

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

Re: Charles and Barbara Bickford  
Land Use Permit #5W1093-EB (Revocation)

MEMORANDUM OF DECISION

This decision pertains to preliminary issues in this revocation proceeding concerning party status and the scope of the revocation hearings. For the reasons explained below, the Board has determined to deny party status to Edward Burkart and Ronald and Darlene DeVincenzi and to bifurcate the proceedings so that the issue of notice will be decided before the issue of whether erroneous information was submitted.

I. BACKGROUND

On October 20, 1992, a petition to revoke Land Use Permit #5W1093 and Amendment #5W1093-1 was filed by Curtis and Ruth Whiteway pursuant to Board Rule 38(A). The Petitioners believe that the permits should be revoked for the following reasons: One, they allege that the Permittees failed to list the Petitioners as adjoining property owners on their permit application and, as a result, the Petitioners were not personally notified of and were not able to participate in the District Commission's proceedings. Two, they claim that the Permittees willfully and with gross negligence provided erroneous information to the District Commission and that accurate and complete information would have caused the District Commission to deny the original permit application.

In the prehearing conference report and order issued on November 20, several preliminary issues were identified for decision by the Board. The Board deliberated on December 16, 1992.

II. DECISION

A. Party Status

The Petitioners live directly across U.S. Route 2 from the Permittees' land and they own property abutting the quarry. They also own a spring and an easement on the Permittees' land. At the prehearing conference held on November 17, a request for party status was made by Edward Burkart, and a written request for party status by Ronald and Darlene DeVincenzi was presented.

Edward Burkart lives five-tenths of a mile from the Bickford quarry on Route 2 and he holds the mortgage on a

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home adjacent to the Petitioners' home which has been recognized by the State of Vermont Division for Historic Preservation as an historic landmark. He alleges that the blasting at the quarry may have caused the spring on the historic property to dry up for a short period of time last summer.

The DeVincenzis live along Route 2 approximately **seven-**tenths of a mile from the Bickford quarry. They are concerned about the effect of blasts from the quarry upon their spring.

The Board **has decided** to deny party status to Mr. Burkart and the DeVincenzis at this time. The reason for the denial is that this is a revocation proceeding, not a review of the effects of the quarry. That is, the only questions for the Board's decision are whether the **Permittees'** permits should be revoked for allegedly failing to list the Petitioners' names on the permit application as **adjoining property** owners or for **allegedly submitting** erroneous information in connection with their permit application. The Board's inquiry into these areas will not include a review of the impacts of the quarry on adjoining or neighboring properties. If, at some time in the future the District Commission will review these or other impacts, Mr. Burkart and the DeVincenzis will have an opportunity to seek party status to address their concerns.

B. Scope of the Hearing

One of the allegations made by the Petitioners is that the Permittees did not provide the names of the Petitioners on their original application. Board Rule 10(F) states that applicants must file a list of adjoining property owners to the tract of land proposed to be developed. If, after a hearing, the Board concludes that the Permittees were required to list the Petitioners' names on the permit application, and that the Permittees did not do so, it is likely that the Board will void the permit, consistent with In re Conway, 152 Vt. 526 (1989).

Accordingly, the Board will proceed with this matter by first addressing the question concerning compliance with Rule 10(F). If, after hearing, the Board concludes that Rule 10(F) was not violated, another date will be set for a hearing on the allegations that the permits should be revoked because the Permittees submitted erroneous information in connection with their permit application, pursuant to Board Rule 38(A).

III. ORDER

1. Party status is denied to Edward Burkart and Ronald and Darlene DeVincenzi.
2. The issue to be addressed at the hearing scheduled for March 3, 1993 is whether the Permittees violated Board Rule 10(F).
3. The filing deadlines in the November 20 prehearing conference report and order are extended as follows:
  - a. On or before February 4, 1993, parties shall file final lists of witnesses and exhibits and prefiled testimony for all direct witnesses they intend to present.
  - b. On or before February 18, parties shall file prefiled rebuttal testimony and revised lists showing rebuttal witnesses and exhibits.
  - c. On or before February 24, parties shall file in writing all evidentiary objections to the prefiled testimony and exhibits previously identified, or such objections shall be deemed waived.
4. All other requirements of the prehearing order remain in effect.

Dated at Montpelier, Vermont this 22nd day of January, 1993.

ENVIRONMENTAL BOARD



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