

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

Re: *Dexter and Susan Merritt* Land Use Permit #5W1395-EB
and co-applicants:
David Rogers, Douglas and Corrine Nicholson,
Real Ouimet, Willie Sayers, Nathan and Joann Phillips
and Richard and Tina Desmaris

Dismissal Order

This proceeding involves an appeal from Land Use Permit # 5W1395 (Permit), and accompanying Findings of Fact, Conclusions of Law, and Order (Decision), issued by the District 5 Environmental Commission (Commission) to Dexter and Susan Merritt (Merritts). The Permit authorizes the Merritts' conveyance by auction of five parcels for residential development, involving 38 contiguous acres of land located off Factory Street and Gray Road in the Towns of East Montpelier and Calais, Vermont (Project).

I. History

The history of this appeal through September 12, 2002 appears in the Prehearing Conference Report and Order issued on that date.

On October 9, 2002, Nathan Phillips, having been informed that the Merritts intended to seek dismissal of this matter, filed a letter with the Environmental Board (Board). The letter requests that the Board act quickly on the Merritts' withdrawal so that the Permit can be final. The letter also notes that, if any other Project parcel owner chooses to proceed with an appeal, the issues on appeal be limited to that person's parcel; should the Board not so limit the appeal, Mr. Phillips requests that he be permitted to file evidence to demonstrate that his parcel is unrelated to any issues on other parcels.

On October 11, 2002, the Merritts filed a Withdrawal of Appeal with the Board.

On October 15, 2002, pursuant to Environmental Board Rule 18(D), Board Chair Marcy Harding issued a Chair's Proposed Dismissal Order, dismissing this appeal. Parties were given until October 28, 2002 to object to the proposed dismissal.

The Merritts filed a letter on October 23, 2002, agreeing to the dismissal.

No party has filed any objection to the Chair's proposed dismissal, although the attorney for Richard and Tina Desmaris filed a letter on October 16, 2002, similar to the

one filed by Nathan Phillips, noting that if any other Project parcel owner chooses to "independently pursue an appeal in this matter" the Desmarises would request "that any such appeal be limited to the lot owned by that appellant, and that a ruling be issued that the permit is final as to all other lots."

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's Permit, which becomes final with this dismissal,¹ governs the Project and thereby protects the interests of the public.

III. Order

1. This appeal is dismissed with prejudice. EBR 18 (D).
2. Jurisdiction is returned to the District 5 Environmental Commission.

Dated at Montpelier, Vermont this 30th day of October 2002

ENVIRONMENTAL BOARD

/s/Marcy Harding
Marcy Harding, Chair

¹ Because no party has filed an objection to the Chair's Proposed Dismissal Order, the concerns expressed by Nathan Phillips and Richard and Tina Desmaris are moot.