

VERMONT ENVIRONMENTAL BOARD

10 V.S.A. §§ 6001-6092

Re: David Camara and Camara Slate
Declaratory Ruling #366

MEMORANDUM OF DECISION

This Memorandum of Decision grants party status to Martha Churchill under EBR 14(A)(5) and 14(B)(1).

I. BACKGROUND

On June 16, 1998, the District #1 Environmental Commission Coordinator (“Coordinator”) issued Jurisdictional Opinion #I-S-46-1 (“Jurisdictional Opinion”) in which he determined that the construction of a new building at the Camara Slate Quarry (“Project”) requires a permit application pursuant to 10 V.S.A. §§ 6001-6092 (“Act 250”) and that there is Act 250 jurisdiction over the “ancillary activities” associated with the Project pursuant to 10 V.S.A. §6081(k).

On July 15, 1998, David Camara and Camara Slate (“Petitioner”) filed a petition for declaratory ruling with the Board, appealing the Jurisdictional Opinion. The petition for declaratory ruling is filed pursuant to 10 V.S.A. § 6007(c) and Environmental Board Rule (“EBR”) 3. The Petitioner contends that there is not Act 250 jurisdiction over the “ancillary activities” associated with the Project.

On July 30, Martha Churchill filed a letter and enclosures.

On August 13, 1998, Ms. Churchill filed a Petition for Party Status.

On August 20, Chair Harding convened a prehearing conference in this matter.

On August 21, 1998, Chair Harding issued a Preheating Conference Report and Order (“Preheating Order”) which is incorporated herein by reference. The Preheating Order stated that it was binding unless an objection to it was received on or before September 3, 1998. There were no objections to the Preheating Order.

On August 25, 1998, Alan Boucher filed a Petition for Party Status. Because Mr. Boucher did not include a certificate of service indicating which participants, if any, he had served with his Petition for Party Status, Board staff spoke with Mr. Boucher by telephone on August 26 and explained that he is required to serve his request for party status on all parties.

On September 3, 1998, the Petitioner filed an Objection to Martha Churchill’s Petition for Party Status and an Objection to the Board Taking Official Notice of

DR #366M1

Jurisdictional Opinion #1-S-46-1.

On September 9, 1998, Chair Harding issued a Chair's Preliminary Ruling, granting Martha Churchill party status under EBR 14(B)(1), denying Ms. Churchill party status under EBR 14(A)(5), denying Alan **Boucher** party status, and sustaining the Petitioner's objection to the Board taking official notice of Jurisdictional Opinion #1-S-46-1.

On September 16, 1998, Ms. Churchill tiled an Objection to the Chair's Preliminary Ruling, requesting full Board review of the Chair's denial of party status under EBR 14(A)(5) and of the Chair's conclusion that Ms. Churchill has not demonstrated that the Project may affect her interests under Criteria 3 and 6. 10 V.S.A. §§ 6086(a)(3), (6). Ms. Churchill also submitted additional information to demonstrate that she is an adjoining property owner.

On September 22, 1998, the Board deliberated on the issues raised by Ms. Churchill's Objection to the Chair's Preliminary Ruling.

II. ISSUES

- A. Whether Ms. Churchill has party status in this matter under Criteria 1 (water pollution, air pollution), 3 (burden on existing water supply), 5 (**traffic**), 6 (educational services), 7 (municipal services), 8 (aesthetics), and 8(A) (necessary wildlife habitat) pursuant to EBR 14(A)(5).
- B. Whether Ms. Churchill has party status in this matter under Criteria 3 (burden on existing water supply) or 6 (educational services) pursuant to EBR 14(B)(1).

III. DECISION

- A. Ms. Churchill's Request for Party Status Under EBR 14(A)(5)

Ms. Churchill objects to Chair Harding's preliminary ruling that Ms. Churchill does not have party status pursuant to EBR 14(A)(5).

10 V.S.A. § 6085(c)(1) and EBR 14 govern Act 250 party status decisions. 10 V.S.A. § 6085(c)(1) states, in part:

Parties shall be those who have requested notice, adjoining property owners who

have requested a hearing, and such other persons as the board may allow by rule. .
..An adjoining property owner may participate in hearings and present evidence only to the extent the proposed development or subdivision will have a direct effect on his or her property under section 6086(a)(1) through (a)(10) of this title.

10 V.S.A. § 6085(c)(1).

EBR 14(A) states, in part:

(A) Parties by right. In proceedings before the board and district commissions, the following persons shall be entitled to party status:

(5) An adjoining property owner who requests a hearing, or who requests the right to be heard by entering an appearance on or before the first prehearing conference or, if no prehearing conference is held, the first day of a hearing that has previously been scheduled, to the extent that the adjoining property owner demonstrates that the proposed development or subdivision may have a direct effect on the adjoiner's property under any of the 10 criteria listed at 10 V.S.A. § 6086(a). In making a request for party status, an adjoining property owner shall provide the district commissions or the board with the following:

(a) A description of the location of the adjoining property in relation to the proposed project, including a map, if available;

(b) A description of the potential effect of the proposed project upon the adjoiner's property with respect to each of the criteria or subcriteria under which party status is being requested.

EBR 14(A).

Ms. Churchill claims that she is an adjoining landowner to the Project and that she should be granted party status pursuant to EBR 14(A)(5). She provided Chair Harding with 4 maps in order to substantiate this claim. Three of the maps are freehand drawings which appear to have been submitted to the Town of Pawlet as part of zoning permit applications. The fourth map appears to be a portion of a survey map but it does not indicate clearly that Ms. Churchill's property directly adjoins the Petitioner's property. The Chair was unable to conclude that Ms. Churchill is an adjoining landowner based on the maps submitted.

Along with her Objection to the Chair's Preliminary Ruling, Ms. Churchill submitted additional information regarding the location of her property in relation to the Petitioner's property. The additional information included a more legible copy of the survey map submitted earlier by Ms. Churchill. Based on this more legible map and the written explanation of ownership of the parcels, the Board concludes that Ms. Churchill is an adjoining property owner to the Project.

Ms. Churchill claims that the Project may have a direct effect on her property under the following criteria listed at 10 V.S.A. § 6086(a): Criteria 1 (water pollution, air pollution), 3 (burden on existing water supply), 5 (traffic), 6 (educational services), 7 (municipal services), 8 (aesthetics), and 8(A) (necessary wildlife habitat). The Board concludes that Ms. Churchill has demonstrated that the Project may affect her interests under Criteria 1 (water pollution, air pollution) and 8 (aesthetics). Ms. Churchill has not demonstrated that the Project may affect her interests under Criteria 3 (burden on existing water supply), 5 (traffic), 6 (educational services), 7 (municipal services), and 8(A) (necessary wildlife habitat). Based on the above, Ms. Churchill is granted party status pursuant to EBR 14(A)(5) under Criteria 1 (water pollution, air pollution) and 8 (aesthetics).

B. Ms. Churchill's Request for Party Status Under EBR 14(B)(1)

Chair Harding's Preliminary Ruling granted party status to Ms. Churchill pursuant to EBR 14(B)(1) based on Chair Harding's conclusion that the Project may affect Ms. Churchill's interests under Criteria 1 (water pollution, air pollution) and 8 (aesthetics). Ms. Churchill objects to Chair Harding's determination that Ms. Churchill has not demonstrated that the Project may affect her interests under the following criteria listed at 10 V.S.A. §6086(a): Criteria 3 (burden on existing water supply) and 6 (educational services).

EBR 14(B) states, in part:

(B) Parties by permission. The board or a district commission may allow as parties to a proceeding individuals or groups, including adjoining property owners, not otherwise accorded party status by statute upon petition if it finds that the petitioner has adequately demonstrated:

- (1) That a proposed development or subdivision may affect the petitioner's interest under any of the provisions of § 6086(a) or
- (2) That the petitioner's participation will materially assist the board or

commission by providing testimony, cross-examining witnesses, or offering argument or other evidence. relevant to the provisions of § 6086(a).

EBR 14. Whether or not a person has demonstrated party status under EBR 14(B) is solely within the Board's discretion. 10 V.S.A. §6085(c)(1); EBR 14(B).

Ms. Churchill claims that the Project may affect her interests under Criterion 3 (burden on existing water supply) because the Project's blasting will cause her water supply to diminish. Ms. Churchill states "This was evidenced by six families in West Pawlet during the summer of 1997." However, she does not provide any information regarding the location of her well, the location of the blasting, or any other information to support her claim that the blasting will diminish her water supply. The Board concludes that Ms. Churchill has not demonstrated that the Project may affect her interests under Criterion 3 (burden on existing water supply).

Ms. Churchill also claims that the Project may affect her interests under Criterion 6 (educational services) because there is a deep crack in a road which crosses the Petitioner's property. She states that school busses travel on the road and that one of the Petitioner's quarry holes is located approximately eight feet from the crack in the road. Ms. Churchill does not provide any information regarding how the Project may affect **her** interests under Criterion 6. Therefore, the Board concludes that Ms. Churchill has not demonstrated that the Project may affect her interests under Criterion 6 (educational services).

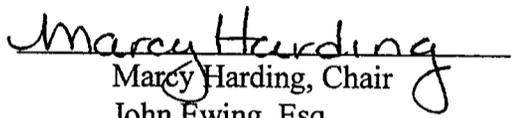
Based on the above and the Chair's Preliminary Ruling, Ms. Churchill is granted party status pursuant to EBR 14(B)(1) under Criteria 1 (water pollution, air pollution) and 8 (aesthetics).

IV. ORDER

1. Ms. Churchill is granted party status pursuant to EBR 14(A)(5) under Criteria 1 (water pollution, air pollution) and 8 (aesthetics).
2. Ms. Churchill is granted party status under EBR 14(B)(1) under Criteria 1 (water pollution, air pollution) and 8 (aesthetics).

Dated at Montpelier, Vermont this 25th day of September, 1998.

ENVIRONMENTAL BOARD


Marcy Harding, Chair
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Arthur Gibb
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Samuel Lloyd
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Gregory Rainville, Esq., Alternate