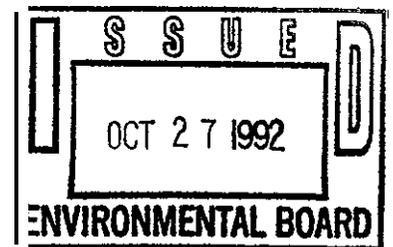


VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151



Re: Okemo Mountain, Inc. "Game Fair"  
Declaratory Ruling Request #268

MEMORANDUM OF DECISION

This decision pertains to a motion to dismiss a petition for declaratory ruling. The petition was filed by John Lysobey (the Petitioner) concerning whether a permit is required under 10 V.S.A. Chapter 151 (Act 250) for an event known as the New England Game Fair held by Okemo Mountain, Inc. (Okemo) at its ski resort in Ludlow.

The background of this matter is set forth in a **prehearing** conference report and order issued on June 26, 1992. Pursuant to that report, parties have made a number of filings with the Board. Specifically, on July 10, Okemo filed factual information regarding the Game Fair. On July 28, the Petitioner filed a statement of why he believes the Game Fair is subject to Act 250.

On September 3, 1992, Okemo filed a motion to dismiss, arguing that the Petitioner's July 28 statement does not demonstrate that a permit is required and that the Petitioner does not qualify for party status. On September 10, the Petitioner filed a response. On September 15, Okemo filed a further memorandum, and on September 22, so did the Petitioner. The Board deliberated on October 2.

DECISION

Rule 18(D) provides that the Board may dismiss a matter at the request of a party for reasons provided by its "rules, by statute, or by law." This authority is discretionary.

We decline to dismiss this petition for two reasons. First, we conclude that the Petitioner has raised genuine issues concerning whether a permit is required for the Game Fair. For example, the Petitioner alleges, and Okemo disputes, that construction has occurred in connection with the Game Fair. (This example is intended to be illustrative and not exhaustive.)

Second, we conclude that the Petitioner is an interested party entitled to request a declaratory ruling on this matter under Board Rule 3. As we have stated before, the term "interested party" includes those who merit party status under 10 V.S.A. § 6085(c) and Board Rule 14, as well as any person who has an identifiable stake in the matter. Re: Interstate Uniform Services, Declaratory Ruling #147 at 3 (Sep. 26, 1984).

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The Petitioner owns two residential properties on Okemo Mountain. One of these properties adjoins, and is above, the ski resort. The other, his primary residence, does not adjoin the resort and is below it. Re: Okemo Mountain, Inc., #2S0351-7A-EB, Findings of Fact, Conclusions of Law, and Order at 6-7 (Aug. 14, 1992). The Petitioner alleges potential water quality impacts from the deposition of tons of lead gunshot as part of the Game Fair. In addition, thousands of people attend the Game Fair. Id. at 9. Traffic associated with these people could affect the Petitioner's interest. We conclude that the Petitioner has an identifiable stake in this matter and also qualifies for party status under Board Rule 14(B)(1)(a).

Accordingly, this matter will proceed to hearing. The following order contains dates for a hearing and prehearing submissions.

ORDER

1. Okemo's motion to dismiss is denied.
2. On or before January 13, 1993, parties shall file final lists of witnesses and exhibits and prefiled testimony for all witnesses they intend to present.
3. On or before February 10, 1993, parties shall file prefiled rebuttal testimony and revised lists showing rebuttal witnesses and exhibits.
4. On or before February 22, 1993, parties shall file in writing all evidentiary objections to the prefiled testimony and exhibits previously identified, or such **objections** shall be deemed waived.
5. On or before March 3, 1993, parties shall file in writing all responses to evidentiary objections.
6. The Board will convene a hearing in this matter on March 10, 1993, to be confirmed by subsequent notice with location.
7. No individual may be called as a witness in this matter if he or she has not been identified in a witness list filed in compliance with this order. All reports and other documents that constitute substantive testimony must be filed with the prefiled testimony. If prefiled testimony has not been submitted by the date specified, the witness

will not be permitted to testify. Instructions for filing prefiled testimony are attached.

8. The Board may waive the filing requirements upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.

9. Parties shall file an original and ten copies of prefiled testimony, legal memoranda, all exhibits which are 8½ by 11 inches or smaller, and any other documents with the Board, and mail one copy to each of the parties listed on the attached Certificate of Service.

Parties are required to file only lists identifying exhibits which are larger than 8½ by 11 inches that they intend to present, rather than the exhibits themselves. Exhibits must be made available for inspection and copying by any parties prior to the hearing.

10. To save time at the evidentiary hearing, the Board will require that parties label their prefiled testimony and exhibits themselves and submit lists of exhibits which the Board can use to keep track of exhibits during the hearing. With respect to labeling, each person is assigned a letter as follows: L for the Petitioner, O for Okemo, T for the Town of Ludlow Board of Selectmen and Village of Ludlow Board of Trustees, P for the Ludlow Planning Commission, and S for the State of Vermont Agency of Natural Resources. Prefiled testimony and exhibits shall be assigned consecutive numbers: for example, Okemo will number its exhibits 01, 02, 03, etc. If an exhibit consists of more than one piece (such as a site plan with multiple sheets), letters will be used for each piece, i.e. 02A, 02B, etc. However, such use of letters is not necessary for each page of a written document.

The labels on the exhibits must contain the words ENVIRONMENTAL BOARD, D.R. #268, the number of the exhibit, and a space for the Board to mark whether the exhibit has been admitted and to mark the date of admission. A dozen label stickers are enclosed with the Petitioner's and Okemo's copies of this decision. More are available from the Board on request; parties must complete the information sought on the stickers prior to the hearing.

Concerning preparation of lists of exhibits, each list must state the full name of the party at the top and the

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Board's case number. There must be three columns, from left to right: NUMBER, DESCRIPTION, and STATUS. The list must include exhibits and prefiled testimony. An example is as follows:

LUDLOW PLANNING COMMISSION  
LIST OF EXHIBITS  
D.R. #268

<u>Number</u>	<u>Description</u>	<u>Status</u>
P1	Prefiled testimony of John Smith	
P2A-D	Plan dated, _____ sheets A1 through A4	

The Board will use the status column to mark whether the exhibit has been admitted.

11. The hearings will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing to have a stenographic reporter present or a transcript of the proceedings must submit a request by December 1, 1992. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

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