

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

Claron

6/12/91

Re: Sherman Hollow, Inc.; Richard A. Gadbois, Trustee,  
Estate of Ned H. Pettengill; Roger Lussier; and  
Arthur Elliot  
Application #4C0422-5R-1-EB

MEMORANDUM OF DECISION

This decision pertains to a Request to the Board to Deny the Neighbors' Exhibits and Prefiled Testimony on Matters Set Forth in Their Summary filed by the Applicants on May 9, 1991. The Applicants' filing contains five requests. On May 17, a response was filed by the parties who have collectively been referred to as the Neighbors in this appeal. The Board deliberated on May 28, 1991 and, as is explained below, denies two of the requests and determines that the remaining three requests are premature and therefore are denied at this time.

I. Discussion

The Applicants' requests relate to the Neighbors' Summary of Anticipated Case filed April 29, 1991 in compliance with the Board's order of March 19. The Board examines each request in turn.

Request 1. This request asks the Board to reject the Neighbors' summary as invalid for improper service. The Applicants assert that the Board ordered all parties to serve Paul Truax, Richard Gadbois, Lisa Barrett, and the Town of Richmond Board of Selectmen, and that the Neighbors failed to serve these persons.

Board Rule 12(D) provides that "[e]very document filed by any party subsequent to the initial document filed in a case shall be served upon the attorneys or other representatives of record for all other parties and upon all parties who have appeared for themselves." Paragraph 17 of the Board's March 19 order provides that one copy of all documents filed must be mailed "to each of the parties listed on the certificate of service."

Under these rules, the Neighbors committed no error worthy of rejecting their summary. First, Paul Truax is not a party in his own right. He is President of Sherman Hollow, Inc., which is represented by counsel Andrew H. Neisner. The Neighbors served Mr. Neisner, who is the attorney of record.

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Second, Richard Gadbois is the trustee for the Estate of Ned H. Pettengill, which is a co-applicant. The attorney of record for this estate is Mr. Neisner, who was served.

Third, the Applicants have no basis to complain that Ms. Barrett and the Town of Richmond Selectboard were not served because they are not prejudiced by it. Cf. East Montoelier Development Corporation v. Barre Trust & Abare, 127 Vt. 491, 494 (1969) (appellant claiming error must show prejudice or injury to rights).

Request 2. The Applicants ask the Board to prohibit the Neighbors from introducing prefiled testimony and exhibits because they did not file a list of exhibits with the April 29 filing in the form which the Board prescribed.

Paragraph 8 of the Board's March 19 order requires that parties file final lists of witnesses and exhibits with the offers of proof. Paragraph 10 of the order requires that, by July 2, 1991, parties file rebuttal testimony and "revised final lists of witnesses and exhibits which meet the specifications of paragraph 18, below." Paragraph 18 sets out a form for lists of exhibits.

There was no requirement for the list of exhibits which the Neighbors submitted with their summary to be in a certain form. Paragraph 8 of the order, which governs the April 29 filing, did not require that the list submitted with the offer of proof conform to Paragraph 18. Instead, as Paragraph 10 states, a list of exhibits in the form prescribed by Paragraph 18 must be submitted with the rebuttal testimony which is due July 2. Accordingly, the Neighbors have not violated the Board's order, and the Applicants' request is denied.

Request 3: The Applicants request that the Board prohibit the Neighbors themselves (as opposed to their experts) from testifying separately to the same information. They argue that in prior proceedings the Neighbors have caused delay by testifying to redundant and irrelevant matters.

The Applicants have made this objection prior to the filing of testimony and it is therefore premature. Accordingly, the objection is denied at this time. The Board does, however, wish to note that in the interest of efficient hearings it is not necessary for any party to put on separate witnesses concerning the same facts.

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Request 4. The Applicants request that the Board deny the submission of any evidence by the Neighbors relating to chemicals or pesticides because the application has changed to include what is being called an "organic turf management program." This objection is premature and is therefore denied at this time for the same reasons given with respect to Request 3.

Request 5. The Applicants request that the Board disallow the Neighbors from offering evidence regarding the Applicants' financial situation. This objection is premature and is therefore denied at this time for the same reasons given with respect to Request 3.

II. Order

1. The Applicants' Requests 1 and 2, as described above, are denied.

2. The Applicants' Requests 3, 4, and 5, as described above, are premature and therefore are denied at this time.

Dated at Montpelier, Vermont this 12th day of June, 1991.

ENVIRONMENTAL BOARD



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