

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

RE: Hector LeClair d/b/a Forestdale Heights
Land Permit Application #4C0329-17-EB

MEMORANDUM OF DECISION

On September 8, 1998, the Vermont Environmental Board ("Board") convened deliberations on the preliminary issues outlined in Board Chair Marcy Harding's Prehearing Conference Report and Order ("Prehearing Order") issued on August 7, 1998. As set forth in more detail below, the Board grants party status to Gavin Wright and Timothy Green under Criterion 8 pursuant to Environmental Board Rule ("EBR") 14(A)(5).

I. BACKGROUND

On June 5, 1998, the District #4 Environmental Commission ("Commission") issued Land Use Permit #4C0329-17 and its supporting Findings of Fact, Conclusions of Law, and Order ("Permit"). The Permit authorizes Hector LeClair d/b/a Forestdale Heights ("Applicant") to construct and maintain 2,300 feet of roadway and associated utilities, including municipal sewer and water mains and storm water drainage structures ("Project"). The Project site is located off Allen Martin Drive in the Town of Essex, Vermont.

On July 6, 1998, Gavin D. Wright and Timothy Green ("Appellants") filed an appeal with the Environmental Board ("Board") from the Permit. The appeal is filed pursuant to 10 V.S.A. § 6089(a) and Environmental Board Rules ("EBR") 6 and 40. The Appellants contend that the Commission erred with respect to Criteria 8 (aesthetics) and 10 (local, and regional plan). 10 V.S.A. §§ 6086(a)(8), (10). The Appellants also contend that the Commission erred by denying party status to Mr. Wright and Mr. Green under Criteria 8 and 10.

On August 6, 1998, Board Chair Harding convened a prehearing conference in this matter.

On August 7, 1998, Chair Harding issued a Prehearing Conference Report and Order ("Prehearing Order").

On August 7, 1998, the Appellants filed a Petition for Party Status.

On August 19, 1998, the Applicant filed its Opposition to Petitioner's Request for Party status.

On September 8, 1998, the Board deliberated on the preliminary issue of party

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status in this matter.

II. PRELIMINARY ISSUES

- A. Whether Mr. Wright has party status in this matter under Criteria 8 (aesthetics) and 10 (town and regional plan) pursuant to EBR 14(A)(5) or 14(B)(1).
- B. Whether Mr. Green has party status in this matter under Criteria 8 (aesthetics) and 10 (town and regional plan) pursuant to EBR 14(A)(5) or 14 (B)(1)*

III. DECISION

The Commission denied party status to both Mr. Wright and Mr. Green.¹ A person denied party status may appeal the denial to the Board. Re: Spring Brook Farm Foundation, Inc., #2S0985-EB, Memorandum of Decision at 7 (July 18, 1995). Such a person is aggrieved by the denial and is deemed to be a party for the purpose of deciding party status. Id. Party status decisions by district commissions may be challenged by appeal or cross-appeal. Id.; Re: St. Albans Group and Wal-Mart Stores, Inc., #6F0471-EB, Memorandum of Decision (April 15, 1994). The Board considers appeals from the denial of party status Re: Pico Peak Ski Resort, Inc., #1R0265-12-EB (Mar. 2, 1995). The Board has the authority to dismiss a proceeding based on a denial of party status. Spring Brook Farm, supra at 7; See Re: Chittenden Recycle Services and Chittenden Solid Waste District, 162 Vt. 84 (1994).

10 V.S.A. § 6085(c)(1) and EBR 14 govern Act 250 party status decisions. 10 V.S.A. § 6085(c)(1) states, in part:

Parties shall be those who have requested notice, adjoining property owners who have requested a hearing, and such other persons as the board may allow by rule. .. An adjoining property owner may participate in hearings and present evidence only to the extent the proposed development or subdivision will have a direct effect on his or her property under section 6086(a)(1) through (a)(10) of this title.

¹The file of the Commission proceedings contains a written request for party status from Mr. Green. The Commission did not address Mr. Green's request in its decision. By failing to address Mr. Green's request for party status, the Commission denied such request.

10 V.S.A. § 6085(c)(1).

EBR 14 states, in part:

(A) Parties by right. In proceedings before the board and district commissions, the following persons shall be entitled to party status:

(5) An adjoining property owner who requests a hearing, or who requests the right to be heard by entering an appearance on or before the first prehearing conference or, if no prehearing conference is held, the first day of a hearing that has previously been scheduled, to the extent that the adjoining property owner demonstrates that the proposed development or subdivision may have a direct effect on the adjoiner's property under any of the 10 criteria listed at 10 V.S.A. §6086(a). In making a request for party status, an adjoining property owner shall provide the district commissions or the board with the following:

(a) A description of the location of the adjoining property in relation to the proposed project, including a map, if available;

(b) A description of the potential effect of the proposed project upon the adjoiner's property with respect to each of the criteria or subcriteria under which party status is being requested.

(B) Parties by permission. The board or a district commission may allow as parties to a proceeding individuals or groups, including adjoining property owners, not otherwise accorded party status by statute upon petition if it finds that the petitioner has adequately demonstrated:

(1) That a proposed development or subdivision may affect the petitioner's interest under any of the provisions of § 6086(a) or

(2) That the petitioner's participation will materially assist the board or commission by providing testimony, cross-examining witnesses, or offering argument or other evidence relevant to the provisions of § 6086(a).

EBR 14.

The Appellants are both adjoining property owners. In their Petition for Party

Status, the Appellants state that the Project may affect their interests under Criterion 8 (aesthetics) based on the noise and lights generated by traffic on the Project. The Appellants claim they can see lights from and hear traffic on Allen Martin Drive even though virtually all of the land between their backyards and Allen Martin Drive is forested. Because the Project will be located between the Appellants' properties and Allen Martin Drive, the Appellants further claim that the lights and sounds of traffic on the Project may have direct effects on their properties. The Applicant argues that the Appellants have failed to establish party status under Criterion 8. The Board concludes that the Appellants have demonstrated that the Project may have direct effects on their properties under Criterion 8 (aesthetics). 10 V.S.A. § 6086(a)(8). Based on the above, the Appellants are granted party status under Criterion 8 (aesthetics) pursuant to EBR 14(A)(5).

The Appellants also seek party status under Criterion 10 (local and regional plan). They claim that the Project may be in violation of a portion of the Town of Essex Zoning Regulations but they do not set forth any claims under the local or regional plan. The Applicant argues that the Appellants have failed to establish party status under Criterion 10. Criterion 10 addresses conformance with the local and regional plans. Because the Appellants have not set forth any claims under the local or regional plan, the Board concludes that the Appellants have not demonstrated that the Project may have direct effects on their properties under Criterion 10. 10 V.S.A. § 6086(a)(10). Additionally, the Board concludes that the Appellants have not demonstrated that the Project may affect their interests under Criterion 10. *Id.* Based on the above, the Appellants are denied party status under Criterion 10 (local and regional plan) pursuant to EBR 14(A)(5) and EBR 14(B)(1).²

V. ORDER

1. The Appellants are granted party status under Criterion 8 (aesthetics) pursuant to EBR 14(A)(5).
2. The Appellants are denied party status under Criterion 10 (local and

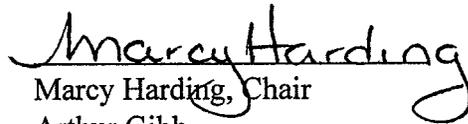
*Because neither of the Appellants has party status under Criterion 10, the Project's conformance with Criterion 10 is not at issue in this appeal. Therefore, the sole issue on appeal is whether, pursuant to 10 V.S.A. § 6086(a)(8), the Project will have an adverse effect on aesthetics.

regional plan) pursuant to EBR 14(A)(5) and 14(B)(1).

3. The Project's conformance with Criterion 10 is not at issue in this Appeal. The sole issue in this Appeal is whether, pursuant to 10 V.S.A. § 6086(a)(S), the Project will have an adverse effect on aesthetics.

Dated at Montpelier, Vermont this 23rd day of September, 1998.

ENVIRONMENTAL BOARD



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