

STATE OF VERMONT
VERMONT WATER RESOURCES BOARD

**Appeal of Thomas Keenan, et al
10 V.S.A., section 1269**

**FINDINGS OF FACT
CONCLUSIONS OF LAW
&
ORDER**

INTRODUCTION

On May 6, 1980, Thomas E. Keenan, Barbara Keenan, George E. Osborne, Wendall A. Barwood and Judeen C. Barwood by Lawrence Slason, Esquire filed an appeal with the Vermont Water Resources Board from the decision of the Environmental Protection Division of the Agency of Environmental Conservation whereby Mr. William Pippin was authorized to connect a 125 condominium unit to the Wilder Sewage Treatment Facility located in the Town of Hartford, Vermont. This appeal was filed under the provisions of 10 V.S.A., section 1269. On May 12, 1980, John C. Candon, Esquire on behalf of William Pippin, David Pippin and Mark Pippin entered an appearance in this proceeding and filed a motion to dismiss the appeal.

On June 23, 1980, the Vermont Water Resources Board conducted a public hearing for the purpose of determining the parties in interest in this proceeding and to hear evidence and testimony with respect to the appellee's motion to dismiss. Appearances were entered by:

- 1. Thomas E. Keenan, Barbara Keenan, George E. Osborne; Wendall A. Barwood and Judeen C. Barwood by Lawrence Slason, Esquire.**
- 2. William Pippin, Mark Pippin and David Pippin by John C. Candon, Esq.**
- 3. The Agency of Environmental Conservation by Stephen B. Sease, Esquire.**

FINDINGS OF FACT

1. The action which the appellants seek to have the Board review is a decision dated April 4, 1980 by Virginia Little of the Permits Section, Division of Environmental Engineering, Agency of Environmental Conservation authorizing connection of a proposed 125 condominium unit development to the Wilder sewage treatment facility located in the Town of Hartford.
2. The appellants are residents of the Town of Hartford and owners of property adjacent to or nearby the site of the proposed condominium development.
3. The appellants' properties are not serviced by the Wilder sewage treatment facility and they have demonstrated no specific interest in the allocation of the treatment capacity of that facility which would distinguish them from other residents and taxpayers in the Town of Hartford.
4. The waters receiving the discharge from the Wilder sewage treatment facility are designated as Class "C" waters within the meaning of 10 V.S.A., section 1252.

CONCLUSIONS OF LAW

The appellants have failed to establish that they are persons or parties in interest to and aggrieved by the April 4, 1980 decision of the Agency of Environmental Conservation authorizing the connection of a proposed 125 unit condominium development to the Wilder sewage treatment facility.

ORDER

On the basis of the Findings of Fact and Conclusions of Law above, the Vermont Water Resources Board hereby grants the appellees motion to dismiss this appeal on the grounds that the appellants are not persons or parties in interest in this proceeding.

DISCUSSION

In arguments on the motion to dismiss the appeal, the parties in this proceeding identified three basic issues: (1) Are the appellants persons or parties in interest within the meaning of 10 V.S.A.; section 1269? (2) Was the appeal filed within the required time period? (3) Is the action being appealed within the jurisdiction of the Water Resources Board?

On the basis of argument heard at the June 23rd hearing, the Water Resources Board has concluded that Thomas Keenan, Barbara Keenan, George Osborne, Wendall Barwood and Judeen Barwood are not persons or parties in interest aggrieved

by an act or 'decision of the Secretary of the Agency of Environmental Conservation made pursuant to 10 V.S.A., Chapter 47, subchapter 1. The Board has taken this action because the appellants have failed to show that their interests regarding this matter lie within the zone of interest which 10 V.S.A., section 1269, seeks to protect.

The appellants have argued for standing on the basis that the April 4, 1980 decision by a component of the Agency of Environmental Conservation to allow the connection of a proposed condominium development to Wilder sewage treatment facility will adversely affect their 'interests in three respects: (1) their recreational use of the waters of the state;' (2) their ability to make improvements or additions' to their property; and (3) the possible expenditure in the future of public monies in order to increase the capacity of the Wilder sewage treatment facility.

The appellants have failed to show that their recreational use of the waters of the State are adversely affected by the decision in question. No evidence was presented to show that the decision which the appellants seek to appeal is in conflict with the recreational uses associated with, the Class "C" designation of the waters receiving the discharge of the Wilder sewage treatment facility. Furthermore, the waters in question have been so classified since March 21, 1968.

The Board finds without merit the appellant's argument that the Agency of Environmental Conservation's decision of April 4, 1980 limits their ability to make improvements to their property because it will result in the allocation of virtually 100% of the capacity of the Wilder sewage treatment facility. All of the appellants currently dispose of sewage and other wastewater by means of individual subsurface disposal facilities and no evidence has been presented to show that such facilities would be inadequate to accommodate such future improvements as the individual property owners may elect to make. Furthermore, there is no evidence to show that the appellants have ever sought connection to the municipal sewer system

More importantly, the allocation of the unused capacity of the Wilder sewage treatment facility is the responsibility of the municipality which owns the facility. The Secretary's role in such matters is limited to a determination that the municipality does in fact have the capacity to allocate. The issue the appellants seek to raise regarding the wisdom of allocating virtually the entire uncommitted reserve capacity of the Wilder sewage treatment facility would thus seem to be properly addressed to municipal officials.

Finally, the Board has determined that concerns regarding the future expenditure of public monies, including those raised by local taxes which may be necessary to provide additional sewage treatment capacity is not sufficient grounds on which to establish the appellants as proper parties in this proceeding. The interests which the appellants seek to protect are hypothetical. Furthermore, the appellants have shown no compelling reasons why they, rather than the local municipality which represents all citizens in the potentially affected community, should raise this issue.

In granting the motion to dismiss this appeal on the grounds that the appellants are not persons or parties in interest the Board does not reach the other issues raised in this proceeding. However, the potential significance of the question regarding the Board's jurisdiction in this matter is such that it warrants discussion. The action which the appellants sought to bring before the Board on appeal was the authorization of the Agency of Environmental Conservation of the connection of a proposed 125 condominium development to the Wilder Sewage Treatment Facility. Implicit in that authorization was an approval to construct a 2,200 foot extension from the existing municipal sewer system to reach the development site. Although the technical aspects of this extension have been reviewed under the provisions of the Public Building Regulations, the Board is not convinced that this project is not also subject to review under the provisions of 10 V.S.A., section 1271. This latter review requires a consideration as to whether or not the proposed sewer line extension is compatible with Vermont's water resource management policies as established by 10 V.S.A., Chapter 47.

The apparent intent of this provision of Vermont's Water Pollution statute was to provide the Secretary of the Agency of Environmental Conservation with an additional management tool with which to carry out his duty as enumerated in 10 V.S.A., section 1258, to manage the waters of the State of Vermont in order to obtain and maintain a water quality associated with their classification. The Board is concerned that the apparent policy of treating substantive extensions to municipal sewer lines paid for by private funds as not being subject to the provisions of section 1271 may result in the unintentional subversion of legislative intent. In this regard, the Board would note that the review required by section 1271 does not seem to be contingent on the expenditure of public monies or indeed on public ownership of the extended sewer line. Furthermore, it seems likely that once constructed, a sewer line extension serving 125 residential units will at some point in time become municipally owned. Such a transfer of ownership may occur many years after construction at which time the management value of 1271 review as apparently contemplated by the legislature would be largely, if not entirely, negated.

Clearly, the review required by 10 V.S.A., section 1271 is not meant to apply to simple service connections within sewer areas of a municipality. However, it seems apparent that a distinction can be made between such "service connections" and bona fide "extensions" of 8 inch sewer mains serving 125 residential units.

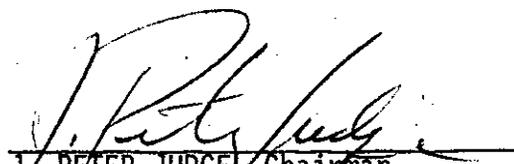
While the Board can draw no final conclusions in this matter, its inclination, subject to persuasion to the contrary, is that 10 V.S.A., section 1271 requires the Secretary to approve all extensions of municipal sewer systems regardless of the funding and ownership. Indeed, the Board would point out that the action of April 4, 1980 by the Division of Environmental Engineering could well be construed to constitute such an approval. The document in question which authorizes connection to the Wilder Sewage Treatment Facility, clearly indicates that a 2,200 foot long sewer line extension is required in order to make such a connection. The impression that this action constitutes authorization for both the sewer line extension and connection to a municipal

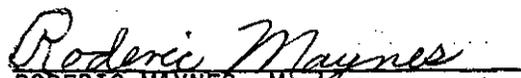
sewer is reinforced by correspondence from the Permits Section, of the Division of Environmental Engineering which refers to the "approval document for the sewer extension to the Pippin development."

In fact, the potential for misunderstanding could be eliminated by clarifying the intent of forms used in the review of connections to municipal sewerage systems. At a minimum, such forms should cite the statutory and/or regulatory authority under which they are issued. The greater need, however, is to develop a more definitive public policy which identifies those projects subject to review under the provisions of 10 V.S.A.; section 1271. Such a policy would not only assist both the Board and the Secretary in defining their respective roles in such cases, but more importantly would provide clear guidance to municipalities, developers and other interested organizations and individuals who are dependent upon a clear enunciation of state policy in this regard.

(Done this 14th day of July, 1980, at Montpelier, Vermont.

Vermont Water Resources Board


J. PETER JUDGE, Chairman


RODERIC MAYNES, Member


DEBORAH J. SISCO, Member