

State of Vermont
ENVIRONMENTAL BOARD

Re: **Morningside Drive Extension**
c/o Thomas Lotta
RFD #1, Box 318
Newport Center, Vermont 05857

Declaratory Ruling Request #367

MEMORANDUM OF DECISION

This decision pertains to an objection to a Chair's Preliminary Ruling in the above-captioned matter, filed by William Halloran ("Petitioner"), pursuant to Environmental Board Rule ("EBR") 16(B). The Petitioner specifically objects to the Chair's determination that she cannot waive the one hundred dollar (\$100.00) filing fee required for the filing of petitions for declaratory rulings pursuant to 10 V.S.A. §6083a(d). As explained below, the Environmental Board ("Board") orders the Petitioner to file a check for seventy-five dollars (\$75.00), the balance due the Board, by **4:30 p.m., Thursday, October 8, 1998**, or this matter shall be dismissed. If, however, the Petitioner elects to withdraw his declaratory ruling request by that same date, the Board shall return the fee of twenty-five dollars (\$25), the amount the Petitioner previously filed in this matter.

I. PROCEDURAL BACKGROUND

On June 24, 1998, the District Coordinator for the District #7 Environmental Commission ("Coordinator") issued Jurisdictional Opinion #7- 193 ("Jurisdictional Opinion"), determining that the construction of certain road improvements to Morningside Drive Extension in the Town of Newport, Vermont, was not subject to Act 250 jurisdiction. At the end of the Jurisdictional Opinion, the Coordinator provided information about how to file a petition for a declaratory ruling with the Board in order to appeal the Jurisdictional Opinion. The Coordinator stated in part: "Any appeal shall be by means of a petition for Declaratory Ruling pursuant to [EBR] 3(D) and must be accompanied by a \$25.00 filing fee."

On July 20, 1998, the Petitioner appealed the Jurisdictional Opinion to the Board ("Petition") and enclosed a check for twenty-five dollars to cover the cost of the filing fee. On July 21, 1998, the Board's General Counsel sent to the Petitioner a letter indicating receipt of the Petition, and noting that the Petition was ministerially incomplete because it was not accompanied by a filing fee of one-hundred dollars. The letter specifically advised the Petitioner that the one hundred dollar filing fee had become effective July 1, 1998, and was sent with a copy of amended 10 V.S.A. §6083a.

When the Petitioner failed to supplement his Petition with the required-filing, a second letter notifying him of the deficiency in his Petition was sent to him by the Board's Executive Director on August 4, 1998.

D.R. #367M1

On August 14, 1998, the Petitioner wrote to the Board's Chair asking her to waive the one hundred dollar filing fee. The Petitioner argued that he had waited nearly three years for the issuance of the Jurisdictional Opinion, that the Jurisdictional Opinion was issued just before the change in the filing fee, and that he was not aware of the change at the time of the filing of the Petition.

On August 21, 1998, the Board's Chair issued a Chair's Preliminary Ruling, denying the Petitioner's request to waive the one hundred dollar filing fee. She concluded that the Petition was filed after July 1, 1998, the effective date of amendments to 10 V.S.A. §6083a(d) and that neither she nor the Board had the authority to waive the new one hundred dollar fee. The Chair's Preliminary Ruling specifically advised the Petitioner how to obtain Board review of this preliminary ruling.

On August 31, 1998, the Petitioner filed a timely objection to the Chair's ruling denying the filing fee waiver request, pursuant to EBR 16(B).

The Board deliberated with respect to this matter on September 8, 1998. This matter is now ready for decision.

II. DISCUSSION

Jurisdictional opinions of a district coordinator may be appealed to the Board by means of a declaratory ruling. 10 V.S.A. §6007(c) and EBR 3(D). Both the statute and rule require that a filing fee of twenty-five dollars shall be filed with a petition for declaratory ruling. Section 6007(c) was last amended five years ago. 1993, Act No. 232 (Adj. Sess.), §25, eff. March 15, 1995.

In 1998, the General Assembly added a new statutory section, 10 V.S.A. § 6083a, setting forth the fees required for all proceedings before district commissions and the Board with respect to administration of Act 250. 1998, Act No.155 (Adj. Sess.), §26 eff. July 1, 1998. Section §6083a(d) specifically states:

All persons filing an appeal, cross appeal or petition from a district environmental commission decision or jurisdictional determination shall pay a fee of \$100.00, plus publication costs.

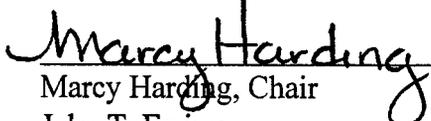
This provision became effective July 1, 1998, prior to the filing of the Petition in this matter. Nevertheless, the Petitioner asks the Board to waive the one hundred dollar filing fee, and allow his declaratory ruling request to be accepted and heard based on the twenty-five dollar fee submitted at the timing of filing.

III. ORDER

1. On or before **4:30 p.m., Thursday, October 8, 1998**, the Petitioner shall pay to the Environmental Board a sum of seventy-five dollars (\$75.00), the balance due on the one hundred dollars (\$100.00) fee required for the filing of a petition for declaratory ruling. Alternatively, on or before **4:30 p.m., Thursday, October 8, 1998**, the Petitioner shall file a written notice of intent to withdraw his request for a declaratory ruling, and the Board shall return to him the sum of twenty-five dollars (\$25.00), the fee paid to date.
2. If the required balance is not filed as required herein or a written notice of withdrawal is not timely received, then this Petition shall be dismissed without further notice and the Jurisdictional Opinion shall be final and binding upon all parties.

Dated this 9th day of September, 1998, at Montpelier, Vermont.

ENVIRONMENTAL BOARD


Marcy Harding, Chair

John T. Ewing
Arthur Gibb
George Holland
Samuel Lloyd
Rebecca Nawrath
Robert Opel