

Author

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

RE: City of Montpelier Water Treatment Facility
Declaratory Ruling Petition #260

MEMORANDUM OF DECISION

This decision, dated March 23, 1992, pertains to a request for a continuance filed by the City of Montpelier (the City) on December 18, 1991. As is explained below, the Environmental Board grants the request.

I. BACKGROUND

On November 27, 1991, petitions for a declaratory ruling were filed by the Town of Berlin (Petitioner) and by the Berlin Pond Preservation Association, Paul Laffal, M.D., the Central Vermont Audubon Society, and the Vermont Natural Resources Council (Co-Petitioners). The petitions were filed as appeals from Advisory Opinion 5-91-24 issued by the District #5 Environmental Coordinator on October 28, 1991. In that opinion, the Coordinator concluded that Act 250 jurisdiction does not apply to the City's construction of a municipal water treatment facility adjacent to the Berlin Pond in the Town of Berlin. The Petitioner and the Co-Petitioners disagree with that ruling.

A prehearing conference was scheduled for January 3, 1992; notice of the prehearing was sent to the parties on December 13, 1991. On December 18, the City filed a request for a continuance. The grounds for the request are that the Berlin Zoning Board of Adjustment denied a permit to the City to construct the facility; that the denial has been appealed to Superior Court; that the facility cannot be constructed until a permit is granted; and that it would be a waste of public funds and official time to proceed with the declaratory ruling proceeding unless a zoning permit is granted. The City requested a continuance of this proceeding until 14 days following the expiration of the time of appeal of the Superior Court decision if no appeal is filed, or, if an appeal is filed, following the ruling of the Supreme Court.

On January 10, 1992, the Petitioner submitted a Notice of Opposition to the City's request for a continuance. The Petitioner contends that the declaratory ruling proceeding should not be delayed and that proceeding at this time will clarify issues.

The Board deliberated on February 12, 1992 in St. Johnsbury.

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II. DECISION

The Board believes that, on balance, granting the requested continuance is in the best interests of the public since, if the project is not granted a zoning permit, it will not be constructed and the Act 250 proceeding will be moot. An important factor in the Board's decision is that the continuance was requested by the affected party. The City is aware that if the Superior Court grants a permit, construction will be delayed until a declaratory ruling is obtained from the Board and, if the Board rules that Act 250 jurisdiction applies, until a permit is obtained. If the City chooses to take the risk of future delay, the Board will grant the continuance requested by the City.

III. ORDER

The City's request for a continuance is granted. This matter is stayed until 14 days following the expiration of the time of appeal of the Superior Court's ruling on the zoning permit if no appeal is filed, or, if an appeal is filed, until issuance of the Supreme Court's decision on the matter.

Dated at Montpelier, Vermont this ~~23rd~~ day of March, 1992.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Terry Ehrich
Lixi Fortna
Arthur Gibb
Samuel Lloyd
William Martinez
Charles F. Storrow
Steve E. Wright

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