

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

RE: North Country Animal League
Appeal #5L0487-4-EB

DISMISSAL ORDER

This proceeding concerns an appeal filed by J.D. Associates ("Appellant") on February 25, 2000 from Findings of Fact, Conclusions of Law and Order issued by the District #5 Environmental Commission ("Commission") on January 25, 2000. This Dismissal Order, issued pursuant to Environmental Board Rule ("EBR") 18(D), dismisses the appeal as untimely.

I. PROCEDURAL SUMMARY

On August 6, 1999, North Country Animal League ("Permittee") filed with the Commission an application for a permit amendment pursuant to 10 V.S.A. §§ 6001-6092 to construct an addition to an existing building in Morrisville, Vermont, and operate a non-profit animal shelter on the site ("Project").

On January 25, 2000, the Commission issued Land Use Permit Amendment #5L0487-4 ("Permit Amendment") authorizing construction and operation of the Project, along with Findings of Fact, Conclusions of Law and Order ("Decision").

Appellant filed a Notice of Appeal and Statement of Issues on February 25, 2000.

Permittee filed a Motion to Dismiss the appeal as untimely on March 13, 2000.

Appellant filed an Objection to Permittee's Motion on March 17, 2000.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

EBR 40 provides that any party aggrieved by an adverse determination of a district commission may appeal to the Board within 30 days after the date of the decision by the commission. See also 10 V.S.A. § 6089. The first day of the thirty-day period begins on the day after the decision is issued. EBR 6. A document is considered "filed" with the Board on the date it is received in the Board office. EBR 12(A).

In this case, the Commission issued the Permit Amendment and Decision on January 25, 2000. Counting January 26, 2000, as "day one," the thirty-day period expired on February 24, 2000. Appellant's Notice of Appeal and Statement of Issues, which is dated February 25, 2000, was received in the Board offices that same day, February 25, 2000. Because the thirty-day deadline had already expired, the appeal was out of time.

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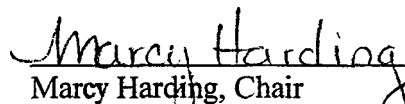
Filing deadlines are jurisdictional and the Board has no discretion to waive a deadline established by statute. See Trask v. Department of Employment & Training, No. 77-1205, *slip op.* (Entry Order, Vt. Supreme Court, January 25, 2000); Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975); Re: Marietta Palmer, #4C0561-5 EB, Memorandum of Decision (November 24, 1998); The Board has dismissed appeals where such appeals were filed after the 30-day deadline. See, e.g., Palmer supra; Re: Havstack Group, #700002-10-EB, Memorandum of Decision (March 29, 1989); Re Club 107, #3 W0196-3-EB, Memorandum of Decision (Feb. 2, 1987); Re: Puppy Acres Boarding Kennel, #2W0568-2-EB, Memorandum of Decision (Oct. 11, 1985), aff'd, In re Puppy Acres Boarding Kennel, No. 85-490 (Vt. 1986). Accordingly, the appeal in this matter must be dismissed.

III. ORDER

1. J.D. Associates' appeal is dismissed with prejudice.

Dated at Montpelier, Vermont this 29th day of March, 2000.

ENVIRONMENTAL BOARD



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