

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

RE: Xenophone Wheeler  
Box 305, West Bolton  
Jericho, VT 05465

Dismissal Order  
Land Use Permit  
#4C0513-1C-EB

On June 3, 1988, the Town of Jericho filed an appeal with the Environmental Board from the decision of the District #4 Environmental Commission dated May 9, 1988 that extends the construction completion date for a previously approved project. The Town contends that the District Commission's findings and conclusions with respect to Criteria 5, 7, 9(A), and 9(K) are in error because the project will create additional burdens on Nashville Road in Jericho, and that the Permittee should contribute \$60,000 toward upgrading the road to mitigate the burdens.

On July 15, 1988 the Permittee filed a Motion to Dismiss the appeal. The Permittee believes that because his application in this matter was solely to extend the construction completion date of the previously approved condominium project, the Town is precluded from raising substantive issues unrelated to the actual issue of construction time.

On September 13, 1988 the Board requested the parties to submit a statement regarding whether there have been any changes to the project since the original permit was issued. On September 20, the parties filed a stipulation in which they agreed "that there have not been any changes to the development which is the subject of this action, since the Applicant's original permit was issued in 1982."

Decision

The Board believes that a person who receives an Act 250 permit has a vested right to use the permit, as conditioned, as long as the permit is used within one year following the date of issuance as required by 10 V.S.A. § 6091(b). When a permittee files an application to extend the construction completion date, a hearing may be held, if necessary, for the purpose of determining whether the project has been abandoned as defined in Board Rule 38(B) or whether the project has changed since it was originally reviewed or whether some previously unknown and significant circumstances have been discovered. If the Commission finds that the permit was not "used" within the required time, it should follow the procedures established in Rule 38 (B). If the Commission finds that the permit was "used" within one year from the date of issuance of the permit, then it must extend the construction completion date. If there have been no changes to the project that would constitute a "material"

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or "substantial" change requiring an amendment pursuant to Rule 34, the Commission does not have the authority to review the permitted project or to impose any new conditions. Of course, an amendment would have to be obtained if any material or substantial changes had occurred or were going to occur.

In this case, the parties have stipulated that there have been no changes to the project since the original permit was issued. The Commission, therefore, did not have the authority to impose any new conditions on the project. The Board similarly has no such authority and must dismiss the appeal.

Order

The Motion to Dismiss is hereby granted, jurisdiction is returned to the District Environmental Commission.

Dated at Montpelier, Vermont this 10th day of November, 1988.

VERMONT ENVIRONMENTAL BOARD

BY: Leonard U. Wilson  
Leonard U. Wilson, Chairman