

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

Re: Ronald L. Saldi, Sr. and Town of Barre and Barre Area Development, Inc., Application #5W1088-1-EB, #5W0308-19-EB, #5W1088-1-EB (Revised) and #5W0308-19-EB (Revised) (consolidated)

MEMORANDUM OF DECISION

In this decision, the Environmental Board ("Board") denies Ronald L. Saldi, Sr.'s request to withdraw Application #5W1088-1/5W0308-19 because such withdrawal would prejudice the public interest the Board is charged to protect.

I. BACKGROUND

On August 10, 1995, Ronald L. Saldi, Sr. ("Saldi"), the Town of Barre ("Town") and Barre Area Development, Inc. ("BAD") filed Application #5W1088-1/5W308-19 ("Application") with the District #5 Environmental Commission ("District Commission") for a Land Use Permit to expand the Wilson Industrial Park, subdivide 150 +/- acres into two lots of 61.7 acres and 87 acres in order to allow such expansion, and construct improvements involving 132 acres ("Project").

On March 6, 1996, the District Commission issued Land Use Permit Amendment #5W1088-1/5W0308-19 ("First Permit") and supporting Findings of Fact, Conclusions of Law and Order ("Decision"), authorizing the Project, including the Town's construction of the following improvements: 4,350 feet of access roads, 5,470 feet of sewer lines, 4,980 feet of water lines and related stormwater drainage improvements. Additionally, the First Permit requires Saldi and all his assigns and successors in interest to preserve the agricultural potential of the primary agricultural soils on the 87 acre retained lot.

On March 27, 1996, Saldi filed an appeal ("First Appeal") with the Board from the First Permit and its supporting Decision.

On March 29, 1996, Saldi filed a Motion to Withdraw the Application with the District Commission.

On April 4, 1996, Sylvia and Edward Relation ("Relations") filed a Motion to Alter the Decision.

On April 5, 1996, the Town filed a Motion to Alter the Decision.

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On April 11, 1996, the Board issued a Notice of Prehearing Conference which scheduled the prehearing conference for May 2, 1996.

On April 17, 1996, Chair Ewing issued a Memorandum to Parties continuing the First Appeal until the District Commission issued decisions on Saldi's Motion to Withdraw Application and the Town's and Relations' Motions to Alter.

On April 22, 1996, Saldi waived the requirement of 10 V.S.A. §6085(b) that a prehearing conference shall be held within 40 days of receipt of the notice of appeal.

On April 24, 1996, the Board postponed the prehearing conference.

On July 2, 1996, the District Commission issued Revised Land Use Permit #5W1088-1/5W0308-19 ("Revised Permit") and a Memorandum of Decision in which it denied Saldi's Motion to Withdraw Application, denied the Relations' Motion to Alter, and granted the Town's Motion to Alter with conditions.

On July 16, 1996, Saldi filed an appeal ("Second Appeal") with the Board from the Revised Permit and its supporting Memorandum of Decision.

On July 24, 1996, the Relations filed a cross appeal ("Cross Appeal") with the Board from the Revised Permit and its supporting Memorandum of Decision.

On August 13, 1996, Board Chair John T. Ewing convened a prehearing conference in Montpelier, Vermont.

On August 15, 1996, Chair Ewing issued a Prehearing Conference Report and Order ("Prehearing Order") in which he consolidated the First Appeal with the Second Appeal. The Prehearing Order is incorporated herein by reference.

On September 3, 1996, Saldi filed a legal memorandum relative to the preliminary issue of withdrawal of the Application.

On September 13, 1996, the Town filed a legal memorandum relative to the preliminary issue of withdrawal of the Application.

On September 25, 1996, the Board deliberated on the preliminary issue of withdrawal of the Application.

II. ISSUE

Whether Saldi can withdraw the Application after the District Commission has issued the Decision on such Application.

III. DISCUSSION

Saldi requests permission to withdraw the Application on which the District Commission issued the Decision and the First Permit.

Administrative agencies have discretion to reject a withdrawal if the withdrawal would prejudice the public interest the agencies are charged to protect. Rockwell Park Associates and Bruce J. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corp., Declaratory Ruling #247, Memorandum of Decision (Dec. 13, 1991); Geoffrey Wilcock and Judith Burns, Declaratory Ruling #224, Memorandum of Decision (Sept. 17, 1990) (citing Oil, Chemical & Atomic Workers International Union, AFL-CIO v. National Labor Relations Board, 806 F.2d 269, 272 (DC Cir. 1986)). The Board and district commissions are charged to protect and conserve the environment of the state. 1969 Vt. Laws, No. 250 § 1 (Adj. Sess.).

The Board concludes that allowing withdrawal of an application after issuance of a final decision on such application would prejudice the public interest that the Board is charged to protect by causing a lack of finality in Board and district commission decisions. Failure to appeal a final administrative decision renders that decision res judicata. Lawrence Lamb, D.V.M. v. Lisa Geovian, D.V.M., 7 Vt. Law Week 228, 230 (Aug. 2, 1996) (citing Hawkins v. Dent. of Economic Sec., 900 P.2d 1236, 1240 (Ariz. Ct. App. 1995)). Res judicata bars the litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter and causes of action are identical or substantially identical. Id. at 229. Res judicata applies to administrative decisions "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of

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fact properly before it which the parties have had an adequate opportunity to litigate." Id. at 230 (quoting Delozier v. State, 160 Vt. 426, 429 (1993)).

The doctrine of res judicata serves the vital public interests of finality and repose. Id. There is significant value in finality to Act 250 decisions so that all parties have some assurance that decisions will not be relitigated, and so that parties may rely on representations that applicants make concerning proposals to mitigate environmental and public health impacts. Re: Stowe Club Highlands, #5L0822-12-EB, Findings of Fact, Conclusions of Law and Order at 9-10 (June 20, 1995); Re: Nehemiah Associates, Inc., #1R0672-1-EB, Findings of Fact, Conclusions of Law and Order at 14 (June 8, 1995). The district commissions also rely on these representations in rendering their decisions. Id. If the Board allowed withdrawal of the Application, there would not be a final administrative decision in this case and res judicata would not bar consideration of the same Application at a later date. Withdrawal of the Application would not serve the public interests of finality and repose.

In addition, the District Commission spent considerable time and effort in reviewing the Project. If the Board allowed withdrawal of the Application after issuance of the Decision, it would open up the possibility of duplicative review at a later date. Duplicative review would waste administrative resources and increase administrative costs. Wasted administrative resources and increased administrative costs are not consistent with the Board's charge to protect and conserve the environment of the state. Accordingly, the Board denies Saldi's request to withdraw the Application.

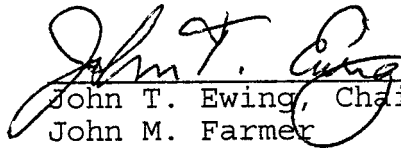
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IV. ORDER

1. Saldi's request to withdraw the Application is denied.

Dated at Montpelier, Vermont this 1st day of October,
1996.

ENVIRONMENTAL BOARD



John T. Ewing, Chair
John M. Farmer
Arthur Gibb
Marcy Harding
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Rebecca M. Nawrath
Steve Wright

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