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

RE: Bell Atlantic Mobile LUP #4C0901 (Revocation Petition)

MEMORANDUM OF DECISION
AND DISMISSAL ORDER

This proceeding involves a petition for revocation ("Petition") filed by Mary Beth Freeman and Graeme Freeman ("Petitioners") concerning Land Use Permit #4C0901 ("Permit"). As explained in more detail below, the Vermont Environmental Board ("Board") concludes that Petitioners have failed to demonstrate that they have standing to file this Petition. Moreover, the Board concludes that the deficiency in the notice associated with Contel Cellular of Vermont's ("Contel")[1] minor application is not a sufficient ground for revocation on the Board's own motion. As a result, the Board dismisses the Petition and declines to take any further action relative to the Permit.

I. PROCEDURAL SUMMARY

On December 5, 1991, the District #4 Environmental Commission ("Commission") issued the Permit to Steve Korwan, as the representative of Contel. The Permit authorized the construction of a 12' x 28' portable equipment shed, clearing of brush to facilitate construction of the shed, and placement of four 13' whip antennae at the mid-way point of an existing 190-foot telecommunications tower ("Project"). The telecommunications tower upon which the whip antennae are situated ("Tower") is a tower for which the Commission had previously determined no Act 250 permit was required[2].

On April 25, 1996, the Petitioners filed a Motion to Revoke or Void the Permit (previously defined as "Petition").

On March 29, 1996, District Coordinator Lou Borie issued Jurisdictional Opinion #4-116 ("J.O.") stating that the Project Review Sheet ("PR Sheet") issued by Assistant District Coordinator Vose was in error, and that based on the prevailing Supreme Court interpretation of the term "involved land," it is the acreage of the entire Henry Lane parcel, not merely the 3 acre leased parcel which serves as the basis for determining whether the Tower required an Act 250 Permit. *See, In re Stokes Communication*, 164 Vt. 30 (1995). Mr. Borie ruled that, because the Henry Lane parcel upon which the Tower is located consists of seventeen-acres and because the Tower is a commercial development, an Act 250 permit was and is required.

Consistent with the Supreme Court's guidance in *In re Barlow*, 160 Vt. 513 (1993), the Tower owners sought to both apply for an Act 250 permit and contest

the Board's assertion of jurisdiction. The challenge to the Board's assertion of jurisdiction came in the form of an objection to the J.O. in a Request for Declaratory Ruling ("DR") which has been docketed as DR #322. In addition, on April 26, 1996, Bell Atlantic Mobile filed an independent request for Declaratory Ruling appealing the J.O. Bell Atlantic Mobile's Request for DR has been docketed as DR #323. The DR Requests noted above contest the Board's assertion of jurisdiction over the Tower on the basis of Ms. Vose's 1986 determination that Act 250 jurisdiction does not apply, and pursuant to allegedly applicable principles of equitable estoppel.

Based on District Coordinator Borie's J.O. finding jurisdiction, the following co-applicants sought an Act 250 permit for the Tower and its associated infrastructure: Charlotte Volunteer Fire and Rescue Service ("CVFRS"); Burlington Broadcasters, Inc. d/b/a WIZN ("WIZN"); and the landowner, Henry Lane (collectively referred to herein as "Tower Applicants"). It appears from the record that Bell Atlantic Mobile sought to participate in the Act 250 proceedings regarding the Tower application but was denied party status. The Commission's ruling on Bell Atlantic Mobile's party status and several other aspects of the Commission's decision are presently on appeal to the Board. The Tower is now subject to the terms of Land Use Permit #4C1004R ("Tower Permit"). The Tower Permit was issued to the Tower Applicants on June 4, 1999 and it pertains to the tower structure, as well as apparatus situated thereon which is owned or controlled by WIZN and CVFRS. On July 2, 1999, the Petitioners (as well as other interested persons) appealed the issuance of the Tower Permit.

During the latter part of 1999, several continuances were ordered and activity relative to the Petition and other pending appeals relating to the Tower were held in abeyance.

On April 6, 2000, Board Chair Harding convened a prehearing status conference with respect to the Petition and other related matters. In an April 13, 2000 Order, Chair Harding required that, relative to the Petition, Bell Atlantic Mobile file a memorandum on the threshold issue of whether Petitioners have standing to pursue the revocation petition. This Order also allowed Petitioners to file a responsive memorandum. Bell Atlantic Mobile and Petitioners were also directed to file a brief statement of stipulated facts germane to the threshold issue.

Parties timely filed their memoranda and appended supplemental materials. The Board deliberated on this matter on June 28 and July 19, 2000. This matter is now ready for a decision.

II. FINDINGS OF FACT

To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they have been considered and are denied. *See Petition of Village of Hardwick Electric Department*, 143 Vt. 437, 445 (1983).

1. Prior to 1986, a 100-foot "single stick" communications tower maintained by CVFRS existed on a 17 acre leased parcel owned by Henry Lane ("Project Tract").

2. The Project Tract is located on the Northeast side of Pease Mountain in the Town of Charlotte.

3. On October 10, 1986, WIZN (then owned by Radio Vergennes, Inc.) leased a 3 acre portion of the Project Tract upon which WIZN sought to install a replacement 190- foot tower.

4. On November 7, 1986, WIZN asked for a determination, in the form of a PR Sheet from then District #4 Coordinator Katherine Vose, whether the proposed 190-foot replacement tower required an Act 250 permit.

5. On November 7, 1986, District Coordinator Vose issued a PR sheet stating that because the Tower was to be located on a three-acre leased parcel, there was no basis for the assertion of jurisdiction. There was no subsequent appeal of the PR Sheet. The question of whether there was Act 250 jurisdiction over the Tower was not raised again until Petitioners sought a jurisdictional opinion from the District #4 Commission nearly ten years later on April 25, 1996.

6. In 1987, WIZN constructed the 190-foot Tower without being required to obtain an Act 250 permit.

7. From 1987-1996 WIZN tower transmitted an FM signal from the Tower without obtaining an Act 250 permit because WIZN was told by District

Coordinator Vose that no such permit was required and until 1996 such jurisdictional determination was never challenged.

8. In 1991 Steve Korwan (on behalf of Contel) applied for the Act 250 permit which is the subject of this revocation petition. The application was for the addition of several whip antennae on the Tower. No co-applicant was named in the application and the application was reviewed as a minor.

9. Notice of the Minor Permit application was provided to the following adjoining landowners: Henry Lane (landowner); Andy & Marlene Mansfield (North side, opposite side of Church Hill Road); Dr. Frank Ittleman (East side); University of Vermont (South side); Leo W. Bushey (West side, Route 7); and Charles Cannata (CVFRS, tower owner).

10. At the time of Contel's application, Petitioners resided in a Charlotte subdivision known as "The Homestead at Church Hill" ("Church Hill Subdivision").

11. The Church Hill Subdivision consists of approximately eight lots encompassing 50.11 acres. Pursuant to a "Declaration of Protective Covenants, Conditions, Obligations, and Restrictions" ("Declaration of Covenants") made on July 19, 1988 and filed in the Town of Charlotte Land Records, the legal owners of each subdivision lot conveyed undivided interests in 32.9 acres of common land for the common enjoyment of each lot owner ("Common Land"). Specifically, the Declaration of Covenants provides that with respect to the Common Land, "Each lot owner, and invited guests, shall have a right and easement of enjoyment in and to the common land as an appurtenance to, and not severable from, lot ownership."

12. Although the Declaration of Covenants sets forth guidelines for how an "association" of homeowners should maintain and improve the Church Hill Subdivision's roadway and common land and sets forth criteria for membership therein, the Declaration of Covenants does not establish such an association.

13. Neither the Church Hill Subdivision landowners nor any "homeowner's association" affiliated with the Church Hill subdivision and envisioned by the Declaration of Covenants was named by Contel as an adjoining landowner.

14. Accordingly, Petitioners were not notified of Contel's minor permit application. Petitioners no longer reside in the Church Hill Subdivision.

15. The Board's practice at the time of the Contel application was to provide actual notice to all adjoiners unless specifically waived by the Commission. No express waiver of the notice requirement from the Commission is in the file.

16. On December 5, 1991, the Commission issued the Permit to Contel. No appeal followed.

17. Construction of the whip antennae and improvements occurred during the following year.

18. According to an Affidavit from Mary Beth Freeman dated April 23, 1996 ("1996 Freeman Affidavit"), Petitioners purchased lot no. 6 in the Church Hill Subdivision in 1988 upon which they subsequently built their home in 1989. Petitioners also own lots numbered 4 and 7. Also in the 1996 Freeman Affidavit, Mary Beth Freeman states that "our common land adjoins the land on which the tower is located which contains the cellular facilities."

19. Ms. Freeman states in the 1996 Freeman Affidavit that "I learned that a cellular bay station had been installed on the tower in February 1996 when I inspected records at the Charlotte Town Hall planning and zoning office to obtain information about construction of the tower."

20. On April 25, 1996, Petitioners filed the Petition to Revoke or Void.

21. On June 10, 1996, a combined prehearing conference was convened with respect to both DR #322 and DR #323 and the revocation request.

22. Preliminary issues in the revocation proceeding were framed in the Prehearing Conference Report and Order dated June 14, 1996.

23. Parties briefed the question of the Petitioners' standing and party status during June and July of 1996 and oral argument was held on July 17, 1996.

24. The Board declined to issue a decision concerning the preliminary issue of standing to bring this revocation action because all pending cases pertaining to the Tower were continued while Tower Applicants sought an Act 250 permit.

25. The DRs referenced above and this revocation petition were continued for over two years while WIZN sought a permit from the Commission.

26. On September 13, 1996, WIZN applied for a permit for the Tower ("Tower Application").

27. On June 5, 1998, the Commission issued Findings of Fact, Conclusions of Law, and Order denying the Tower Application under Criterion 1(Air).

28. On June 30, 1998, WIZN appealed the denial of the Tower Application to the Board. Petitioners to this revocation and Bell Atlantic Mobile cross appealed. Several parties sought motions to alter.

29. On August 24, 1998, WIZN sought reconsideration of the Tower Application pursuant to Environmental Board Rule ("EBR") 31.

30. On June 4, 1999, the Commission granted the Tower Permit to WIZN.

31. On July 2, 1999, Petitioners to this revocation petition filed an appeal of the Tower Permit with the Board. On July 14, 1999, Bell Atlantic Mobile filed a cross appeal contesting the Commission's denial of Bell Atlantic Mobile's party status.

III. CONCLUSIONS OF LAW

The issue presented to the Board in this Memorandum of Decision is a preliminary issue concerning whether Petitioners have standing to file the petition for revocation pursuant to EBR 38(A). A further issue that the Board addresses is the question of whether, even if Petitioners are determined not to have standing, the Board should upon its own motion, revoke or void the Permit because of an acknowledged deficiency concerning notice.

A. Consideration of Direct Effects

It is not enough, under recent Board precedent concerning revocations, that a property owner merely adjoin a parcel on which a permitted project is located to compel the Board to undertake a revocation proceeding. Rather, in addition to showing that a complainant is an adjoiner, a putative revocation petitioner must meet a higher burden than that which applies for determining party status under EBR 14(A)(5). Specifically, they must prove that their property interests *are* directly affected by an alleged violation. In contrast, party status is demonstrated when the proposed project *may* have a direct effect on the adjoiner's property under one of the 10 criteria. See EBR 38 and *Re: Roger and Beverly Potwin*, LUP #3W0587-1-EB (Revocation), Findings of Fact, Conclusions of Law, and Order (July 15, 1997); *Re: Lawrence White*, LUP Amendment #1R0391-EB, #1R0391-3-EB, #1R0391-4-EB, #1R0391-5-EB, #1R0391-5A-EB, #1R0391-6-EB (Revocation), Findings of Fact, Conclusions of Law, and Order (April 16, 1998); and *Re: Williamstown Square Limited Partnership*, LUP #5W0482-2-EB (Revocation Petition), Memorandum of Decision (July 8, 1999).

This higher hurdle for initiating a revocation petition is known as the direct effects test and it is premised upon the public policy favoring finality of permits. In the context of the above-cited cases, the Board has laid out an analysis for determining who may bring an action for revocation and thereby compel the Board to undertake consideration of the petition[3].

B. Recent Cases

A brief discussion of the cases cited above is instructive. In *Lawrence White*, the Board considered whether an adjoining landowner had standing to file a revocation petition where the sole violation alleged was a failure to provide notification pursuant to EBR 10(F). The Board found it significant that the petitioner's property adjoined the project site for approximately 1,000 feet, the petitioner could see the project site from his property, the petitioner had experienced noise and dust emanating from the project, and a closed dump with a high potential for contaminating the landowner's water supplies existed on the project site. If the adjoining landowner had received notification of the application for the project, he would have opposed the proposal pursuant to the Act 250 criteria set forth at 10 V.S.A. §§ 6086(a)(1), (1)(B), (5), and (8). The Board concluded that based upon documented direct effects upon the adjoining

landowner's property that were attributable to the permitted project, the adjoining landowner had standing to file the revocation petition.

The *Lawrence White* case demonstrates that failure to give notice can be a "violation" in the context of EBR 38. In that case petitioner had standing to file a petition to revoke by demonstrating direct effects attributable to the permitted project and by emphasizing the inability to protect a valid property interest because of the lack of sufficient notice. *Re: Lawrence White*, LUP Amendment #1R0391-EB, #1R0391-3-EB, #1R0391-4-EB, #1R0391-5-EB, #1R0391-5A-EB, #1R0391-6-EB (Revocation).

The Board confronted a very similar issue in *Re: Williamstown Square Limited Partnership*, LUP #5W0482-2-EB (Revocation Petition), Memorandum of Decision (July 8, 1999), in which the violation giving rise to the revocation petition was again insufficient notice. In contrast to *Lawrence White*, the Board in *Williamstown Square* found that a deficiency in notice, without more, will not provide adequate grounds for standing to pursue a revocation petition.

Williamstown Square involved the construction and use of a 2,000 square foot carport structure situated in an existing parking lot at the previously permitted Williamstown Square elderly housing project located off Vermont Route 14 in the Village of Williamstown, Vermont. Revocation petitioners were adjoiners who did not receive notice. The revocation petitioners filed their petition based on the allegation that they did not receive notice of the Project application when it was filed with the District Commission and that, accordingly, they were unable to participate in the permit application process. In the revocation proceeding, the Board addressed alleged direct effects under Criteria 5, 8, and 9, and found that none of the impacts noted had any direct effects upon the petitioner's property interests. Accordingly, the Board denied standing and declined to revoke the Permit.

With respect to the Petition now before the Board, Petitioners have similarly raised numerous concerns about Contel's failure to provide them with actual notice of the Contel minor permit application. In summary, Petitioners allege that the lack of actual notice precluded the Petitioners from requesting a hearing at which they could have: (1) informed the Commission of the legal basis for asserting jurisdiction over the WIZN Tower, which as noted above was determined by the Commission not to be subject to jurisdiction at the time of Contel's application; (2) addressed RFR and RFI impacts under then-prevailing federal law; (3) identified impacts to their common land under criteria 1(Air

Pollution) and 8 (Aesthetics); (4) presented evidence of more general effects under Criteria 5 (unsafe traffic conditions), 6(unreasonable burden on educational facilities), 7 (unreasonable burden on local governments to provide municipal or government services), 9(A) (Impact on Growth), and, 10 (compliance with town and regional plans). When the Board turns to its analysis of the direct effects test, there are two significant shortcomings in the Petition. First, Petitioners have failed to attribute the alleged impacts to the Project and second, even assuming some impacts, Petitioners have failed to demonstrate any nexus between such effects and their property interests.

C. Analysis

1. Criterion 1 (Air Pollution)

The Petitioners allege that the permitted facility causes or contributes to radio frequency interference affecting nearby devices such as the Charlotte Central School's use of computers and cable television channels. In addition, the Petitioners claim that "only some of the interference is directly linked to WIZN, a local radio station, sharing the same tower with [Bell Atlantic Mobile]." Notwithstanding these assertions, the Board's focus in the present case is not on whether the general public is affected in any way by the Tower or any of its apparatus, including use of the whip antennae authorized by the Permit. Rather, the Board's focus is upon whether these Petitioners have identified any *direct effects* upon their property interest. No such interest has been sufficiently identified for the Board.

There is another rationale upon which to decline to revoke the Permit based on alleged violations of Criterion 1. This rationale is based upon recent cases from the Second Circuit federal court of appeals which unequivocally provide the Federal Communications Commission ("FCC") with extremely broad field preemption concerning issues of alleged radio frequency interference attendant to personal wireless service facilities. Specifically, the court held that "...[n]o State or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." *Cellular Phone Task Force et al., v. FCC, 205 F.3d 82, 94 (February 18, 2000) citing 47 U.S.C. §332(c)(7)(B)(iv).* The Court in *Cellular Phone Task Force* affirmed the FCC's applicable regulations and in the instant case, there appears to be general agreement that the RF emissions associated with Bell

Atlantic Mobile's use of the tower are well within the acceptable range. *See also Freeman et al. v. Burlington Broadcasters, Inc. d/b/a WIZN, Charlotte Fire & Rescue Services, Inc., and NYNEx Mobile Limited Partnership 1, d/b/a Bell Atlantic Nynex Mobile*, 204 F.3d 311 (February 23, 2000) (holding that FCC's preemptive authority precludes a town zoning board of adjustment (or any instrumentality of the state) from voiding a permit to operate radio tower on the grounds that signals were causing RF interference with neighbors).

2. Criterion 8 (Aesthetics)

Petitioners also allege that the Project violates Criterion 8 (Aesthetics) and that such impacts constitute a direct effect upon the Petitioner's property interests. Petitioners merely allege that they "can see the tower from several vantage points on their property." As the Board concluded in *Williamstown Square*, seeing the project does not constitute a violation or a direct effect that warrants standing to revoke. Here, by Petitioner's own admission in her affidavit dated April 23, 1996, she did not "learn[] that a cellular bay station had been installed on the tower" until February, 1996 *while inspecting records at the Charlotte Town Hall.* This admission is very telling with respect to the actual aesthetic impact of an unobtrusive addition to the Tower that was installed sometime in 1992. It is evident from the Petitioners' allegations concerning aesthetics, that the actual basis for alleged aesthetic impacts is the siting of, and existence of, the Tower. A petition to revoke a project that was not even noticed by the Petitioner until 4 years after its construction warrants no further analysis under Criterion 8 (Aesthetics) as it is obvious that the Project does not result in direct effects to Petitioners' property interests under that Criterion.

3. Other Criteria Pursuant to which Petitioners Allege Direct Effects

The Board addresses summarily the remaining criteria upon which Petitioners allege direct effects. These are as follows: Criterion 5 (unsafe traffic conditions); Criterion 6 (unreasonable burden on educational facilities); Criterion 7 (unreasonable burden on local governments to provide municipal or government services); Criterion 9(A) (impact of growth); and Criterion 10 (compliance with town and regional plans).

With respect to criteria 5, 6, and 7, the allegations of direct effects under these criteria are analogous to those proffered under criterion 1. These are merely different variants of the argument concerning radio frequency interference and the Board again finds the argument to be unavailing. As discussed in

subsection C.1., above, federal law greatly constrains the Board's ability to regulate the radiofrequency interference impacts associated with personal wireless facilities. However, even assuming that the Board could revoke on this basis, Petitioners have premised their standing upon alleged direct effects to interests that derive from the public's interest, not the property interests of the Petitioners. Petitioners do not represent the Town of Charlotte, its School Board or the Agency of Transportation. The Board concludes that it would be inappropriate to afford standing to Petitioners on the basis of alleged direct effects experienced by the public at-large, rather than actual direct effects to the Petitioners' property interest.

Regarding alleged direct effects pursuant to criteria 9(A) and 10, the Board declines to grant standing to revoke the Permit on this basis. The arguments put forth by Petitioners concerning direct effects under criteria 9(A) and 10 go to the question of whether *the Tower*, not Bell Atlantic Mobile's Project, was appropriately sited. As discussed more fully below, the vehicle to address concerns relative to criteria 9(A) and 10 is the pending appeal of the Tower permit, not a petition to revoke the Permit.

4. Revocation or Voidance *Sua sponte*

The Board declines to impute to Bell Atlantic Mobile any willful or grossly negligent act relating to the inaccurate, erroneous, or materially incomplete information in connection with the permit application. Bell Atlantic Mobile's predecessor in interest, Contel, clearly identified for the Commission the proper physical location of the Tower upon which its apparatus was to be located. *Cf. Re: H.A. Manosh, Inc., Land Use Permit #5L1290-EB (Revocation), Findings of Fact, Conclusions of Law, and Order (2/3/99).* Moreover, Bell Atlantic Mobile identified where, upon the existing Tower, its apparatus was to be located. Its application specifically identifies the midpoint of the existing 190-foot Tower.

The Board concludes that Bell Atlantic Mobile did not willfully or with gross negligence submit inaccurate, erroneous, or materially incomplete information in connection with its application. The Board acknowledges that several owners of undivided interests in Common Land that adjoins the Project Tract were not notified of the minor permit application. There is no residence located on that Common Land, and in fact, the lot owner seeking revocation in this case no longer resides in the Church Hill Subdivision. Moreover, the Petitioners declined to pursue revocation for a period of over 4 and one-half years after the Permit was granted. The public policy favoring finality of permits merits a conclusion

that revocation be based only upon violations of permits that are causing direct effects to the property interests of complainants.

That the Tower had not been required by the Commission to obtain an Act 250 permit was not, and is not, a matter for which Bell Atlantic Mobile had any legal duty to correct, even if the law were clear that such a Permit was required. This is particularly true where an unappealed PR Sheet unequivocally stated that there was no basis for Act 250 jurisdiction over the Tower. Should the Board be required to take up the pending DR Requests #322 and 323 due to a denial of the Tower Permit, it will, in that context, address whether jurisdiction attached retroactively in light of *Re: Stokes Communications Corp.* and other rulings on the meaning of involved land. However, at the time of the Contel application in October of 1991, the status of the unpermitted Tower upon which the whip antennae were to be located was that jurisdiction did not attach and no one had either questioned that ruling or appealed the PR Sheet. Were jurisdiction to be asserted retroactively, it is the Tower Applicants who must secure a permit. As noted above, Tower Applicants have initiated that process. Petitioners are parties to the appeal of a land use permit issued by the Commission to the Tower Applicants. Matters involving the potential impacts of the Tower should be addressed in the context of that proceeding, not by imposing an undue burden on Bell Atlantic to relitigate its permit application where Bell Atlantic has followed the directives of the District Coordinator, the requirements of 10 V.S.A. §§6001 - 6092, and the Board rules.

D. Summary

Petitioners have failed to demonstrate that their property interests are directly affected by the Project. Accordingly, the Board concludes that Petitioners have not demonstrated that they have standing to file the petition to revoke the Permit.

The Board may dismiss any matter before it, in whole or in part, at the request of any party or on its own motion for reasons provided by the Board Rules, by statute, or by law. EBR 18(D). A decision to dismiss must be supported by findings of fact and conclusions of law. *Id.* *See State of Vermont Agency of Transportation (Williston Area Improvements)*, Declaratory Ruling #311 at 3 (Jan. 31, 1996) (Board made findings of fact based on documents of which it took official notice), *aff'd*, No. 96-109 (VT. Oct. 31, 1996). For the reasons discussed above, the Board concludes that the Petitioners lack standing pursuant to EBR 38(A) to request a revocation. Moreover, the Board, having

reviewed the deficiency in notice attendant to the Bell Atlantic Mobile's application declines to pursue revocation of this matter on its own motion.

IV. ORDER

1. Petitioners have failed to demonstrate that they have standing to file this petition for revocation.

2. The Board declines to declare Land Use Permit #4C0901 void.

3. Revocation Petition #4C0901-EB is hereby dismissed.

Dated at Montpelier, Vermont this 7th day of August, 2000.

ENVIRONMENTAL BOARD

Marcy Harding

Marcy Harding, Chair
George Holland
Samuel Lloyd
W. William Martinez
Rebecca M. Nawrath
Alice Olenick
Nancy Waples
Don Sargent

ENDNOTES:

1. Steve Korwan was the initial applicant for LUP #4C0901 as the representative for Contel. Bell Atlantic Nynex Mobile was a successor in interest to Contel. As such it acquired the rights and responsibilities conferred by the Permit to Contel. Bell Atlantic Nynex Mobile subsequently changed its name to Bell Atlantic Mobile and has, very recently, changed its name again to Verizon Wireless. The case has been captioned as "Bell Atlantic Mobile" for purposes of convenience and continuity.

2. On November 7, 1986, Assistant District Coordinator, Katherine Vose issued a Project Review Sheet to Burlington Broadcasters, Inc.'s predecessor in interest, Radio Vergennes, Inc., Mike Calhoun, and the Stevens House regarding a proposed replacement of a 100' steel communication tower located on approximately 3 acres of land leased from Henry Lane on Pease Mountain in Charlotte, Vermont. Ms. Vose ruled that because the leased parcel was less than ten acres, there was no basis for Act 250 jurisdiction.

3. Although referred to as "standing" to bring the petition, use of that term implies the vesting of jurisdiction with the Board to address a complaint of injury. As is obvious, any time a validly issued permit is in force, the Board or Commission retains jurisdiction and can, pursuant to EBR 38 and 10 V.S.A. §6090, revoke the permit. Standing, *per se,* is therefore not technically required in order for the Board to review a complaint asking for revocation. Where the test for "standing" is not met, as is the result here, the Board can nevertheless consider a violation or a procedural defect that has been brought to its attention as providing a basis for revocation. This authority is no different than the Board's ability to seek revocation *sua sponte*. See, *Bull's Eye Sporting Center,* Land Use Permit #5W0743-2-EB (Altered) (Revocation) (June 23, 2000). Accordingly, the Board's denial of standing does not conclusively result in dismissal.