

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

RE: Barre Granite Quarries, LLC  
William and Margaret Dyott  
Land Use Permit Application #7C1079(Revised)-EB

MEMORANDUM OF DECISION

This matter comes before the Vermont Environmental Board (the "Board") on Residents of Northeast Kingdom Preservation, Ltd.'s ("RNKP") request for service of documents, the Collins's and Sessions's letters petitioning for continued party status, and Barre Granite Quarries, LLC and William and Margaret Dyott ("Permittees") and RNKP's request to amend hearing and filing dates. The Board deliberated on these matters on September 29 and October 8, 1999. For the reasons stated below, the Board denies RNKP's request for service of Permittees' subsequent filings, grants the Collins's petition for continued party status, denies the Sessions's petition for continued party status, and amends the filing and hearing schedule set out in the Prehearing Conference Report and Order.

I. PROCEDURAL SUMMARY

On June 23, 1999, the District #7 Environmental Commission ("Commission") issued Land Use Permit #7C 1079 ("Permit") and Findings of Fact and Conclusions of Law and Order ("Decision") authorizing the Permittees to reactivate and expand abandoned granite quarries located on the Dyott, Padula and LeCours properties in the Town of Sheffield, Vermont (the "Project").

On July 23, 1999, RNKP filed a Motion to Alter with the Commission.

On August 9, 1999, in reaction to RNKP's Motion to Alter, the Commission issued Land Use Permit #7C1079 Revised ("Revised Permit"), Revised Findings of Fact and Conclusions of Law and Order ("Revised Decision") and Memorandum of Decision on RNKP's Motion to Alter ("MOD").

On August 12, 1999, RNKP filed a Notice of Appeal to the Board from the Commission's Revised Decision.

On September 14, 1999, at the prehearing conference, RNKP verbally requested that the Board order that the Permittees serve all parties with copies of subsequent filings required by the Revised Permit. The Permittees objected to this request.

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On September 20, 1999, Chair Harding issued a Prehearing Conference Report and Order ("Prehearing Order").

On September 27, 1999, Alice and Anthony Sessions filed a letter petitioning for continued party status before the Board.

On September 28, 1999, Oliver and Elaine Collins filed a letter petitioning for continued party status before the Board.

On September 28, 1999, Permittees filed a Response to the Prehearing Conference Report and Order seeking amended hearing and filing dates. RNKP agreed with the Permittees' Response by stipulation.

## II. DISCUSSION

### A. RNKP's Request for Service of Documents

The Revised Permit and Revised Decision require the Permittees to file additional documents for Commission review before undertaking various actions pursuant to the Permit.

RNKP requests that the Permittees serve RNKP with copies of all the Permittees' subsequent filings with the Commission required under the Revised Permit. RNKP states that this service is appropriate under Environmental Board Rule ("EBR") 12(J) and that it is a reasonable request because it is the only opportunity for RNKP to review and comment on the filings.

The Permittees objected to this request claiming that serving copies of all subsequent submissions upon each party would be an undue burden. Permittees also argued that the Revised Permit requires Permittees to **submit the** subsequent filings to the Commission only.

RNKP moved to alter the original Permit on July 23, 1999. **At** that time, RNKP could have requested that the Permit and incorporated findings be revised to require service on interested parties of the subsequent filings. RNKP did not make this request. RNKP has appealed the Revised Permit but has not raised this issue on appeal. Accordingly, this request is not properly before the Board.

Even if this request was properly before the Board, the Board is not persuaded that EBR 12(J) requires service of the subsequent filings. This rule states:

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Every document filed by any party subsequent to the initial document filed **in a case** shall be served upon the attorneys or other representatives of record for all other parties and upon **all** parties who have appeared for themselves. [emphasis added]

Although it is not necessary for the Board to reach its decision on this issue, the Board interprets this rule to require service only within a "case." For instance, when a party applies for a permit or when an appeal is filed concerning a decision on a permit application, a "case" begins. At that point, service of all filings on all parties is required. Once an application is approved and a permit **issues** or the appeal is decided, the "case" is complete and no additional filings are necessary. Under this analysis, once the Revised Permit was granted, the case ended and no further service of subsequent filings is required under Board rules.

Lastly, it seems likely that Permittees will produce the subsequent filings as evidence in connection with the criteria on appeal in this case. Therefore, interested parties will receive copies at that time.

The Board finds that **RNKP's** request is not properly before the Board. Accordingly, the Board will not require that the Permittees serve **RNKP** or other parties with copies of the subsequent filings required by permit conditions in this matter.

#### **B. Petitions for Continued Party Status**

Oliver and Elaine Collins and Alice and Anthony Sessions filed letters petitioning for continued party status in this matter. Elaine **Collins** obtained party status pursuant to EBR 14(A)(5) as to Criteria 1, 1(A), 1(B), 1(C), 2 & 3, 5 and 8 at the Commission level, however, Oliver Collins was not a party. The **Sessionses** obtained party status pursuant to EBR 14(B) as to Criteria 1, 1 (A), 1 (B), 1 (C), 2 & 3, 5 and 8.' The Collinses claim that Oliver Collins intended to appear at the **prehearing** conference but a sick child prevented him from doing so. The Sessionses admit that they received notice of the preheating conference and claim it was their oversight not to attend the conference or provide timely notice of their interest in retaining party status.

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Although these individuals had party status under Criterion 1 (C) at the Commission level, this Criterion has not been appealed, and therefore, Criterion 1(C) is not an issue before the Board.

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EBR 14(B)(2) states that a petition for party status must be made in writing to the Board, unless waived by the Chair. EBR 14 (B)(2)(c) states, in relevant part, that such petition must be made on or before the day of the prehearing conference, if one is held. The Board has discretion to grant a party status petition filed after the prehearing conference if the Board finds that the petitioner has demonstrated good cause for failure to appear on time, and that its late appearance will not **unfairly** delay the proceedings or place an unfair burden on the applicant or other parties. EBR 14(B)(2)(c).

In addition to being charged with knowledge of the Board Rules, both Elaine Collins and the Sessionses were served the Notice of Appeal and Prehearing Conference. This notice states that statutory parties should appear at the conference or notify the Board in writing of their intention to appear at the public hearing. The **notice** further states that for nonstatutory parties who do not attend or provide notice and do not demonstrate good cause for not attending or providing notice, the party is deemed to have waived all rights to **further** notice.

The Board finds that the Collinses have demonstrated good cause for their failure to appear on time due to an unexpected family medical situation. Furthermore, the Collinses late appearance at this point in the proceedings will not unfairly delay the proceedings or place an unfair burden on the applicant or other parties. The Board is cognizant of the large number of parties to this matter and the added burden of additional service and additional time required at the hearing as more parties are admitted. The Board believes, however, that this additional burden does **not** rise to the level of unfairness. The Collinses are therefore granted party status to the extent of their status before the Commission and as limited by the scope of criteria on appeal.\*

The Board finds that the Sessionses have not demonstrated good cause for their failure to appear on time. The Sessions's letter petitioning for party status states that they received notice of the prehearing conference but that they missed the information concerning the obligation required of them to continue their **party** status. The Sessionses further state that "family matters prohibited us from attending the prehearing." No

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It does not appear that Oliver Collins had party status at the Commission below. Similarly, James LeCours did not have party status before the Commission. At the prehearing conference Mr. LeCours requested status with his wife Elizabeth who did have party status below. No objection to Mr. LeCours' request was made at the prehearing conference. Mr. LeCours was therefore granted party status. Upon similar reasoning and to be fair, the Board grants Oliver Collins party status along with his wife Elaine.

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rationale is given as to why the Sessionses did not provide the Board with timely written notice of their intent to continue their party status. The Sessionses petition for continued party status is therefore denied.

The Board hereby informs the Sessionses that if one of the admitted parties chooses to call them as witnesses, they will be permitted to participate in the hearing, even absent party status. The Sessionses should arrange for their participation with a party at this time to ensure that the Sessionses meet the relevant filing dates relating to their testimony and exhibits which they may seek to admit.

**C. Requested Amendment to Prehearing Conference Report and Order**

By stipulation, the Permittees and RNKP propose amending the hearing and filing dates set out in the Prehearing Order. Subsequent to the issuance of the Prehearing Order, Permittees determined that expert witnesses were not available on the dates set for hearing, January 26 and 27, 2000. Permittees propose new hearing dates of January 19 and 26, 2000. RNKP stipulates to these dates. To accommodate the parties' needs to have expert witnesses available for hearings, the Board hereby amends Section VI( 11) of the Prehearing Order to reflect the new hearing dates of January 19 and 26, 2000.

The Permittees and RNKP also request amendments to the filing dates set out in the Prehearing Order. This request is predicated on the number of expert witnesses projected to testify in this matter. The Board has considered the parties' requests as well as the time required for the Board and its staff to prepare for the hearing and agrees to amend the filing dates set in Section VI of the Prehearing Order as specified in Section III of this memorandum below.

**D. Alternate Board Member Potential Participation at Site Visit and Hearing**

Alternate Board Member Jill Broderick may attend the site visit, and may also participate as a Board Member during the hearing in this matter. Ms. Broderick works closely with Attorney Robert Gensburg of St. Johnsbury performing legal services involving complex real estate and tax transactions for a single client. Some of these transactions involve Act 250, but neither Mr. Gensburg nor Ms. Broderick performs services for this client in connection with Act 250. Mr. Gensburg's associate, Clarke Atwell, met about one year ago with several Sheffield residents who oppose Permittees in this matter. Mr. Atwell advised the residents about how to organize themselves to participate in this matter. Mr. Atwell never appeared on behalf of the residents in any proceeding, and does not represent the residents at the present time. Ms. Broderick was

not associated with Mr. Gensburg in any way when Mr. Atwell performed these activities, and has not spoken with Mr. Atwell about the services he performed for the residents. Ms. Broderick believes that her association with Mr. Gensburg will not influence her judgment in this matter.

Any party wishing to object to Ms. Broderick's involvement in this matter must notify the Board in writing on or before 12:00 **p.m. on Tuesday, October 12, 1999** of the objection. This notice should specifically state the reasons for the objection.

### **III. ORDER**

1. RNKP's request for service of Permittees' subsequent filings to the Commission is **DISMISSED**.
2. The Collins's petition for continued party status is **GRANTED**. The Collinses are therefore granted party status to the extent of their status before the Commission and as limited by the scope of criteria on appeal.
3. The Sessions's petition for continued party status is **DENIED**.
4. **The** Board amends the schedule set out in Section VI of the Prehearing Conference Report and Order as follows:
  3. On or before **Tuesday, November 2, 1999**, all parties shall file (a) exhibits, (b) prefixed direct testimony for all witnesses they intend to present, and (c) lists of witnesses and exhibits.
  4. On or before **Tuesday, November 30, 1999**, all parties shall file (a) rebuttal exhibits, (b) prefixed rebuttal testimony, and (c) a final list of witnesses and exhibits reflecting the addition of rebuttal witnesses and exhibits.
  5. On or before **Tuesday, December 14, 1999**, all parties shall file (a) surrebuttal exhibits, (b) prefixed surrebuttal testimony, and (c) a final list of witnesses and exhibits reflecting the addition of sin-rebuttal witnesses and exhibits.
  6. On or before **Tuesday, December 28, 1999**, parties shall file written requests for time beyond the time allotments outlined in Section V, SCHEDULING. The Chair **may** allow more time if good cause is shown.

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7. On or before **Tuesday, December 28, 1999**, parties shall file proposed findings of fact and conclusions of law.

8. On or before **Tuesday, December 28, 1999**, parties shall file evidentiary objections to the pre-filed evidence or such objections shall be deemed waived.

9. On or before **Tuesday, January 4, 2000**, parties shall file responses to evidentiary objections to the pre-filed evidence or such responses shall be deemed waived.

10. Chair H&ding will conduct a second prehearing conference at the Board offices on **Monday, January 17, 2000 at 10:00 a.m.** at the Environmental Board's Conference Room in the National Life Records Center Building, National Life Drive, Montpelier, Vermont to address any pending evidentiary objections, the site visit, other preliminary rulings, the schedule for the hearing days, etc. Any party wishing to participate in this conference by telephone should advise Board Secretary Barbara Blanchard (telephone 802-828-5445) accordingly on or before 12:00 noon on Thursday, January **13, 2000**. Ms. Blanchard will arrange the conference call.

11. The Board will convene a hearing in this matter on Wednesday, January 19, 2000 and continue the hearing on Wednesday, January **26, 2000** at 9:00 a.m. The specific location of this hearing shall be announced later.

The remainder of the Prehearing Conference Report and Order remains **unchange**.

5. Any party wishing to object to Board Alternate Jill Broderick's involvement in this matter, must notify the Board in writing on or before 12:00 noon on Tuesday, October **12, 1999** of the objection. This notice should specifically state the reasons for the objection.

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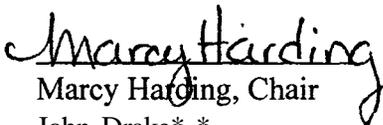
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Dated at Montpelier, Vermont this 8<sup>th</sup> day of October 1999.

ENVIRONMENTAL BOARD\*

  
Marcy Harding, Chair

John Drake\* \*

George Holland

W. William Martinez

Rebecca M. Nawrath

Alice Olenick

\* Board member Samuel Lloyd participated in the September 29, 1999 deliberations, but did not participate in the October 8, 1999 deliberations as he was out of the country. Board member Robert H. Opel was not present for and did not participate in the September 29 or October 8, 1999 deliberations.

\*\* Board member John Drake was not present for and did not participate in the October 8, 1999 deliberations, but he did review and approve this decision.