matter at its meeting on February 16, 2000, if no party filed by February 14, 2000, an objection to the request or asked for oral argument.

No party filed a response to the Chair's memorandum of February 7, 2000. Accordingly, on February 16, 2000, the Board deliberated with respect to the Motion to Withdraw.

II. DISCUSSION

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.). An administrative agency has discretion to reject a stipulation to dismiss or a request to withdraw if dismissal would prejudice the public interest the agency is charged to protect. Taft Corners Associates, Inc., Land Use Permit Application #4C0696-17-EB, Dismissal Order (Aug. 18, 1999) (citing Rockwell Park Associates and Bruce J. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994) and H.A. Manosh Corp., Declaratory Ruling #247 (Dec. 13, 1991)). The Board concludes that allowing withdrawal of the Petition will not prejudice the public interest that the Board is charged to protect. Therefore, the Petitioner's Motion to Withdraw is granted.

Based upon the foregoing, the Petition is hereby dismissed pursuant to EBR 18(D). Because the Petitioners have filed the Motion to Withdraw, the Board believes this dismissal should be with prejudice.

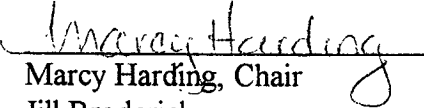
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III. ORDER

The Petition seeking revocation of the Permit is dismissed with prejudice.
Jurisdiction over Land Use Permit #3W0441 is returned to the District #3 Environmental
Commission.

Dated at Montpelier, Vermont, this ^{4th}10 day of February, 2000.

ENVIRONMENTAL BOARD


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