

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

RE: River Station Properties III, LLC

Land Use Permit
#5W1436-EB
(Interlocutory)

MEMORANDUM OF DECISION

This proceeding concerns an interlocutory appeal from Land Use Permit Application #5W1436 (Application) regarding the denial of party status to Kenneth Glines and Sarah Halpine (Appellants). The Application is for the demolition of an existing industrial building on Barre Street in Montpelier and the construction of a 36 unit apartment building with a parking garage and exterior parking and 14 townhouse units each with a single car garage (Project).

I. PROCEDURAL SUMMARY

On June 14, 2004, River Station Properties III, LLC. (Applicant) submitted the Application for the Project.

On July 25, 2004, the District #5 Environmental Commission (Commission) Coordinator issued a Memorandum to the Parties which summarized the following decisions of the Commission on party status. The Commission granted party status pursuant to Environmental Board Rule (EBR) 14 (A)(5) to the Appellants on Criteria 5 and 8 and denied them party status on Criteria 1 (Air) and 1 (B). The Memorandum indicated that the Commission would call the Appellants as witnesses on Criteria 1 (Air) and 1 (B). The Commission also denied the Appellants party status pursuant to EBR 14 (A)(6) on Criteria 4, 7, and 9 (K).

On August 6, 2004, the Appellants filed an interlocutory appeal on the Commission's denial of their request for party status on Criterion 1.

On September 15, 2004, the Board deliberated on this matter.

On September 17, 2004, the Board issued a Memorandum of Decision accepting the interlocutory appeal.

II. DISCUSSION

The Appellants' interlocutory appeal contained a brief petition for party status. The Memorandum of Decision issued on September 17, 2004 provided an opportunity for Appellants to supplement the petition for party status and for the Applicant to respond. The Appellants did not supplement their petition for party status.

The Memorandum of Decision also informed the parties that the Board will only consider holding an evidentiary hearing if there are factual disputes in the parties filings and the Applicant requests an evidentiary hearing. Otherwise, the Board will make its ruling based on the parties filings.

When an opponent to a party status petition raises a factual dispute, the Board still attempts to make party status determinations based on an assumption of veracity in the petition for party status. While holding an evidentiary hearing on party status petitions would enable the Board to make more precise rulings, the Board believes that, in most situations, the delay such a hearing causes generally outweighs its benefit. However, an applicant, aware of such potential for delay, may choose to contest a factual issue in a party status petition beyond submitting opposing memoranda, by requesting an evidentiary hearing and asking the Board to weigh the evidence and testimony on party status before making its final determinations.

McLean Enterprises Corporation #2S1147-1-EB Memorandum of Decision at 6 (Sep 30, 2003).

Although Appellants' petition for party status was brief and lacked a map and detailed description as required by EBR 14(A)(5), they did state that they may be impacted by toxic chemicals unless the Project site is properly cleaned up before construction begins. The Appellants also included health reports from the chemicals listed in the Phase I Environmental Site Assessment, Phase II Environmental Site Assessment and the Drain report. As noted above, although the Board has no evidence before it, at this stage in the process, the Board assumes the veracity of the Appellants' petition. In addition, the Applicant did not object to the Appellants' petition for party status. In light of the above, the Board grants the Appellants party status on Criterion 1 pursuant to EBR 14 (A)(5).

III. ORDER

1. The Board grants the Appellants party status on Criterion 1 pursuant to EBR 14 (A)(5).
2. This case is remanded to the District #5 Environmental Commission for further review.

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Dated at Montpelier, Vermont this 14th day of October, 2004.

Environmental Board

/s/ Patricia Moulton Powden
Patricia Moulton Powden, Chair
George Holland
Sam Lloyd
Pat Nowak
Alice Olenick
Richard C. Pembroke Sr.
Jean Richardson
Christopher Roy