

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

Re: MBL Associates  
Land Use Application #4C0948-EB(Altered)

MEMORANDUM OF DECISION

This action came before the Board by way of an application to amend Land Use Permit #4C0948(Altered) ("Permit") filed by MBL Associates ("Permittee"). As explained in more detail below, this proceeding is dismissed with prejudice.

**I. BACKGROUND**

On January 30, 1996, the Vermont Environmental Board ("Board") issued the Permit and supporting Findings of Fact, Conclusions of Law, and Order ("Order") authorizing the creation and construction of 161 single family lots and 60 multi-family units, internal roads that would become public streets, and related infrastructure, including municipal water and sewer lines on 202 acres of land off Dorset Street in the City of South Burlington, Vermont ("Project").

On or about October 21, 1997, Permittee filed with the District #4 Environmental Commission ("Commission") a Motion to Modify Condition #17 of the Permit by administrative amendment.

On December 24, 1997, Chief Coordinator Louis Borie, issued a letter on behalf of the Commission determining that Permittee's requested modifications were beyond the scope of the amendments to Condition #17 that were authorized by Permit Condition #18.

On December 30, 1997, Permittee tiled a land use permit application with the Board ("Application"), seeking to amend Permit Condition #17 despite Permittee's stated, continuing belief that the Condition could be amended administratively pursuant to Environmental Board Rule ("EBR") 34(D).

On January 14, 1998, the Chair of the Board issued a Chair's Preliminary Ruling ("Preliminary Ruling"), which is incorporated by reference, and which dismissed the matter with prejudice and returned the accompanying application fee to Permittee.

On January 20, 1998, Permittee tiled an Objection to the Preliminary Ruling ("Objection").

On January 28, 1998, the Board deliberated.

## II. DISCUSSION

As stated more fully in the Preliminary Ruling, jurisdiction over the Application does not reside with the Board. The Objection does not contest the substance of the Preliminary Ruling. Rather, Permittee objects to the language of the Preliminary Ruling that states: "1. This matter is dismissed with prejudice and Permittee's application fee is hereby returned." Permittee expresses concern that "use of the term 'this matter' may be taken to refer to the entire permitting process for this project, and when coupled with the term 'dismissed with prejudice' might lead to unfortunate confusion that jeopardizes the underlying permit." Objection at 2.

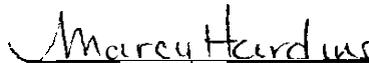
The Board does not wish its order in this matter to "lead to unfortunate confusion." Therefore, the Board hereby clarifies that in dismissing the "matter" with prejudice, it does not refer to the "entire permitting process for this project." It is dismissing a "matter" that Permittee erroneously tiled with the Board -- the Application. The matter is dismissed "with prejudice" because the Application cannot be reviewed in *the first instance* by the Board. As was stated in the Preliminary Ruling, if Permittee wishes to amend Permit Condition #17, it should tile its Application with the Commission which will review the amendment application in accordance with its statutory mandate. Preliminary Ruling at 2.

## III. ORDER

The Board affirms the Preliminary Ruling. This matter is **dismissed with prejudice**.

Dated at Montpelier, Vermont this 29th day of January, 1998.

ENVIRONMENTAL BOARD

  
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Marcy Harding, Chair

John T. Ewing

Arthur Gibb

Samuel Lloyd

William Martinez

Rebecca M. Nawrath

Robert H. Opel