

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

Re: Far Water, Ltd. and Sunrise Partnership
Land Use Permit Application #4C1 036-EB

DISMISSAL ORDER

As explained in more detail below, at the request of Far Water, Ltd. and Sunrise Partnership ("Applicant"), the Vermont Environmental Board ("Board") hereby dismisses the Applicant's November 19, 1999 appeal in this matter.

I. PROCEDURAL SUMMARY

On September 8, 1998, the Applicant filed Land Use Permit Application #4C1036 with the District #4 Environmental Commission ("Commission") seeking authorization to construct four (4) three-story condominium structures for a total of 84 dwelling units to be served by municipal water and sewer facilities on Airport Parkway (a/k/a Lime Kiln Road) in the City of South Burlington, Vermont ("Project"). The Project was designed to construct forty-four (44) units on the west side of Airport Parkway, while forty (40) units were proposed for the east side of Airport Parkway.

On May 7, 1999, the Commission issued its Findings of Fact, Conclusions of Law, and Order ("Decision") denying the application under Criteria 1(B) and 8. The application was also determined to be incomplete under EB Rule IO(D). On June 7, 1999, the Applicant filed a Motion to Alter and for a Reconsideration before the Commission. On October 21, 1999, the Commission issued Altered Findings of Fact, Conclusions of Law, and Order and Memorandum of Decision and Order ("Altered Decision") denying the application for the Project under Criterion 8.

On November 19, 1999, the Applicant filed an appeal with the Environmental Board from the Altered Decision alleging that the Commission erred in its conclusions concerning 10 V.S.A. § 6086 (a) Criterion 8 (rare and irreplaceable natural areas). The appeal was filed pursuant to 10 V.S.A. § 6089(a) and Environmental Board Rule ("EBR") 40.

On December 7, 1999, the Chair granted the Applicant's request for a continuance to pursue modification of the Project and settlement discussions.

On March 20, 2000, the Applicant filed a motion to dismiss the appeal.

On March 29, 2000, the Board deliberated on the motion to dismiss the appeal on the assumption that no objections would be filed.

As of April 5, 2000, no objections have been filed to the Applicant's motion to dismiss the appeal.

II. DISCUSSION

The Applicant has advised the Board that it has been working with the City of South Burlington and the Vermont Department of Fish and Wildlife to revise the Project in a manner that will acceptably mitigate adverse impacts on a rare and irreplaceable natural area and comply with the Comprehensive Plan and Zoning Regulations of the City of South Burlington. The Applicant has reached an informal agreement with the other parties revising the Project. The Applicant has informed the Board that the revisions are significant enough to require review of the revised Project by the Commission as a new application. No parties have objected to the Applicant's motion to dismiss the appeal.

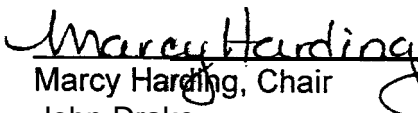
Before the Board can grant Applicant's Motion to Dismiss, the Board must conclude that dismissing the appeal will not harm the public interest. The Board and district commissions are charged to protect and conserve the lands and environment of the state. 10 V.S.A. Ch 151. An administrative agency has discretion to reject a stipulation to dismiss or a request to withdraw an appeal if dismissal would prejudice the public interest the agency is charged to protect. Cf., Rockwell Park Associates and Bruce J. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corp., Declaratory Ruling #247 (Dec. 13, 1991). The Board concludes that allowing dismissal of Applicant's appeal will not prejudice the public interest that the Board is charged to protect. Therefore, Applicant's Motion to Dismiss is granted.

III. ORDER

1. The Applicant's November 19, 1999 appeal is dismissed with prejudice.

Dated at Montpelier, Vermont this 6th day of April, 2000.

ENVIRONMENTAL BOARD



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