

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

RE: Thomas Stacy
d/b/a Action Towing Service

Declaratory Ruling
Request #400

DISMISSAL ORDER

This order grants the request of Thomas Stacy to dismiss his Petition for Declaratory Ruling filed with the Board.

I. PROCEDURAL SUMMARY

On September 11, 2001, the District #5 Environmental Commission Coordinator (Coordinator) issued a Jurisdictional Opinion (JO) in which he determined that improvements to a salvage vehicle storage area owned by Thomas Stacy in the Town of Orange, Vermont (Project) requires a permit pursuant to 10 V.S.A. §§ 6001-6092 (Act 250).

On October 19, 2001, the Coordinator affirmed his decision in a Reconsidered JO.

On November 16, 2001, Thomas Stacy (Petitioner) filed a Petition for Declaratory Ruling with the 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 Petitioner contends that the Project does not require an Act 250 permit.

On November 16, 2001, the Petitioner also filed a motion for a continuance of the proceedings in order to apply for a land use permit with the District #5 Environmental Commission (Commission).

On December 11, 2001, the Chair issued a Continuance Order to allow the Petitioner time to obtain a permit from the Commission. The Chair subsequently issued a series of continuance orders through the spring of 2004.

On May 14, 2004, the Petitioner filed a 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 withdrawal or dismissal of an

appeal or declaratory ruling 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).

Given that the Petitioner is seeking to withdraw his own declaratory ruling and no party objected or requested oral argument, it is hard to conceive of how dismissing the declaratory ruling could possibly prejudice the public interest. Therefore, the Board has determined that dismissing this matter will not prejudice the public interest that it is charged to protect.

III. ORDER

1. This declaratory is dismissed with prejudice.
2. Jurisdiction is returned to the District 5 Environmental Commission.

Dated at Montpelier, Vermont this 9th day of June, 2004.

ENVIRONMENTAL BOARD

 /s/Patricia Moulton Powden
Patricia Moulton Powden, Chair
Sam Lloyd
Patricia Nowak
Alice Olenick
Richard Pembroke Sr.
Jean Richardson