

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

RE: Paul and Jane Choquette by MEMORANDUM OF DECISION  
Charles Hickey, Esq. Land Use Permit #7R0234-1-EB  
Swainbank, Morrissette,  
Neylon & Hickey  
83 Eastern Avenue  
St. Johnsbury, VT 05819

On January 20, 1987, Charles D. Hickey, Esq., on behalf of Paul and Jane Choquette, requested that the Environmental Board (**Board**) remand this case to the District 7 Environmental Commission (Commission) for reconsideration of the Choquettes' application for a permit approving a community water system for a seven-lot subdivision located in Newport, Vermont. The basis for the request was that the Orleans Superior Court was remanding the same matter to the Commission for reconsideration of its decision that all lot owners must participate as co-applicants in the Choquettes' application. A copy of the Court's January 26 Order remanding the case to the Commission was filed with the Board on January 28. Paul Wolfe, Esq., on behalf of Frederick and Norma **Bushey**, has objected to the Choquettes' request for a remand of the appeal now pending before the Board.

SUMMARY OF THE FACTS

The circumstances leading to this appeal are not in substantial dispute. They were set forth in the Board's Prehearing Conference Report and Order dated November 4, 1986, as corrected by a Stipulation of the parties dated November 17 and as updated by recent events. They are as follows:

1. In 1975, the Applicants filed Land Use Permit Application #7R0234 to construct a nine-lot subdivision and access road on Vance Hill in Newport, Vermont. The nine lots were each to be served by an on-site well and sewage disposal system. Land Use Permit #7R0234 approving this application was issued on October 1, 1975.

2. During the years from 1979 to 1981, the Applicants sold four lots in the Choquette subdivision. Mr. and Mrs. Champagne, Mr. and Mrs. **Bushey**, and Mr. and Mrs. Royer each purchased one lot. In addition, the Champagnes purchased a lot with Sheila Greene. The Applicants retained the remaining lots, and still own them **today**.

3. None of the four lots which were sold by the Applicants are served by individual wells, as required by the original permit. Instead, in May 1979, the Applicants drilled a single well on the "**Bushey**" lot and constructed a community water system which would serve the four lots which were sold, as

well as the lots retained by the Applicants. The deeds to the Champagnes, Busheys, Rovers, and Champagne-Greene all refer to the community water system, and make provision for the operation, maintenance and repair of the system.

4. At the time the community water system was installed, the Applicants had not sought an amendment to Land Use Permit #7R0234.

5. In 1982 or 1983, the persons who had purchased the four lots objected to the community water system, apparently because of concerns about contaminants in the water. The Vermont Health Department subsequently conducted substantial testing to determine whether the water was safe.

6. On June 2, 1982 the Applicants filed Land Use Permit Amendment #7R0234-1 to change the subdivision from nine lots to seven lots, and to approve the community water system. The lot owners signed the application as co-applicants for the purpose of changing the number of lots. However, they refused to be co-applicants for the purpose of approving the community water system.

7. The District #7 Environmental Commission eventually approved the change in number of lots. However, by a decision dated April 12, 1984, the Commission ruled that the application was incomplete as to the water system, because the other lot owners had not signed as co-applicants, as required by Board Rule 10. On February 26, 1985 the Applicants filed a motion requesting that the Commission reconsider its decision on the completeness of the application. On April 8, 1985, the Commission ruled that the Commission was not persuaded that there was reason to believe that it had erred in judgment, omitted relevant facts or acted contrary to accepted fair and reasonable procedures and that the motion was not timely, and denied the request for reconsideration. On May 7, 1985 the Applicants appealed the denial to the Environmental Board, and under 10 V.S.A. § 6089 (since amended), removed the appeal to the Orleans Superior Court.

8. In April 1985 the State of Vermont filed an enforcement action against the Applicants in the Orleans Superior Court. The suit requested that the Court order the Applicants to obtain all State permits necessary to approve the community water system, and **to pay** a \$5,000 civil **penalty**. The suit is still pending.

9. On April 12, 1986 the Applicants filed the present permit amendment application (which has been variously identified as #7R0234-1 and #7R0234-3), which again sought to amend the 1975 permit to approve the community water system. The lot

owners again refused to sign the application as co-applicants. However, the Applicants argued that Board Rule 10 had been amended in 1984 to allow the Commissions to waive the signatures of co-applicants in certain situations. On July 12, 1986 the District #7 Commission agreed to accept the application, and scheduled a hearing on September 17. The lot owners requested that the Commission reconsider its decision, raising, among other things, the issue of whether the Commission had jurisdiction over the application since the same application was pending in Superior Court. The Commission agreed with that argument and dismissed the application on September 16, thus setting the stage for this appeal.

10. On January 26, 1987, the Orleans Superior Court remanded the Superior Court appeal to the Commission for reconsideration of the co-applicant issue in light of the revisions to Board Rule 10.

DECISION

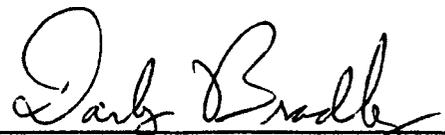
The Choquettes brought this appeal to the Environmental Board because it objected to the Commission's dismissal of their application for lack of jurisdiction. The Commission's decision was based upon its determination that it had no jurisdiction over the matter because an appeal involving a similar issue was pending in Superior Court. Now that the Court has remanded the case to the Commission, it appears that the Commission will be able to hear the case. The Board will therefore remand this appeal to the Commission for reconsideration of whether it will accept an application from the Choquettes without the participation of the lot owners, pursuant to the waiver provision of Board Rule 10 (A).

ORDER

This appeal is hereby remanded to the District #7 Environmental Commission for further proceedings on the Choquettes' application.

Dated at Montpelier, Vermont this 24th day of February, 1987.

ENVIRONMENTAL BOARD



Darby Bradley, Chairman  
Lawrence H. Bruce, Jr.  
Samuel Lloyd III  
Roger N. Miller  
Donald B. Sargent

CERTIFICATE OF SERVICE

I hereby certify that I, Stephanie J. Kaplan, Executive Officer, Environmental Board, sent a copy of the foregoing by U.S. Mail, postage prepaid, on this 24th day of February, 1987, to the following:

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Dated at Montpelier, Vermont this 24th day of February, 1987.

BY Stephanie J. Kaplan  
Stephanie J. Kaplan  
Executive Officer  
Environmental Board