

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

Re: Fred and Laura Viens

Land Use Permit Application #5W1410-EB

Memorandum of Decision

This matter is an appeal by Thomas and Kathleen Tafuto (Tafutos) to the Environmental Board (Board) from certain aspects of Land Use Permit #5W1410 (Permit) and accompanying Findings of Fact, Conclusions of Law, and Order (Decision), issued by the District 5 Environmental Commission (Commission) to Fred and Laura Viens (Viens), authorizing the construction and operation of an auto body repair shop located on a 16.69 acre tract in the Town of Fayston, Vermont (Project).

I. History

The history of this matter through September 3, 2003 may be found in the Memorandum of Decision of that date and the May 22, 2003 Prehearing Order.

On October 17, 2003, Board Chair Patricia Moulton Powden issued a Second Prehearing Order, setting dates for the filing of documents and a hearing in this matter.

On October 29, 2003, the Tafutos filed an Objection to the Second Prehearing Order; the Viens replied to the Objection by memorandum filed on November 4, 2003.

The Board deliberated on the Tafutos' Objection on November 12, 2003. The matter is now ready for decision.

II. Discussion

Following their appeal of this matter to the Board, the Tafutos filed subpoenas *duces tecum* with the Viens, seeking information about the Project. The Viens declined to produce certain documents and moved the Board to quash the subpoenas. In her May 22, 2003 Prehearing Order, the Chair informed the parties that Environmental Board Rule 4 directs that matters concerning subpoenas "shall be heard in superior court, pursuant to 3 V.S.A. Sections 809a and 809b, 12 V.S.A. Sections, 1263 and 1264, and V.R.C.P. 45, as applicable." *Prehearing Order* at 4 - 5.

The parties pursued their claims in superior court, and on October 23, 2003, the court issued an Order which held, in part, "The court has determined for purposes of proceedings before the Environmental Board that the [Viens'] personal and business financial records, including tax returns, are not relevant."

The Tafutos' *Objection* states that they intend to ask the court to reconsider its decision, and, failing a favorable ruling, intend to seek review in the Vermont Supreme

Court. They ask the Board to continue the filing and hearing dates in the Second Prehearing Order pending resolution of their claims before the courts.

The Viens ask the Board not to continue this matter. They note that an appeal to the Supreme Court will likely not succeed, as appeals of discovery matters are interlocutory, and it is unlikely that the Court will grant review. They also claim that the Tafutos already have the information that they seek in their subpoenas and that the litigation in this case is causing them financial harm and negative publicity, but they do not explain how the timing of this appeal is relevant as to their financial circumstances.

Pending before the Board in this matter are the following issues:

1. Whether the Project satisfies 10 V.S.A. §6086(a)(1) (air pollution)
2. Whether the Project satisfies 10 V.S.A. §6086(a)(8) (aesthetics).

The Board agrees with the superior court and fails to understand how the financial information sought by the Tafutos' subpoenas has any relevance whatsoever to the Act 250 issues of air pollution or aesthetics. There is no reason to continue this matter while the Tafutos pursue their case in the courts.

III. Order

The Tafutos' *Objection* is denied. The case shall proceed as set forth in the Second Prehearing Order.

Dated at Montpelier, Vermont this 14th day of November 2003.

ENVIRONMENTAL BOARD

Patricia Moulton Powden, Chair
George Holland
Samuel Lloyd
Donald Marsh
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