

On August 7, 1996, Appellant Bongartz filed a written party status request along with his Memorandum of Law Concerning Existence of Actual Case in Controversy. Also on August 7, 1996, Appellant Sparkman filed his Memorandum on Existence of Actual Controversy. In response to these memoranda, the Town of Manchester filed a letter on August 14, 1996 which generally advocated the pursuit of this appeal as a case or controversy only at such time that MCA sought reconsideration of the Decision.

The Chair reviewed the parties' memoranda on the preliminary issues set forth at the prehearing conference and on September 11, 1996, issued a Memorandum of Decision and Continuance Order ("Continuance Order"). The Continuance Order is incorporated herein by reference. In summary, the Continuance Order determined that the existence of an actual case or controversy in this matter would be conditioned upon MCA filing a request for reconsideration of the Commission's Decision. In the Continuance Order the Board stated as follows:

. . . in this case where the Appellants have not been aggrieved by the Commission's decision below with respect to its ultimate result, the Board has no basis upon which to conclude that a ruling on [the legal questions in issue] is either necessary or proper in the present appeal. Should the applicant file a further request for reconsideration, the issues under appeal will clearly be ripe for a decision. If the reconsideration request does not materialize, then the appeal will be moot.

Manchester Commons Associates, Application #8B0500-EB (Reconsideration), Continuance Order (September 11, 1996) at 2.

II. FINDINGS OF FACT

1. The Decision was issued by the Commission on May 15, 1996.
2. Six months from the date of issuance elapsed on November 15, 1996.
3. No request for reconsideration was filed by MCA.
4. Appellants objected to MCA's proposed project before the District #8 Commission. The Commission declined to issue an Act 250 permit for the proposed project. Appellants therefore prevailed on the ultimate issue before the Commission.
5. On November 27, 1996, Appellant Sparkman filed a Motion to Dismiss the

Appeal.

6. On December 17, 1996, Appellant Bongartz filed a Concurring Motion to Dismiss the Appeal.

III. CONCLUSIONS OF LAW

Pursuant to EBR 31(B), the applicant may seek reconsideration of a Commission or a Board decision to deny a permit for a period of not more than 6 months from the date of issuance of the decision. As the Appellants acknowledge in their memoranda of law filed on August 7, 1996, the event that would trigger a case or controversy in the referenced matter would be the applicant's filing for reconsideration to the Commission. No reconsideration request was filed within the allotted six month period.¹ Accordingly, the Commission's Decision becomes a final decision and MCA has no further recourse based on the application that it has filed.² Both Appellants have filed Motions to Dismiss which acknowledge that the procedural and substantive issues raised in his appeal no longer need to be addressed.

The Board finds that in the interest of administrative efficiency and because no justiciable issue remains ripe for a decision in this matter, the Board will decline to take further action on the pending appeal. The Board further concludes that dismissal of this matter is not contrary to the values sought to be protected by Act 250.

¹

The Board declines to determine whether a reconsideration request of a Commission's decision *on reconsideration* is appropriate or whether such would have been allowed in this case. The Board further declines to determine how many reconsideration requests are allowed for a single application.

²

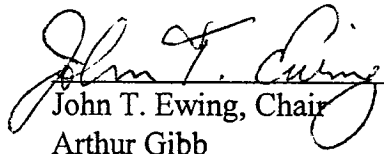
MCA may of course file a new application.

IV. ORDER

The above-referenced matter is hereby dismissed.

Dated at Montpelier, this 18th day of December, 1996.

ENVIRONMENTAL BOARD


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