State of Vermont
Water Resources Board

In re: &peal of Ann & Paul DesLauriers - Petition to Revoke Permit PB-4-1461

Preliminary Order

The Water Resources Board (the "Board") has been asked to rule as a preliminary matter on whetherthis proceeding is de novo or on the basis of tne record created before cne Department of Environmental Conservation (the "Department"). For the reasons indicated below, the Board rules that this appeal proceeding is not de novo and is limited to appellate review of the record 'created befcre the 'Department in its consideration of the appellant's petition for permit revocation. (See In re: Petition of Robert and Barbara White, No. 89-358 '(March 1990)).

'Any party seeking to present new evidence in this proceeding may petition the Board to remand this matter to the Department.

Background

This proceeding concerns permit PB-4-1461 (the "permit") issued by the Department to Roger Villermarie/Bayridge Estates (the "permittee") for a non-municipal, on-land wastewater disposal facility and a water supply facility associated with a 20 unit condominium development known as Bayridge Estates located on Lakeshore Drive in Colchester, Vermont. On Juns 20, 1989, Ann and Paul DesLauriers (the "DesLauriers") filed a petition with the Department seeking the revocation of the permit. The Department considered this petition under the provisions of Section 2-02(F) of the Environmental Protection Rules and'decided to deny the petition on September 26, 1989.

The DesLauriers appealed‘the Department's decision to the Board on' October 24, 1989, citing both 3 V.S.A. § 2873(c)(4) and 10 V.S.A. § 1269 as the statutory authority for their appeal. The only parties entering their appearance in this proceeding were the DesLauriers (appellants) and Roger Villermarie/Bayridge Estates (permittee). ' At a prehearing conference both parties agreed that the Board should resolve as a preliminary issue tha question of whether this proceeding is de novo or on the basis of the record created before the Department. Both parties further agreed to a schedule for briefing this issue and waived the opportunity to present oral argument.

The DesLauriers were the only party to file a brief on this issue, arguing that 10 V.S.A. § 1269 mandates that this proceeding be conducted de novo and that even if a de novo proceeding is not mandated, the Board should nevertheless hear new evidence.

Conclusions of Law

1. The DesLauriers petition for revocation was considered by the Department under Rule 2.02(F) of the Environmental Protection Rules.

2. The Environmental Protection Rules, with a minor exception pertaining to municipal sewer extensions not applicable in this case (10 V.S.A. § 1271), are adopted under a number of statutory authorities other than 10 V.S.A. Chapter 47 (Environmental Protection Rules Appendix 1A).

3. The Department's decision on the DesLaurier's petition for revocation was not an act or decision pursuant to subchapter 1 of 10 V.S.A. Chapter 47 and therefore is not appealable to the Board under 10 V.S.A. § 1269.

4. The Department's decision on the DesLaurier's petition for permit revocation is appealable to the Board under Environmental Protection Rules § 2.02,(F), and 3 V.S.A. § 2873(c)(4).

5. Appeals filed under Section 2.02(F) of the Environmental Protection Rules and 3 V.S.A. § 2873(c)(4) are subject to appellate review based solely on the Department's record as provided for in Rule 30 of the Water Resources Board's Rules of Procedure.

Order

This proceeding is not de novo and is limited to appellate review of the record created before the Department in its consideration of the DesLauriers' petition for revocation of Permit PB-4-1461.~

Done this 24th day of May 1990, at Montpelier, Vermont.

David M. Wilson
Chairman
Vermont Water Resources Board

Board members concurring with this decision:

Elaine Little
Mark DesMeules
David L. Deen

Board member not participating in this decision:

Sheldon M. Novick

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