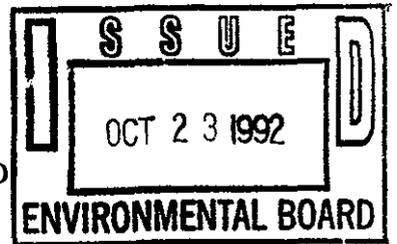


VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151



Re: Robert and Barbara Barlow
Application #8B0473-EB

MEMORANDUM OF DECISION AND ORDER

This decision pertains to a motion for reconsideration filed pursuant to Board Rule 31(A) by Robert and Barbara Barlow (the Applicants) with respect to a memorandum of decision and order issued by the Environmental Board on August 6, 1992. In that decision, the Board partially stayed Condition #6 of Land Use Permit #8B0473 and recessed the matter pending decision by the Supreme Court on whether an Act 250 permit is required. The project is a gravel pit owned and operated by the Applicants located in Pownal. The project is before the Board on appeal by permitted party Nancy Lubeck (the Appellant).

The motion was filed on September 2, 1992. It included a request for hearing. On September 21, 1992, the Appellant filed two documents in response to the motion. On October 20, the Applicants made a further submission. The Board deliberated on October 21.

DECISION

Under Rule 31(A), holding a hearing on a motion to alter is discretionary. Such hearings are not to take new evidence but rather to hear argument concerning whether a decision should be altered based on what was before the Board prior to making its decision. As we have stated before, to ensure that arguments and evidence are introduced prior to final decision, we believe that it is inappropriate to raise new arguments or evidence in a motion to alter filed with the Board. Re: Finard-Zamias Associates, #1R0661-EB, Memorandum of Decision at 2 (Jan. 16, 1991); Re: Berlin Associates, #5W0584-9-EB, Memorandum of Decision at 5-6 (Jan. 16, 1991).

In view of the potential for hardship engendered by the partial stay, we have decided to hold a hearing for the purpose of receiving argument as to whether we should alter our August 6 decision.

As parties are aware, a significant reason for issuing a partial stay was the Appellant's contention that loaded trucks from the gravel pit will cross a bridge which is in serious need of repair. In this regard, the Applicants have renewed a contention they made prior to our August 6 decision, namely, that the bridge has been repaired. In support of this, they have submitted a letter dated February 20, 1992, signed by Warren B. Tripp, Structures Engineer for the State of Vermont Agency of Transportation (AOT). This letter had been submitted to us by the Appellant prior to our August 6 decision as part of a submission served on the

547M1

Applicants. The letter does not support the Applicants' contention that the repairs have been done; rather, it supports the Appellant's assertion that repairs are needed.

Accordingly, we conclude that the Applicants need to substantiate their claims that the bridge repairs have been made. We therefore direct that, prior to oral argument, the Applicants must submit documents or affidavits from AOT certifying that the bridge repairs have been made and delineating how many tons per truck, and how many trucks per day, may safely cross the bridge. We will serve a copy of this decision on AOT and will request its cooperation pursuant to 10 V.S.A. § 6024. In making this decision; we are aware that the Town of Pownal is the actual entity charged with repairing the bridge. However, we believe that AOT is a more appropriate authority to determine whether the bridge has been repaired and is safe.

We also will direct the Applicants to file affidavits supporting all other facts set forth in their motion. We believe that this is appropriate under Rule 31(A) because the decision for which alteration is requested is an interim decision concerning a stay request and not a final decision on an appeal.

ORDER

1. The Board will convene oral argument concerning the Applicants' motion to alter during its meeting scheduled for November 18, 1992, the time and location to be announced.
2. On or before November 12, 1992, the Applicants shall file with the Board documents or affidavits from the State of Vermont Agency of Transportation (AOT) certifying that bridge repairs have been made and delineating how many tons per truck, and how many trucks per day, may safely cross the bridge.
3. Pursuant to 10 V.S.A. § 6024, the Board requests that AOT cooperate with the Applicants.
4. On or before November 12, 1992, the Applicants shall file with the Board sworn affidavits attesting to all facts set forth in their motion.
5. Any written response to the above filings must be filed on or before **November 17**, 1992 or at oral argument on November 18, 1992.
6. The Applicants and the Appellant shall hand-deliver the above filings to each other.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Lixi Fortna
Arthur Gibb
Samuel Lloyd
Steve E. Wright

1

2

3