

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

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

MEMORANDUM OF DECISION

This decision, dated July 17, 1992, pertains to a request for party status filed by Mount Holly Concerned Citizens on Public Issues (MHCCPI) with respect to a petition *for* declaratory ruling 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. at its ski resort in Ludlow. As is explained below, the Environmental Board grants MHCCPI party status because members of MHCCPI may be affected by the closure of the Okemo Mountain Road in connection with the Game Fair. However, this grant is contingent because the Board may adjudicate the issue of Road closure as part of another proceeding which is pending.

I. BACKGROUND

This proceeding concerns the New England Game Fair. The Game Fair was first held by Okemo Mountain, Inc. at its ski area on Okemo Mountain in 1991. Previously, the District #2 Environmental Commission had issued Land Use Permit #2S0351-7A, which authorized the summer use of the Mid-mountain Lodge located mid-way up the Okemo Mountain in the Town of Ludlow. Okemo Mountain, Inc. used the Lodge in connection with the 1991 Game Fair. Also in connection with the Game Fair, Okemo closed the Okemo Mountain Road, which provides access up the mountain. Permit #2S0351-7A included conditions regarding closure of the Road.

The District Commission's Mid-mountain Lodge permit. is currently under appeal before the Board. During the course of the appeal proceeding, Okemo contended that it did not need to use the Lodge in connection with the Game Fair and therefore that the Board could not review closure of the Road in that case. In response, on April 15, 1992, adjoining landowner John Lysobey filed this petition for declaratory ruling, seeking a ruling from the Board that a permit is required for the Game Fair regardless of whether it is conducted in connection with use of the Lodge.

The petition not only seeks the above ruling but also states that it seeks a ruling as to whether the Game Fair is linked to the use of the Lodge. That issue, however, is being adjudicated as part of the appeal of the District Commission's permit. A decision on that appeal is anticipated later this month and may affect the course of this proceeding.

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On June 12, 1992, MHCCPI, a party to the Lodge appeal, filed a petition for party status in this proceeding. The petition referred to submissions made by MHCCPI in support of its being granted party status in the Lodge case.

On June 17, 1992, Acting Chair Charles F. Storrow convened a prehearing conference in Ludlow. On June 25, MHCCPI filed an additional submission regarding party status. On June 26, the Board issued a prehearing conference report and order which is incorporated by reference. On July 9, Okemo filed an opposition to MHCCPI's party status request. Okemo's opposition referred to filings made by Okemo in the lodge case. On July 10, Okemo filed information regarding the Game Fair. The Board deliberated on July 15.

## II. DECISION

MHCCPI is not a statutory party or an adjoining landowner pursuant to 10 V.S.A. § 6085(c) or Board Rule 14(A). However, the Board has discretion to grant party status to MHCCPI pursuant to 10 V.S.A. § 6085(c) and Board Rule 14(B) if MHCCPI demonstrates that its interests may be affected under the Act 250 criteria or that will materially assist the Board.

The Board believes that the interests of the members of MHCCPI may be affected by the closure of the Okemo Mountain Road in connection with the Game Fair. See Re: Okemo Mountain, Inc., #2S0351-7A-EB, Memorandum of Decision (Sep. 6, 1991). As that decision states, MHCCPI's interests may be affected under Criteria 5 (traffic) and 9(K) (public facilities) of 10 V.S.A. § 6086(a). Accordingly, MHCCPI is granted party **status** in this proceeding pursuant to Rule 14(B) (1) (a).

This grant of party status is a discretionary act. It is based on effects of closure of the Okemo Mountain Road. The Board will be issuing a decision in the Lodge appeal concerning whether closure of the Road is linked to use of the Lodge. If the Board concludes that Road closure **is** SO linked, it may deny or condition the application for approval of summer use of the Lodge because of the impacts of Road closure. Consequently, the Board makes its grant of party status to MHCCPI in this proceeding contingent on the

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Board's decision in the Lodge appeal. MHCCPI may participate until such time, if ever, as the Board concludes that closure of the Road is linked to use of the Lodge.

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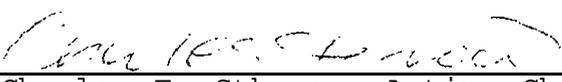
ORDER

1. MHCCPI is granted party status pursuant to Rule 14(B) (1) (a).

2. The above grant of party status is contingent. MHCCPI may participate in this proceeding until such time, if ever, as the Board concludes that closure of the Road is linked to use of the Mid-mountain Lodge.

Dated at Montpelier, Vermont **this 17th day** of July, 1992.

ENVIRONMENTAL BOARD

  
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Charles F. Stbrrow, Acting Chair  
Ferdinand Bongartz  
Terry Ehrich  
Lixi Fortna  
Samuel Lloyd  
Steve E. Wright

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