

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

Re: Brewster River Land Co., LLC.  
Land Use Permit #5L1348-EB  
(Revocation Request)  
Docket #773

**CHAIR'S PROPOSED DISMISSAL ORDER**

This matter concerns a Petition for Revocation of Land Use Permit #5L1348-EB filed by William and Jan Sander, Constance Edwards, Tony Kryzak, and Judy Stout, (collectively, the "Neighbors"). For the reasons stated below, this Petition for Revocation shall be dismissed pursuant to Environmental Board Rule ("EBR") 18(D) if not completed on or before **February 14, 2001**.

**I. PROCEDURAL SUMMARY**

On April 7, 2000, the District #5 Environmental Commission ("Commission") issued Land Use Permit #5L1348 ("Permit") and supporting Findings of Fact and Conclusions of Law and Order ("Decision") to Brewster River Land Co., LLC ("Permittee"). The Permit authorizes the construction and use of 32 residential housing units to be configured in three buildings on a 5.4 acre tract of land located off Church Street in the Village of Jeffersonville within the Town of Cambridge, Vermont ("Project").

On December 7, 2000, the Neighbors filed a revocation petition with the Vermont Environmental Board ("Board"), requesting the Board to revoke the Permit. The revocation petition was filed pursuant to 10 V.S.A. § 6090(c) and EBR 38(A). The revocation petition lacked sufficient copies of the document and a certificate of service.

On December 26, 2000, the Neighbors submitted a request for a stay and conditional dismissal. This request lacked a certificate of service indicating that all parties were served.

On January 4, 2001, the Chair issued a Chair's Preliminary Ruling which set a deadline of January 18, 2001 for the Neighbors to complete their filings and remedy all deficiencies.

## II. OFFICIAL NOTICE

Pursuant to 3 V.S.A. §801(4), the Chair of the Board takes official notice of the information in the official files maintained by the Board in this matter from issuance of the original permit to date ("Record"). Under 3 V.S.A. §810(4), notice may be taken of judicially cognizable facts in contested cases. In addition, and with limited exceptions, "[t]he rules of evidence as applied in civil cases . . . shall be followed" in contested cases before administrative bodies. *Id.* §810(1). Pursuant to the Vermont Rules of Evidence, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." V.R.E. 201(b); see *In re Handy*, 144 Vt. 610, 612 (1984). Official notice of a judicially cognizable fact may be taken whether requested or not and may be done at any stage of the proceeding. 3 V.S.A. § 810(4); V.R.E. 201(c) and (f). Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. See V.R.E. 201(e). Findings of Fact may be based upon officially noticed matters. 3 V.S.A. §809(g).

## III. FINDINGS OF FACT

1. On December 7, 2000, the Neighbors filed a revocation petition with the Board, requesting the Board to revoke the Permit. The revocation petition was filed pursuant to 10 V.S.A. § 6090(c) and EBR 38(A). The revocation petition lacked sufficient copies of the document and a certificate of service.
2. On December 18, 2000, an attorney for the Board notified the Neighbors that the revocation petition was incomplete because it lacked sufficient copies and a certificate of service indicating that all parties were served with a copy of the revocation petition. The Neighbors were further notified that if the filing was not completed by December 26, 2000, the revocation petition may be referred to the Board for possible dismissal.
3. On January 4, 2001, the Chair issued a Chair's Preliminary Ruling which set a deadline of January 18, 2001 for the Neighbors to complete their filings and remedy all deficiencies.
4. The Neighbors did not remedy any of the deficiencies outlined in the December 18, 2000, letter from an attorney for the Board or in the Chair's January 4, 2001 Preliminary Ruling.

5. The Petition for Revocation remains incomplete to date.

#### **IV. PRELIMINARY RULING**

The Chair is authorized by EBR 16(B) to make preliminary rulings on procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any interested party. EBR 16(B). Should any party object to the ruling, it "shall be reviewed and the matter resolved by the board." *Id.*; see also, *Re: Eaglewood XI, Ltd.*, #9A0151-EB, Notice of Dismissal, at 1 (Feb. 18, 1986)(the Board will approve or reject a preliminary decision without hearing where no party makes a timely request for a hearing).

#### **V. CONCLUSIONS OF LAW**

The Chair proposes to dismiss this Petition because it is incomplete. Petitions for revocation are governed by EBR 38(A), which provides, in relevant part, that:

The petition shall consist of an original and 10 copies of the petition which shall include a statement of reasons why the petitioner believes that grounds for revocation exist, a preliminary list of witnesses and the land use permit to which it applies.

The Neighbors included a statement of reasons why they believed grounds for revocation exist and a preliminary list of witnesses. However, the Neighbors did not include an original plus ten copies of those documents or of the Permit. The Neighbors also failed to include additional documents required by other applicable rules.

EBR 40, which applies to revocation petitions by operation of EBR 38(A)(1), requires submission of a certificate of service certifying that the Petition was sent to all parties in the original permit proceeding. See also, EBR 38(A)(1)("petition shall be served on all parties to the original permit proceeding"). The Neighbors did not include a certificate of service indicating that the Petition was served on the Permittee, or on any other party to the original permit proceeding. Accordingly, the Petition is incomplete.

The Board has the general authority to dismiss a matter in which a party has failed to comply with the Board's rules :

The Board may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before the Board for reasons provided by these rules, by statute, or by law.

EBR 18(D). The rule also provides an opportunity for oral argument, upon request of a party, prior to consideration of dismissal. *Id.*

It "is within the authority of the Chairman and the Board to impose reasonable requirements on the parties . . . in order to ensure that the proceedings will be conducted in a judicious, fair and expeditious manner." *Re: Bernard and Suzanne Carrier, #7R0639-EB, Memorandum of Decision and Order at 2 (Jun. 22, 1987)(dismissing appeal for failure to file prefiled testimony, pursuant to EBR18(D)).*

While the Board is reluctant to dismiss a petition for failure to comply with procedural requirements, *see, Re: Kapitan Gravel Pit, Declaratory Ruling #388, Dismissal Order, at 3 (Sept. 8, 2000)(citing Constantino Antique Business, Declaratory Ruling #262, Memorandum of Decision at 2-3 (May 12, 1992); John v. Medical Center Hospital of Vermont, Inc., 136 Vt. 517, 519 (1978)); Re: Ruby Iantosca, #2S1085-EB, Chair's Proposed Dismissal Order, at 2-3 (Sept. 1, 2000),* the Chair notes that the Neighbors have failed to complete the Petition despite having been reminded to do so by the Board's attorney and the Chair. This Order gives the Neighbors one last chance to complete the Petition in accordance with applicable rules.

#### **IV. ORDER**

1. The Chair takes official notice of the official files kept by the Board in this matter as stated above in Section I, Official Notice.

2. This Petition shall be dismissed unless completed, or an objection to this Order or request for oral argument is filed, by **Tuesday, February 13, 2001.**

3. This Order is issued pursuant to EBR 16(B) and 18(D) and is binding on all parties unless a written objection to it, in whole or in part, is filed in accordance with this paragraph. Any party who objects to this Order shall file a written objection and supporting memorandum with the Board on or before **Tuesday, February 13, 2001.** Any request for oral argument, pursuant to EBR

