

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

RE: George and Diana Davis  
d/b/a Bates Mansion at Brook Farm

Declaratory Ruling #390

**DISMISSAL ORDER**

This proceeding concerns a request for a declaratory ruling whether Bates Mansion at Brook Farm (Project) operated by George and Diana Davis requires an Act 250 Permit pursuant to 10 V.S.A. §§ 6001-6092 (Act 250). The Project is located in the Town of Cavendish, Vermont.

**I. PROCEDURAL SUMMARY**

On July 28, 2000, the District #2 Environmental Commission Assistant Coordinator (Coordinator) issued Jurisdictional Opinion #2-132 (JO) in which she determined that the Project does require a permit pursuant to Act 250.

The Assistant Coordinator issued a reconsidered JO on September 27, 2000 and a corrected reconsidered JO on September 28, 2000 affirming the prior JO.

On October 6, 2000, George and Diana Davis (Petitioners) filed a Petition for a Declaratory Ruling with the Vermont Environmental Board (Board), appealing the JO and the reconsidered JO. The Petition for Declaratory Ruling was filed pursuant to 10 V.S.A. § 6007(c) and Environmental Board Rule (EBR) 3. The Petitioners contend that the Project does not require an Act 250 permit.

On November 9, 2000, the Board Chair convened a prehearing conference and on November 15, 2000, she issued a Prehearing Conference Report and Order. At the Petitioners' request, the declaratory ruling was continued in order to allow the Petitioners time to pursue an Act 250 Permit.

On February 27, 2004, the District # 2 Environmental Commission (Commission) issued an Act 250 Permit for the Project.

On March 17, 2004, Petitioners filed an appeal with the Board alleging that the Commission erred in its conclusions with respect to Conditions 17, 18, 19 and 20 concerning Criteria 1(B) and 8.

On September 29, 2004, a Panel of the Board issued Proposed Findings of Fact, Conclusions of Law, and Order (Panel Decision) and proposed Land Use Permit #2S1129-EB to Petitioners.

On October 14, 2004, Petitioners filed a motion to alter the Panel Decision.

On December 14, 2004, the Board issued an Act 250 Permit that addressed Petitioners' motion to alter.

On January 24, 2005, Petitioners requested that their petition for a declaratory ruling be withdrawn.

On February 2, 2005, the Board deliberated on Petitioners' request to withdraw the declaratory ruling.

## **II. DISCUSSION**

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 request for withdrawal or dismissal if it would prejudice the public interest that the agency is charged to protect. *Ronald L. Saldi*, #5W1088-1-EB, Memorandum of Decision at 3 (Oct. 1, 1996); *and see Rockwell Park Associates and Bruce J. Levinsky*, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); *H.A. Manosh Corp.*, Declaratory Ruling #247 (Dec. 13, 1991).

Allowing dismissal of the Petition in this matter will not prejudice the public interest that the Board is charged to protect. The Coordinator found that Act 250 jurisdiction exists over the Project, and the dismissal of the Petition will cause the Coordinator's JO to become final. The interests of the public are therefore adequately protected. *Re: Central Vermont Public Service Corporation*, DR #412, Remand Order at 2 (Sep. 19, 2002).

**III. ORDER**

Petitioners' request for a declaratory ruling is dismissed.

Dated at Montpelier, Vermont this 11<sup>th</sup> day of February 2005.

ENVIRONMENTAL BOARD

    /s/Patricia Moulton Powden      
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