

State of Vermont
Water Resources Board

Appeal of Robert A. Gillin
In re: Proposed Holcomb Bay Boat
Access Area, Lake Champlain
Isle LaMotte, Vermont
Docket No. 90-11

29 V.S.A. § 406

Order

Based on the Findings of Fact and Conclusions of Law set forth below, the Water Resources Board denies the appeal of Robert A. Gillin in this matter and orders that the Management of Lakes and Ponds Permit issued to the Department of Fish and Wildlife on September 20, 1990, be modified as follows:

1. That the first sentence of condition 2 shall be amended to read "No work shall take place prior to Labor Day nor after November 1 of 1991 or 1992."
2. That the first sentence of condition 7 shall be amended to read "The permittee shall complete the approved construction by November 1, 1992."

Discussion

In making its ruling, the Board has given careful consideration to the many concerns raised by Mr. Gillin in his appeal, to the extent that they are relevant to the scope of the Board's review under applicable Vermont law 29 V.S.A. §§ 401 and 405(b). The Board has concluded, based on its record in this de novo proceeding, that the Department of Fish and Wildlife has fully met its burden of proof under 29 V.S.A. Chapter 11 and is therefore entitled to a permit.

In reaching this decision, the Board has not ruled on Mr. Gillin's deeply held view that he has in some fashion been wronged. Many of the concerns which Mr. Gillin sought to address in this proceeding (the cost of the project, the procedural history of similar prior applications, the use of the 20 foot private road, the employment of convict labor at the site, etc.) have not been shown to be relevant to matters under the Board's jurisdiction.

Procedural History

On February 15, 1990, the Department of Fish and Wildlife (DFW) filed an application with the Department of Environmental Conservation (DEC) as required by 29 V.S.A. § 404(a) for a

permit to encroach beyond the mean water level of Lake Champlain in the Town of Isle La Motte. The proposed encroachment consists of construction associated with two boat access ramps located on the eastern shoreline of Lake Champlain in the Town of Isle La Motte on property owned by the DFW.

On September 20, 1990, the DEC issued a permit with conditions for the proposed encroachment. This decision was appealed on October 1, 1990, by Robert A. Gillin. Mr. Gillin was represented in this proceeding by legal counsel from October of 1990 until July of 1991.

As provided for in 29 V.S.A. § 406(b), the hearing before the Board is de novo and is conducted as a contested case. An initial hearing (pre-hearing conference) was held at Montpelier, Vermont on December 12, 1990, at which time all parties were notified of the requirement to identify witnesses by January 18, 1991, and to prefile their testimony by February 8, 1991. These deadlines were subsequently specified in the Board's March 16, 1991, Prehearing Order. The DFW and DEC subsequently identified their respective witnesses and prefiled their testimony by those deadlines. Mr. Gillin did not identify any witnesses and prefiled no testimony by the deadlines.

On March 11, 1991, Mr. Gillin's counsel requested a continuance. The Board granted the requested continuance which was objected to by DFW on the grounds that its interests were prejudiced by the delay.

On June 5, 1991, the Board gave notice that the hearing on the merits would be held on June 19, 1991, in Montpelier, Vermont. At the June 19 hearing the Board amended its March 16 Pre-hearing Order to allow Mr. Gillin an opportunity to testify as his only witness. The Board granted the Appellant's request and established July 3, 1991, as the deadline for the prefiling of his testimony. Other parties were given until July 15, 1991, to prefile any rebuttal testimony.

On June 24, 1991, the Appellant's counsel filed a request for permission to withdraw. On July 8, 1991, Mr. Gillin filed notice that he intended to represent himself pro se and requested that the Board issue a subpoena compelling the attendance of five additional witnesses on his behalf.

The June 19 hearing was continued on July 15, 1991, at which time Mr. Gillin's counsel's request to withdraw and Mr. Gillin's request to represent himself pro se were granted. Mr. Gillin's request for a subpoena was denied on the grounds that the request was not timely and he had failed to show that the requested additional witnesses are necessary or relevant to this (de novo) proceeding.

... and further identified as application #20 19.

Exhibit E. A letter dated February 12, 1991, to John Guilmette from Eric Gilbertson, Division for Historic Preservation.

Exhibit F. An exchange of correspondence between John Guilmette and the Town Clerk of Isle La Motte.

Exhibit G. Comment on the proposed encroachment by the Vermont Natural Heritage Program dated January 12, 1989.

Exhibit H. Notes of a public informational meeting regarding the proposed Holcomb Bay Access area held on July 19, 1990, compiled by Virginia Garrison of the Department of Environmental Conservation.

