

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

RE: Edward E. Buttolph Revocable Trust
Land Use Permit Application #5L1339(Reconsideration)-EB
Docket #780

DISMISSAL ORDER

This proceeding concerns a 12 lot residential subdivision and construction of 3,400 feet of roadways located off Town Highway 44 in the Town of Johnson, Vermont ("Project").

I. PROCEDURAL SUMMARY

On August 8 and 18, 2000, Edward E. Buttolph Revocable Trust ("Applicant") filed materials with the District # 5 Environmental Commission ("Commission") seeking reconsideration of the Commission's denial of Land Use Permit Application # 5L1339. Land Use Permit Application # 5L1339 (Reconsideration) seeks authorization to construct a revised or modified Project. Upon reconsideration, on January 22, 2001 the Commission issued Findings of Fact, Conclusions of Law, and Order ("Decision") again denying the application for the revised or modified Project.

On February 21, 2001, Applicant filed an appeal with the Environmental Board ("Board") from the Decision alleging that the Commission erred in its conclusions concerning 10 V.S.A. § 6086(a)(1)(F)(i)(iii) and (iv), 5, 7, 9(H)). The appeal was filed pursuant to 10 V.S.A. § 6089(a) and Environmental Board Rule ("EBR") 40(A).

On May 17, 2001, Board Chair Marcy Harding convened a prehearing conference. During the prehearing conference, Applicant requested permission to withdraw his appeal. Applicant explained that he intends to again redesign the Project to satisfy the concerns of the Commission. Chair Harding gave all other parties an opportunity to object to Applicant's request to withdraw. No party voiced any objections.

On May 23, 2001, Chair Harding issued a Prehearing Conference Report and Chair's Proposed Dismissal Order. The Order stated that, pursuant to EBR 16(B), unless a party filed an objection to the proposed dismissal on or before June 4, 2001, the Order would be binding on all parties and a final Dismissal Order would be issued.

No objection was filed.

II. DISCUSSION

The Board and district commissions are charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 §1 (Adj. Sess.). An administrative agency has discretion to reject a withdrawal or dismissal of an appeal if it would prejudice the public interest that the agency is charged to protect. *Ronald L. Saldi*, #5W1088-1-EB, Memorandum of Decision at 3 (Oct. 1, 1996); *and see 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).

Allowing dismissal of the appeal in this matter will not prejudice the public interest that the Board is charged to protect. The Commission denied Applicant's Land Use Permit Application #5L1339(Reconsideration), which, absent a second timely request for reconsideration filed with the Commission, will become final with this dismissal. The interests of the public are therefore adequately protected.

III. ORDER

1. The appeal of Land Use Application #5L1339(Reconsideration) is DISMISSED.
2. Jurisdiction is returned to the District 5 Environmental Commission.

Dated at Montpelier, Vermont this 5th day of June, 2001.

ENVIRONMENTAL BOARD

 /s/Marcy Harding
Marcy Harding, Chair