

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. § 6001 et seq.

Re: Sandra-North, Inc.
Land Use Permit # 4C0973-EB .

DISMISSAL ORDER

I. BACKGROUND

Land Use Permit # 4C0973 authorizes the permittee, Sandra-North, Inc., to construct a 13 unit housing development including nine single family residences and two duplexes. The development is located at 456 North Street in Burlington. On February 5, 1996, Peter Gailitis ("Petitioner"), individually and as a putative representative of 17 other interested persons, filed a petition to revoke LUP# 4C0973 ("Petition") with the Environmental Board.

II. DISCUSSION

The Petition was not filed in accordance with Environmental Board Rule ("EBR") 38, governing petitions for revocation. Among other requirements, EBR 38 requires a petitioner to file 10 copies of the land use permit which the petitioner seeks to have revoked. The Petition did not include a copy of the Permit. This defect is marginal and would, of itself, not likely have prompted deliberation on dismissal of this Petition. However, the Petitioner also failed to serve the Petition on any of the parties to the original permit proceeding, including the permittee. EBR 38(A)(1) requires that: "The petition shall be served on all parties to the original permit proceeding."

The Petition also failed to meet the notice requirement set forth in EBR 40 as it relates to initial pleadings in a contested case. EBR 38(A)(1) specifically states that petitions for revocations are initial pleadings in a contested case and must be filed in accordance with the notice and hearing procedure requirements of EBR 40. The notice requirement of EBR 40(B) directs that an appellant, or in this case the Petitioner, shall send a copy of the notice of appeal (here the Petition) by U.S. mail to all parties of right and all parties of record to the commission proceedings and *shall file a certification of service with the board at the time it files its appeal.* (emphasis added). Although EBR 40 is entitled "Appeals", the notice and hearing procedure requirements of the rule apply to the initial pleading in this revocation proceeding because it is a contested case. The Petitioner has not filed a certificate of service, and has therefore failed to comply with either EBR 38 or EBR 40.

By a letter dated February 14, 1996, Board staff informed the Petitioner that the Petition was incomplete and stated that the omission of the necessary documents "may affect your ability to proceed with the petition." Petitioner did not respond to the Board staffs letter and did not file any additional documents. On March 28, 1996, Board Chair

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John T. Ewing sent a memorandum to the Petitioner indicating that the Board would consider scheduling a prehearing conference in this matter if it received the necessary documents on or before April 17, 1996. The Chair's memorandum also allowed the Petitioner an opportunity to request oral argument on this matter at the April 24, 1996 Board meeting. The Petitioner neither supplemented the Petition, nor requested oral argument.

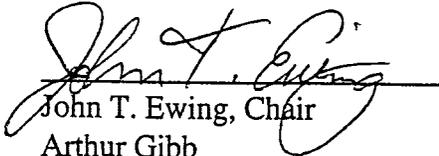
This matter was set on the Board's docket for the April 24, 1996 Board meeting for contemplated dismissal. The Board has general authority to dismiss on its own motion, for reasons provided by the Environmental Board Rules, by statute, or by law. EBR 18(D). Moreover, the Board has authority to dismiss under EBR 40 where an initial pleading in a contested case is insufficient.

III. ORDER

The Board deliberated on April 24, 1996 and decided that dismissal of this matter is not contrary to the values embodied in Act 250. This matter is dismissed without prejudice.

Dated at Montpelier, Vermont this 21st day of May, 1996.

ENVIRONMENTAL BOARD



John T. Ewing, Chair

Arthur Gibb

Rebecca Nawrath

Robert G. Page, M.D.

Steve E. Wright