

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

RE: North Country Animal League
Declaratory Ruling Request #3 83

DISMISSAL ORDER

This proceeding concerns whether North Country Animal League's ("Respondent's") occupation of a previously permitted commercial building for administrative use, without housing animals on the property (the "Project"), constitutes a substantial or material change and requires a permit amendment pursuant to 10 V. S. A. § 6001-6092 ("Act 250") and Environmental Board Rule ("EBR") 34. In this Dismissal Order, the Environmental Board ("Board") addresses Petitioner J.D. Associates' ("Petitioner's") Motion to Withdraw its declaratory ruling request.¹ As set forth below, the Petitioner's Motion is granted and the petition is dismissed.

I. PROCEDURAL SUMMARY

On October 19, 1999, the District #5 Environmental Commission Assistant Coordinator ("Coordinator") issued a Project Review Sheet ("PRS") which contained a jurisdictional opinion ("PRS") concluding that Respondent's occupation of a previously permitted commercial building for administrative office use did not constitute a material change to Land Use Permit #5L0487-1 and therefore did not require a permit amendment.

On November 29, 1999, Petitioner filed a Notice of Appeal of Jurisdictional Opinion ("Petition") with the Board pursuant to 10 V.S.A. §6007(c) and EBR 3. Petitioner contended that the PRS was issued in error because it does not specifically prohibit Respondent from having animals at the property, which would create nuisance noise. Petitioner requested a declaratory ruling prohibiting animals from being allowed on the property unless or until a permit amendment or permit is obtained for such use.

On December 21, 1999, Board Chair Marcy Harding ("Chair") convened a prehearing conference. Harold B. Stevens, Esq., appearing for Petitioner, participated. Jeff W. Lively, Esq., timely filed a notice of appearance on behalf of Respondent and indicated Respondent's intent to participate in the proceedings, but did not attend the Prehearing Conference.

¹ Throughout these proceedings, Petitioner has referred to its declaratory ruling request as an "appeal." A request for a declaratory ruling pursuant to 10 V. S.A. §6007(c) is properly a "petition." EBR 3(C)(3). Petitioner's request is referred to as such herein its Motion to Withdraw Appeal is construed as a motion to withdraw a petition.

A Prehearing Conference Report and Order was issued on December 23, 1999.

Petitioner filed a Motion to Withdraw Appeal² on January 12, 2000.

The Board deliberated on the Motion on January 26, 2000.

II. DISCUSSION

During the Prehearing Conference, Petitioner indicated that the jurisdictional issue it wanted addressed was not whether the Project constitutes a substantial or material change to the permitted project, but rather whether having animals on the property constitutes a substantial or material change. The Chair explained that as this was not the issue decided by the Coordinator, the Board could not hear the question in the first instance and the Petitioner would need to seek a jurisdictional opinion from the Coordinator before the Board could address this concern. The Petitioner agreed, and accordingly filed its Motion to Withdraw.

The Board and district commissions are charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 § 1 (Adj. Sess.). An administrative agency has discretion to reject a motion to withdraw if withdrawal would prejudice the public interest that the agency is charged to protect. See e.g., Rockwell Park Associates and Bruce I. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corp., Declaratory Ruling #247 (Dec. 13, 1991).

Allowing withdrawal of the Petition will not prejudice the public interest that the Board is charged to protect. A petition to the Coordinator, not the Board, is the appropriate mechanism for seeking a jurisdictional opinion on the question of whether having animals on the Project property constitutes a substantial or material change. EBR 3(C). Petitioner has the option to seek such an opinion if circumstances warrant.

Based upon the foregoing, the Motion to Withdraw is granted. The effect of the withdrawal is that the jurisdictional opinion contained in the PRS is final. The Petition is dismissed with prejudice. EBR **18(D)**.

² See footnote 1.

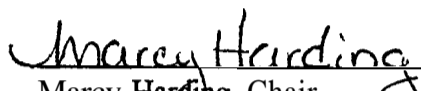
III. ORDER

1. The Petitioner's Motion to Withdraw Appeal is GRANTED The Petition is dismissed with prejudice.

2. The jurisdictional order contained in the PRS is final

Dated at Montpelier, Vermont this 27th of January, 2000.

ENVIRONMENTAL BOARD



Marcy Harding, Chair

John Drake
George Holland
Samuel Lloyd
Alice Olenick
Greg Rainville