

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

Re: McGovern-Haystack (**McGovern** Clay Shooting)
Declaratory Ruling #336

DISMISSAL ORDER

I. BACKGROUND AND JURISDICTIONAL STATEMENT

On December 13, 1996, James L. McGovern III ("Petitioner") of Wilmington, Vermont, appealed Jurisdictional Opinion #2- 105 to the Environmental Board ("Board"), through counsel William M. McCarty, Esq., seeking a declaratory ruling from the Board ("Petition").

The Petitioner operates a clay pigeon shooting operation in Wilmington, Vermont, on lands owned by Stratfield Associates and West Lake Enterprises, successors to Haystack Associates. In the early 1970s, Haystack Associates had obtained Master Plan approval and certain Act 250 permits from the District #2 Environmental Commission ("Commission") for development of those lands. In Jurisdictional Opinion #2-1 05, the District Coordinator determined that the shooting operation had existed at the time of the Haystack Master Plan approval in an area designated for recreational use. The District Coordinator further determined that certain shooting stations related to the shooting operation had been located outside the recreational area designated in the Master Plan. She concluded that the placement of these stations outside the designated area constitutes a material change to the project and that an Act 250 is therefore required.

On January 23, 1997, the Board's staff counsel advised the Petitioner that he should file copies of his declaratory ruling with necessary parties.

On February 3, 1997, the Petitioner filed a letter notifying the Board that he had withdrawn his appeal effective January 25, 1997.

On February 6, 1997, the Board's Chair issued a letter informing the Petitioner that the Board would consider dismissal of his declaratory ruling request based on the notice of withdrawal. However, he warned the Petitioner that such dismissal would result in Jurisdictional Opinion #2-105 becoming final and that an Act 250 permit would be required accordingly.

The Board deliberated with respect to this matter at its regular meeting on February 26, 1997, in Montpelier, Vermont. It decided to circulate a proposed dismissal order to the parties and interested persons prior to issuing a final order in this matter.

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On February 27, 1997, a proposed order was issued and the parties were given until March 13, 1997, to submit any exceptions or requests for oral argument.

On February 27, 1997, attorney McCarty filed with the Board a notice of withdrawal as counsel, and on March 7, 1997, the Petitioner filed a notice that James Knabe of Wilmington would serve as the Petitioner's representative with respect to this matter.

On March 7, 1997, the Board's Associate Counsel forwarded a copy of the February 27, 1997, memo and proposed order to Mr. Knabe. On March 12, 1997, Mr. Knabe filed a letter with the Board containing certain written exceptions. The Chair determined that oral argument was not warranted in light of the Petitioner's filing and so notified the parties on March 19, 1997.

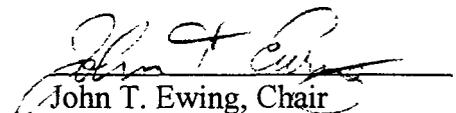
At its regular meeting on March 26, 1997, the Board deliberated and considered the filings in this proceeding, including the exceptions filed by Mr. Knabe on behalf of the Petitioner. It concluded that dismissal of this matter is not contrary to the values embodied in Act 250. The Board issues the following order.

II. ORDER

1. The Petition is dismissed with prejudice.
2. Jurisdictional Opinion #2-105 is final.
3. The Petitioner shall file an Act 250 permit application consistent with Jurisdictional Opinion #2-105.

Dated at Montpelier, Vermont, this 27th day of March, 1997.

ENVIRONMENTAL BOARD


John T. Ewing, Chair

Marcy Harding
Samuel Lloyd
W. William Martinez
Rebecca M. Nawrath
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