

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

RE: John Kennedy and
Jeffrey Kilburn by
Jon S. Readnour, Esq.
Carroll, George & Pratt
Drawer 530 (J)
Rutland, VT 05701

MEMORANDUM OF DECISION
Land Use Permit #8B0370-2-EB

On May 16, 1988, the Environmental Board received a Motion for Additional Time from William Hunter, Esq. on behalf of the Appellants, William Drunsic and the Barnumville Coalition. On May 19, the Board received a Motion to Dismiss and an Opposition to Appellants' Request for Additional Time from the Applicants, John Kennedy and Jeffrey Kilburn, through their attorney, Jon Readnour, Esq.

On May 26, 1988, the Environmental Board convened a public hearing with the following parties participating:

Appellants by William Hunter, Esq.
Applicants by Jon Readnour, Esq.

Mr. Hunter requests a continuance of the hearing and an extension of the deadlines established in the April 14 Prehearing Conference Report and Order for filing witness lists (April 25) and prefiled testimony (May 12). He claims that, as a state senator, unexpected extension of the legislative session prevented his meeting the deadlines for filing documents in this appeal. He argues that the extension would not prejudice the Applicants since they have no zoning permit and a Superior Court hearing on the Town of Manchester's denial of a zoning permit will not be held until September.

The Applicants object to the Appellants' request for a continuance of the hearing and an extension of time for filing documents. They argue that because the Appellants have made no efforts to comply with the established deadlines and failed even to contact the Applicants' attorney or the Board to discuss the need for extensions before the deadline passed, the appeal should be dismissed. The Applicants claim that the Appellants' attorney has an obligation to his clients and to the Board to abide by the requirements of the Board's order. They also contend that postponement of this hearing cannot be justified on the ground that other litigation is pending, since the Applicants' rights to a hearing in this appeal are distinct from other proceedings.

At the hearing it was discovered that the Appellants also failed to file a "written statement that specifies the criteria under which [the Appellants] are seeking party

status and identifies their interests with respect to each criterion in accordance with 10 V.S.A. § 6085(c) and Board Rule 14(A) and (B)." The Board asked the Appellants to provide this information orally so it could make a decision regarding the party status of the Appellants. Mr. Drunsic is an adjoining landowner who claims to be directly affected by the visual impact of, and the traffic from the project. He seeks party status under Criteria 5 and 8 (aesthetics) as well as Criterion 10 because of his interest in seeing the area developed in conformance with the Town Plan. The Barnumville Coalition, consisting of neighbors who live on Barnumville Road and in the general area, seeks party status pursuant to Criteria 1(B), 5, 7, 8(a), 9(H), 9(K), and 10.

DECISION

1. Party Status

The Board hereby grants party status pursuant to Rule 14(B) (1) to William Drunsic on Criteria 5 and 8 (aesthetics) since he will be directly affected by the impacts of the project with respect to these criteria. The Board denies party status on Criterion 10, however, since he has not demonstrated that he will be directly affected differently from any other member of the public or that he could materially assist the Board. The Board also denies party status to the Barnumville Coalition. There has been no identification of the members of the Coalition and no information provided to the Board regarding their interests with regard to the criteria. Under the statute and the rules, the Board cannot allow persons or organizations to participate in proceedings unless they demonstrate that their specific interests or properties will be affected by the project or that they will materially assist the Board. Since the Board does not know the location of the properties of the members of the Coalition or their proximity to the project, the Board is unable to reach any conclusions about the possibility of impacts. Similarly, the Board has no information regarding the Coalition's ability to materially assist the Board.

2. Request for Extension of Deadlines

The Board hereby confirms the Chairman's decision to continue the hearing on the merits of the appeal.

The Board finds no reasonable excuse for the Appellants' attorney's failure to inform the Applicants or the Board in advance that he was not going to be able to meet the deadlines in the Board's order and therefore denies the Appellants' request for an extension of the deadlines

established in the April 14 order for filing witness lists and prefiled testimony. William Drunsic may cross-examine the Applicants' witnesses on Criteria 5 and 8 (aesthetics).

3. Motion to Dismiss

The Board does not believe that the circumstances justify dismissal and therefore denies the Applicants' Motion to Dismiss.

ORDER

1. A public hearing will be convened on Tuesday, June 21, 1988 at 10:00 a.m. at the Equinox Hotel, Route 7A, Manchester, Vermont. The issues to be addressed are the compliance of the project with Criteria 5 and 8 (aesthetics).
2. William Drunsic is granted party status pursuant to Rule 14(B)(1) on Criteria 5 and 8 (aesthetics) and denied party status on Criteria 10. The Barnumville Coalition is denied party status.
3. The Appellants' Motion for an Extension of Deadlines for filing witness lists and prefiled testimony is denied.
4. The Applicants' Motion to Dismiss is denied.

Dated at Montpelier, Vermont this 2nd day of June, 1988.



Leonard U. Wilson, Chairman
Jan S. Eastman
Arthur Gibb
Samuel Lloyd
Roger N. Miller