

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151
July 2, 1991

Re: Dorothy and George Carpenter,
Declaratory Ruling Request #237

MEMORANDUM OF DECISION

This decision pertains to a request for reconsideration filed concerning the Environmental Board's dismissal of this matter dated April 25, 1991. The reconsideration request was filed by the Petitioners on May 24 pursuant to Board Rule 31(A). On June 27, 1991, the Board deliberated in Berlin, and as is explained below, decided to deny the reconsideration request.

Decision

The Petitioners request reconsideration on four grounds. First, they argue that the District #5 Coordinator did not make a ruling that an Act 250 permit was needed. This argument is precluded by Finding of Fact #4 of the Board's prior decision on the Petitioner's application, which states that the Assistant District #5 Coordinator notified the Petitioners that a permit was required on February 2, 1988. Re: Georae and Dorothy Carpenter, Application #5W0976-EB, Findings of Fact, Conclusions of Law and Order at 3 (Jan. 19, 1990). That decision was appealed to the Supreme Court and upheld. In re Georae and Dorothy Carverter, No. 90-096, slip op. (Nov. 14, 1990). Accordingly, the Petitioners are barred from relitigating this issue.

Second, the Petitioners argue that the Board has assumed that the gravel pit is commercial without due process. This is incorrect. The issue of whether the gravel pit is commercial was litigated extensively during the prior application proceeding, and the decision issued pursuant to that proceeding reveals that a public hearing and oral argument were held. Carpenter, Application #5W0976-EB, supra at 1-2. Further, with respect to this declaratory ruling request, the Petitioners were notified October 30, 1990 that all preliminary issues, including whether the Board is bound by its prior findings, would be decided in deliberative session based on written submissions. Any objection to this procedure was to be filed by November 8, 1990. No objection was filed, and the Petitioners filed written comments in opposition to dismissal on December 13, 1990. The Petitioners have received ample process.

237M1

George and Dorothy Carpenter
Memorandum of Decision
Declaratory Ruling Request #237
Page 2

Third, the Petitioners argue that the **record shows** that jurisdiction was not waived. This is irrelevant. The Board's dismissal is not predicated on any notion that jurisdiction was or was not waived.

Finally, the **Petitioners** argue that the prior proceedings were "**on** the merits of the case not on jurisdiction." The Board **believes** that its April 25 decision dismissing this matter adequately addresses this issue. If the Petitioners sought to contest jurisdiction, they should have done so during the **pendency** of the prior proceedings or during their appeal to the Supreme Court.

The Board recognizes that the Petitioners seek to extract gravel from their property. Based on the Board's January 1990 decision concerning their permit application, it is clear that to do so they should seek to have the Waitsfield town plan changed.

Order

The request for reconsideration is denied.

Dated at Montpelier, Vermont, this 2nd day of July,
1991.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair

Ferdinand Bongartz

Rebecca Day I

Samuel Lloyd

Charles F. Storrow

Steve E. Wright

carpente.mem(awp3)