

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

Re: Atlantic Cellular Company, L.P.  
and Elwin F. Davis  
Application #3W0726-EB

MEMORANDUM OF DECISION

This decision pertains to an appeal filed with the Environmental Board by the **Royalton** Planning Commission (the RPC) concerning Land Use Permit #3W0726 (the Permit). The Permit was issued on September 23, 1993 to Atlantic Cellular Company, L.P. and Elwin P. Davis and authorizes the construction of a **120-foot** communications tower, a **12- x 20-foot** concrete storage building, a **3,000-foot** access trail, and the installation of a 30 kw emergency generator.

The RPC contends that the Applicant did not send a copy of its application to the RPC until after the RPC asked the Applicant for a copy, and that this was too late for the RPC to meet to discuss the application until its next scheduled meeting on August 30. Because the public hearing was scheduled for and held on September 1, the RPC believes it had insufficient time to review the application in order to determine what issues to address at the hearing.

On November 17, 1993, Elizabeth Courtney, Chair of the Board, issued a Proposal for Dismissal. Chair Courtney proposed to dismiss the appeal on the basis that the RPC had an opportunity to ask the District Commission to reconvene the hearing, and by not doing so waived its right to object to the late receipt of the application. The RPC seeks a complete re-hearing on the application.

The Proposal for Dismissal provided an opportunity for parties to file objections to the proposed dismissal.

On December 9, 1993, an Objection to the Proposal for Dismissal was filed by the RPC. The RPC contends that the District Commission's Hearing Recess Memorandum provided that the hearing would be reconvened only for the purpose of allowing parties to ask questions about additional information submitted after the hearing was recessed, but that no opportunity was provided for the reconvening of the hearing for other reasons.

On December 13, 1993, the Applicant filed a Memorandum in Support of Environmental Board's Proposal for Dismissal. The Applicant disputes the factual allegations made by the RPC, and contends that the RPC did receive proper notice.

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The Applicant also argues that the Board lacks jurisdiction to hear this appeal because the RPC did not raise an objection concerning notice to the District Commission.

On December 16, 1993 the full Board considered in deliberative session whether to dismiss the appeal.

#### DECISION

From the submissions of the parties, it is apparent that a factual dispute exists concerning whether the RPC was provided with a copy of the application as required by 10 V.S.A. § 6084(a), which states:

On or before the date of filing of application the applicant shall send notice and a copy of the application to the owner of the land if the applicant is not the owner, a municipality, and municipal and regional planning commissions wherein the land is located, and any adjacent Vermont municipality, municipal or regional planning commission if the land is located on a boundary. The applicant shall furnish to the district commission the names of those furnished notice by affidavit, and shall post a copy of the notice in the town clerk's office of the town or towns wherein the land lies.

Therefore, the Board will convene a hearing for the purpose of determining when a copy of the application was sent to and received by the RPC.

#### ORDER

1. This appeal is not dismissed.
2. The Board will convene a hearing on **January 20, 1994** for the purpose of taking testimony concerning when a copy of the application was sent to the RPC and when the RPC received it. The time and location of the hearing will be announced at a later date.
3. On or before January 12, 1994, parties shall file lists of exhibits and witnesses and a brief description of the testimony that each witness will present. If documents

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are needed from the District Commission file, these should also be identified in the list submitted on January 12.

4. Any party with questions about preparing for this hearing should contact Stephanie Kaplan, General Counsel, at the Environmental Board office in Montpelier (828-3309).

Dated at Montpelier, Vermont this 30th day of December, 1993.

ENVIRONMENTAL BOARD

*Elizabeth Courtney (Sk)*  
**Elizabeth Courtney, Chair**  
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