



STATE OF VERMONT  
ENVIRONMENTAL BOARD  
MONTPELIER, VERMONT 05602  
802-828-3309

DATE: July 21, 1989  
TO: Parties  
FROM: Leonard U. Wilson, Chairman *luw*  
RE: Allie Ring, Land Use Permit  
Amendment #6L0168-1-EB

---

The Environmental Board voted on July 19, 1989 to uphold this preliminary ruling and remand order. Accordingly, it is now a final decision of the Board and the matter is remanded to the District #5 Environmental Commission for further proceedings consistent with the ruling.

ADA/v1

M 6L0168-1-EB

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

Re: **Allie** Ring  
by David M. Ring, P.E.  
Shire Town Engineering  
P.O. Box 1040  
Morrisville, VT 05661

Chairman's Preliminary  
Ruling and Remand Order  
Land Use Permit  
**#6L0169-1-EB**

This decision pertains to a remand of an appeal of the above permit amendment. Pursuant to Environmental Board Rule 16, this decision is a Chairman's preliminary ruling.

BACKGROUND

The District #5 Environmental Commission issued the permit amendment to the Permittee on February 23, 1989. The Permittee requested reconsideration of the amendment on March 6, supplementing this request by letter of March 17. The District Commission denied the reconsideration request on April 18. The Permittee filed an appeal with the Board on May 15.

In the appeal, the Permittee states that the Commission (1) in imposing permit condition

Review of the

the findings of fact which the Permittee is now appealing to the Board. The Permittee commented on the decision as proposed but did not request a hearing at that time. Subsequently, the District Commission issued the final decision containing the contested permit condition and findings of fact. In the Permittee's request to reconsider the final decision, the Permittee asked to have a meeting with the District Commission. In its denial of the reconsideration request, the District Commission did not respond to the request for a meeting, nor does it appear such a meeting was held.

DISCUSSION

10 V.S.A. § 6089(d) states:

An appeal from the district commission will be allowed for any reason except no appeal shall be allowed when an application has been granted and no preliminary hearing requested.

Board Rule 51 requires that district commissions explicitly provide an opportunity for parties to request a hearing when issuing a proposed minor permit.

Further, the Vermont Supreme Court has stated the Environmental Board cannot issue permit amendments without a prior hearing on the amendment before a district commission. In re Juster Associates, 136 Vt. 577, 580-81 (1978).

Based on these authorities, the Chairman of the Board concludes that this appeal is proper but must be remanded to the district commission for a hearing. The Chairman deems the Permittee's request for a meeting concerning the final permit to have been a request for a hearing, thus meeting the strictures of 10 V.S.A. § 6089(d). The Chairman so deems because of the circumstances of this case, in which the final district commission decision was different from the proposed decision. Had the contested condition and findings been in the proposed decision, the Permittee would have had notice of those conditions to which he now objects. The Chairman believes that, in issuing a final decision that differed from the proposed decision, the District Commission effectively deprived the Permittee of the opportunity to request a hearing. Finally, in light of the Juster decision, the Chairman believes that the Board may not consider a permit amendment appeal without a prior hearing at the district commission level.

---

ORDER

The appeal of Land Use Permit Amendment #6L0169-1-EB is hereby remanded to the District #5 Environmental Commission for hearing on the issues raised in the appeal. Jurisdiction over this matter is returned to the District #5 Environmental Commission.

Dated at Montpelier, Vermont this 23rd day of June, 1989.

ENVIRONMENTAL BOARD

BY: Leonard U. Wilson  
Leonard U. Wilson  
Chairman

The Environmental Board voted on July 19, 1989 to uphold this preliminary ruling and remand order. Accordingly, it is now a final decision of the Board and the matter is remanded to the District #5 Environmental Commission for further proceedings consistent with the ruling.

Dated at Montpelier, Vermont this 21st day of July, 1989.

ENVIRONMENTAL BOARD

BY: Leonard U. Wilson  
Leonard U. Wilson  
Chairman

MD 6L0169-1-EB (21)