

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

Re: Michael Jedware
Land Use Permits #6F0194 and #6F0259 (Revocation)

DISMISSAL ORDER

This matter comes before the Vermont Environmental Board ("Board") on a Petition for Revocation filed by the Abenaki Self-Help Association, Inc. ("ASHAI") relating to Land Use Permits ("LUP") #6F0194 and/or #6F0259. In a January 4, 2001 Memorandum of Decision, the Board dismissed ASHAI's petition relative to LUP #6F0259 based on the Board's conclusion that ASHAI lacked standing to bring the petition. As set forth below, ASHAI's petition for revocation of LUP #6F0194 is dismissed pursuant to Environmental Board Rule ("EBR") 18(D) based on the Board's conclusion that the petition is moot.

I. PROCEDURAL SUMMARY

October 9, 2000, ASHAI filed a Petition for Revocation pertaining to LUPs #6F0194 and #6F0259.¹

On November 9, 2000, Chair Harding issued a Prehearing Conference Report and Order ("PHCRO"). The PHCRO identified ASHAI's standing to bring a petition for revocation of both LUPs as a preliminary issue and established a date for an evidentiary hearing on this issue.

The Board held an evidentiary hearing on ASHAI's standing on December 20, 2000 and deliberated on December 20, 2000 and January 3, 2001, on ASHAI's standing to petition for revocation of both permits and on the merits of ASHAI's Petition for Revocation of LUP #6F0149.

In a January 4, 2001 Memorandum of Decision, the Board concluded that ASHAI had standing to petition for revocation of LUP #6F0149, but that ASHAI was without standing to petition for revocation of LUP #6F0259. Accordingly, the Board dismissed ASHAI's petition for revocation of LUP #6F0259. Additionally, pursuant to EBR 18(D), the Board on its own motion stated its belief that ASHAI's Petition for Revocation of Land Use Permit #6F0194 should be dismissed because the Board had concerns that the petition was moot. Pursuant to EBR 18(D), the Board set a deadline of January 12, 2001 for the

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Both land use permits #6F0194 and #6F0259 have undergone amendments, and additionally land use permit #6F0194 was appealed to the Board. ASHAI petitioned for revocation of the most current versions of these permits.

parties to request oral argument relating to the Board's own motion to dismiss ASHAI's petition. No party requested oral argument.

On January 24, 2001, the Board deliberated on its own motion to dismiss ASHAI's petition for revocation of LUP #6F0194.

II. FINDINGS OF FACT

Based upon a review of the Record and evidence taken during the December 20, 2000 evidentiary hearing, the Board finds the following facts:

1. On July 20, 1979, the Commission issued LUP #6F0194.
2. Within the Commission's July 20, 1979 Findings of Fact, Conclusions of Law and Order issued with LUP #6F0194, the Commission granted ASHAI party status under Criterion 8 pursuant to then EBR 12(C).
3. Former EBR 12(C) is the equivalent of the present EBR 14(B)(2), materially assisting party status.
4. On October 29, 1979, the Board ordered that ASHAI was a proper EBR 12(C) party, denied the appeals of an adjoining landowner and ASHAI, and affirmed LUP #6F0194.
5. On October 23, 1979, the Commission issued LUP #6F0194-1 which extended the construction completion deadline from October 1, 1979 to November 24, 1979.
6. All construction work relating to LUP #6F0194 was completed prior to November 24, 1979.
7. ASHAI's grounds for revocation of LUP #6F0194 relate to condition number 5 of that permit which states:

The Vermont State Archaeologist shall be notified of any site excavation.
8. The Board's January 4, 2001 Memorandum of Decision, states the following at Section V. Order:

2. Pursuant to EBR 18(D) the Board moves to dismiss ASHAI's petition to revoke LUP #6F0194 on the basis that it is moot.

3. ASHAI's Petition for Revocation of LUP #6F0194 shall be dismissed unless a party requests oral argument. Any request for oral argument, pursuant to EBR 18(D), shall be filed on or before **Friday, January 12, 2001 at 12:00 noon**, or the right to request oral argument shall be deemed to have been waived.

9. No party requested oral argument concerning the Board's motion to dismiss.

III. CONCLUSIONS OF LAW

EBR 18(D) authorizes the Board to dismiss a matter *sua sponte* for reasons consistent with the rules, statute or law. In the Board's January 4, 2001 Memorandum of Decision, the Board stated the following:

In reviewing ASHAI's Petition for Revocation, its Supplemental Petition for Revocation, and based on evidence taken during the evidentiary hearing on ASHAI's standing, the Board believes that ASHAI's Petition for Revocation of LUP #6F0194 is moot. Accordingly, pursuant to EBR 18(D), the Board moves to dismiss ASHAI's Petition for Revocation relative to LUP #6F0194 for the following reasons.

By its terms, LUP #6F0194 was to expire on June 15, 1980. The Commission issued LUP #6F0194-1 which extended the construction completion deadline from October 1, 1979 to November 11, 1979. There is no evidence that Permittee ever sought to extend this deadline further. Additionally, there is no evidence that Permittee performed any construction authorized under this permit or permit amendment beyond the deadlines.

ASHAI alleges in its petition, and in its supplement to its petition, that the specific grounds for revocation relative to LUP #6F0194 regard condition number 5 which states:

The Vermont State Archaeologist shall be notified of any site excavation.

If no construction work was authorized by or carried out under LUP #6F0194 after the construction completion deadline of November 11, 1979, then any violation of this permit relating to excavation work would have occurred more than 21 years ago. Permittee cannot undertake any further excavation work pursuant to LUP #6F0194 or any amendments thereto.

ASHAI also argues that although LUP #6F0194 expired on June 15, 1980, the permit expiration date was extended by legislative enactment of 10 V.S.A. § 6090(b)(2). The Board does not agree with ASHAI's analysis. First, ASHAI's use of 10 V.S.A. § 6090(b)(2) is misplaced. The legislative purpose of 10 V.S.A. § 6090(b)(2) was for the benefit of developers or permit holders to prevent undue hardship from unjustified permit expiration. ASHAI is using 10 V.S.A. § 6090(b)(2) for the opposite purpose of extending a permit expiration so that it can be revoked. This is a purpose which has no logic. Second, by the express terms of 10 V.S.A. § 6090(b)(2), a permit expiration date is extended only if there is compliance with the conditions of the permit. If ASHAI is seeking revocation due to permit violations, then by necessity, 10 V.S.A. § 6090(b)(2) would not extend the expiration date because of the lack of compliance. Conversely, if ASHAI argues that 10 V.S.A. § 6090(b)(2) extends the expiration of the permit, then there can be no violations of the permit, and thus, no grounds for revocation. Either way, the Board believes that it cannot reach the conclusion that LUP #6F0194 should be revoked on the facts before it.

For these reasons, the Board moves to dismiss ASHAI's petition.

Michael Jedware, Land Use Permits #6F0194 and #6F0259 (Revocation), Memorandum of Decision at 7-8 (Jan. 4, 2001).

No party requested oral argument concerning the Board's own motion to dismiss ASHAI's petition for revocation of LUP #6F0194. Accordingly, the Board

deliberated on its motion to dismiss on January 24, 2001, and concluded that ASHA's petition should be dismissed based on the above reasons.

IV. ORDER

1. ASHA's Petition for Revocation of LUP #6F0194 and any amendment thereto is **DISMISSED**.

Dated at Montpelier, Vermont this 24th day of January 2001.

ENVIRONMENTAL BOARD

_____/s/Marcy Harding_____
Marcy Harding, Chair
John Drake
George Holland
Samuel Lloyd
W. William Martinez
Alice Olenick