

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

*Re: Vermont RSA Limited Partnership d/b/a Bell Atlantic Mobile
Land Use Permit #3W0738-4-EB (Revocation)*

MEMORANDUM OF DECISION

This matter concerns the revocation of Land Use Permit 3W0738-4-EB issued to Vermont RSA Limited Partnership d/b/a Bell Atlantic Mobile.

I. PROCEDURAL HISTORY

On November 14, 1995, the District #3 Environmental Commission ("District Commission") issued Land Use Permit #3W0738-4 and its supporting Findings of Fact, Conclusions of Law, and Order (collectively the "Permit"). The Permit authorizes Vermont RSA Limited Partnership d/b/a Bell Atlantic Mobile ("Vermont RSA") to construct a 190-foot unlit telecommunications tower, equipment shed, access road, and related improvements (collectively the "Project"). The Project is located on Baxter Mountain off of Fay Brook Road in the Town of Sharon, Vermont.

On December 29, 1997, the Town of Sharon Planning Commission ("Planning Commission") filed a revocation petition with the Board, requesting the Board to review and, if necessary, revoke the Permit. The Planning Commission contended that the Project conflicted with statements contained in the Scenic Resources Evaluation, that the Project fails to conform to the Permit and exhibits incorporated into the Permit, and that Vermont RSA submitted inaccurate, erroneous, or incomplete information in connection with the Permit application.

Following a May 13, 1998 hearing, the Board conditionally revoked Land Use Permit #3W0378-4 on August 21, 1998, subject to an opportunity to cure. *Re: Vermont RSA Limited Partnership d/b/a Bell Atlantic Mobile, #3W0738-4-EB (Revocation), Findings of Fact, Conclusions of Law, and Order (Aug. 21, 1998) ("Revocation Decision").*

On September 21, 1998, Vermont RSA filed a Motion to Alter with the Board.

On October 1 and 2, 1998, Vermont RSA and the Town of Sharon ("Town") filed a Motion for Waiver and Stipulation to Extension of Time.

Continuance Orders issued in October and December 1998 and January 1999 continued this matter to February 26, 1999.



On February 24 and 25, 1999, the parties notified the Board that they had reached a settlement agreement "in principle" and that they expected to forward a final settlement agreement to the Board within ten days.

On May 14 and 20, 1999, Vermont RSA and the Town filed a Motion and Stipulation to Conditionally Confirm Correction of Violation and for Extension of Time and Further Continuance.

On May 18, 1999, Vermont RSA filed the parties' signed Settlement Agreement.

On June 16, 1999, the Board issued a Memorandum of Decision in this matter.

On June 28, 1999, Vermont RSA filed a Motion to Alter the Board's Memorandum of Decision, requesting the Board to alter paragraph 2(d) of the Order section of its Memorandum of Decision.

On July 14, 1999, the Board deliberated on Vermont RSA's Motion to Alter and determined that it would grant such motion.

On July 15, 1999, the Board issued a Memorandum of Decision (Altered). This Memorandum continued this matter until December 13, 1999 and conditionally confirmed that the parties' Settlement Agreement would correct the violations set forth in the Revocation Decision.

The Board granted further Continuances on December 13, 1999 and March 8 and August 1, 2000 in order to allow the parties to resolve their differences through stipulation.

On December 15, 2000, Vermont RSA filed a *Motion to Confirm Correction of Violations, Satisfaction of Conditions, and Vacate Order*.

Neither the Town of Sharon Selectboard nor the Sharon Planning Commission has filed an objection to Vermont RSA's Motion.

On January 3, 2001 the Board deliberated on Vermont RSA's Motion.

III. DISCUSSION

A. Vermont RSA's Motion

In support of its motion, Vermont RSA states:

1. Subsequent to the issuance of the Board's Memorandum of Decision (Altered), Vermont RSA certifies to the following:

(a) As of the date of this Motion, the parties have fully complied with the terms of the Settlement Agreement.

(b) Vermont RSA has pursued and obtained all necessary government approvals including Land Use Permit Amendment #3W0738-4C dated December 8, 1999, which authorized the construction of the Replacement Tower and a Jurisdictional Opinion that the addition of equipment by the Sharon Fire Department did not constitute a material change dated July 21, 2000. Neither the permit amendment nor the jurisdictional opinion were appealed and are final decisions.

(c) Vermont RSA provided the Board with a certification dated March 3, 2000 that it had obtained all necessary government approvals for the Replacement Tower.

(d) Vermont RSA dismantled the Existing Tower, constructed the Replacement Tower and the improvements and equipment of the Sharon Fire Department were completed in September 2000. On October 5, 2000, Vt. RSA provided the Town of Sharon with the certification required by the Settlement Agreement confirming that the Replacement Tower was constructed in accordance with "Exhibit A" of the Settlement Agreement and as approved by District #3 Environmental Commission in Land Use Permit Amendment #3W0738-4C. An original of that certification is attached and incorporated with this Motion.

Vermont RSA has also attached to its Motion a copy of a resolution issued by the Town of Sharon Selectboard on December 12, 2000. This resolution states:

Now be it resolved that the Board of Selectmen hereby supports VT RSA Limited Partnerships (D/B/A VERIZON) Motion to Confirm Correction of Violations, Satisfaction of Conditions, and Vacate Order and requests the Environmental Board to issue a decision and order consistent with the request contained in the motion.

B. Analysis

In its decision to revoke the Permit, the Board concluded that Vermont RSA had "submitted inaccurate, erroneous, and materially incomplete information regarding the number of locations from which the Tower would be visible how much of the Tower would be visible [and] the analysis of the aesthetic impacts of the Tower under Criterion 8." *Revocation Decision* at 15, 16. The Board further concluded that Vermont RSA had "violated conditions 2 and 11 of the Permit because more than half of the Tower is visible from a number of locations." *Id.* at 21.

The Board's Revocation Order stated:

[Vermont RSA] has violated conditions 2 and 11 of the Permit. The Permit is revoked subject to [Vermont RSA]'s opportunity to correct the violation on or before 90 days from the date of issuance of this decision, either (i) by filing a statement with the Board detailing the manner in which it has corrected the violations or (ii) by submitting a complete amendment application with the District Commission seeking amendment of condition 11 and Finding #8.

Subsequent to the Revocation Decision, Vermont RSA and the Town met to discuss the manner by which Vermont RSA could cure the revocation. The result of those meetings was the parties' signed Settlement Agreement filed by Vermont RSA on May 18, 1999. On July 15, 1999, the Board conditionally confirmed that the parties' Settlement Agreement will correct the violations set forth in the Revocation Decision. The Board wrote:

Because the parties have agreed that the construction of the Replacement Tower as depicted in Exhibit A will correct the violations set forth in the Decision, the Board confirms that such violations will be corrected when the following conditions have been met:

- (a) the parties shall fully comply with all terms of the

Settlement Agreement;

(b) [Vermont RSA] shall pursue diligently all necessary Government Approvals, including an amended permit from the District #4 Environmental Commission, for the Replacement Tower;

(c) upon receipt of all necessary Government Approvals for the Replacement Tower, [Vermont RSA] shall provide the Board with certification that it has obtained all necessary Government Approvals for the Replacement Tower;

(d) after providing the Board with certification that it has received all necessary Government Approvals for the Replacement Tower, [Vermont RSA] diligently shall dismantle the Existing Tower and construct the Replacement Tower subject to (i) acceptable delays because of weather conditions and (ii) avoidance of construction between December 15 and March 31 to protect the deer wintering area consistent with condition 9(c) of Land Use Permit #3W0738-4; and

(e) upon completion of construction of the Replacement Tower, [Vermont RSA] shall provide the Board with certification that the Replacement Tower was constructed as depicted in Exhibit A and/or as approved by the Government Approvals.

If the above conditions are met and no party objects to dismissal of this matter, the Board will issue a decision stating that the violations set forth in the Decision have been corrected and dismissing this matter.

Memorandum of Decision (Altered) at 3 – 4 (July 15, 1999).

Vermont RSA now confirms that it has complied with all terms of the Settlement Agreement and the Board's July 15, 1999 Memorandum of Decision. It now moves the Board to confirm that Vermont RSA has corrected the violations stated in the Revocation Decision, find that the parties have satisfied the conditions set forth in the Board's July 15, 1999 Memorandum of Decision (Altered), and vacate the conditional revocation Order contained in the Revocation Decision ("Revocation Order"). The Sharon Selectboard supports Vermont RSA's Motion.

C. Conclusions

It appearing that Vermont RSA has complied with the terms of the Settlement Agreement, as conditionally approved by the Board's Memorandum of Decision, and the terms of the Board's July 15, 1999 Memorandum of Decision (Altered), the Board concludes that Vermont RSA has cured the violations noted in the Revocation Decision.

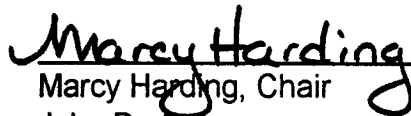
IV. Order

1. The Board confirms that Vermont RSA has corrected the violations found in the Revocation Decision and finds that the conditions set forth in the Board's July 15, 1999 Memorandum of Decision (Altered) have been satisfied.

2. The Revocation Order which appears in *Re: Vermont RSA Limited Partnership d/b/a Bell Atlantic Mobile, #3W0738-4-EB (Revocation)*, Findings of Fact, Conclusions of Law, and Order (Aug. 21, 1998), is vacated.

Dated at Montpelier, Vermont this 4th day of January 2001.

ENVIRONMENTAL BOARD



Marcy Harding, Chair

John Drake

George Holland

Samuel Lloyd

W. William Martinez

Rebecca Nawrath

Alice Olenick

Nancy Waples