

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

RE: Bernard and Suzanne Carrier by ORDER DISMISSING APPEAL
Robert P. Davison, Jr., Esq. Land Use Permit #7R0639-EB
P.O. Box 279
Stowe, VT 05672-0279

On January 7, 1987, Bluffside Farms, Inc. and Dan and Richard Scott filed an appeal from the decisions of the District #7 Environmental Commission dated October 28, 1986 and December 8, 1986, issuing Land Use Permit #7R0639 to Bernard and Suzanne Carrier. The Permit authorized the creation of a 9-lot subdivision and related facilities off Bigelow Bluff Road in Newport, Vermont. The Appellant Bluffside Farms, Inc. owns land adjoining the project site, and had been granted party status in the District Commission proceedings under Environmental Board Rule 14(A). Dan and Richard Scott are the principal owners of Bluffside Farms, Inc., and had been granted party status under Rule 14(B).

The Environmental Board (Board) convened a prehearing conference in the appeal on January 26, 1987. During the prehearing conference, the parties identified in considerable detail the witnesses and exhibits which they intended to produce for the appeal. The Board issued a prehearing report and order on February 5 listing these witnesses and exhibits. The report also identified several preliminary issues and ordered the parties to submit various motions and information on the issues raised by specified dates. The parties were given an opportunity to address these issues through written memoranda, and the Board resolved them through its Memoranda of Decision dated February 26 and April 3. In its February 26 Memorandum of Decision, the Board set Wednesday, April 29 as the date for a hearing on the merits of the appeal. It also required the parties to submit an updated list of witnesses by April 15 and the prefiled testimony of each witness and an updated list of exhibits by April 22.

A hearing on the merits of the appeal was scheduled for April 29 in Newport, but was cancelled by the Chairman when the Appellants failed to file their prefiled testimony and exhibit list. The Chairman issued a Proposed Decision to Dismiss Appeal on April 24. At the request of the Appellants, the full Board convened a public hearing on June 10 to consider the oral argument of the parties on the Chairman's proposed decision.

The Permittees Bernard and Suzanne Carrier have consistently complied with the requirements of the Board's Orders, including the filing of prefiled testimony on April 10. The Appellants have consistently failed to comply with the Board's Orders, including the submission of their request for party status on additional criteria by February 11, the submission of the updated witness list by

6/22/87

Docket # 333,

April 15, and the submission of prefiled testimony and an updated exhibit list by April 22. No objections to the prehearing orders or the time limits established therein were filed by any of the parties.

The Permittees are essentially satisfied with the land use permit as issued by the District Commission, and seek to have the Commission's decision affirmed by the Board. The Appellants have claimed that the project does not comply with the Act 250 criteria relating to waste disposal (1) (B), shorelines (1)(F), erosion (4), traffic safety (5), aesthetics (8), necessary wildlife habitat (8)(a), impact of growth (9) (A), primary agricultural soils (9)(B), and forest and secondary agricultural soils (9)(C). At the January 26 prehearing conference, the Appellants listed a substantial number of witnesses and exhibits that would be used. None has been produced. Other than the statements made by the Appellants at the January 26 prehearing conference, the Appellants have not submitted any prefiled testimony or offers of proof to support any of their claims.

It is within the authority of the Chairman and the Board to impose reasonable requirements on the parties, including the submission of prefiled testimony, in order to ensure that the proceedings will be conducted in a judicious, fair and expeditious manner. See Board Rules 17(E) and 18(C) and the Administrative Procedure Act, 3 V.S.A. § 810(1). The Board is currently carrying a very heavy docket of appeals, declaratory ruling requests, and permit revocation requests. In cases where the issues are numerous **or** technically complex, the Board has found it necessary and desirable to require the use of prefiled testimony. Not only does this procedure reduce the amount of hearing time required for the presentation of direct testimony, but it allows the parties and the Board members to prepare their cross-examination and questions for the witnesses. Prefiled testimony is useful in the particular case being heard, and assists the entire Act 250 process by reducing delay in hearing other appeals.

If parties were free to ignore the Board's Orders as the Appellants have done in this case, the Board's efforts to expedite the appeals process would be thwarted. The Appellants have produced no substantive evidence to support their claims that the project will cause environmental harm. Under the circumstances, the Board is amply justified in dismissing this appeal under Board Rule 18(D).

ORDER

1. The appeal of Land Use Permit #7R0639 is hereby dismissed.
2. Jurisdiction is returned to the District #7 Environmental Commission.

Dated at Montpelier, Vermont this 22nd day of June, 1987.

ENVIRONMENTAL BOARD



Darby Bradley, Chairman
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Elizabeth Courtney
Arthur Gibb

BSC14