

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.

The hearing was concluded on July 15 and all parties were given until July 29, 1991, to file proposed findings and legal arguments. Both Mr. Gillin and the DFW proposed such filings.

Standard of Review

In order to grant a permit for an encroachment under 29 V.S.A. Chapter 11 the reviewing agency, on an appeal as in this case the Water Resources Board, must make two determinations. In re: Williams Point Yacht Club Docket No. S213-89 CnC (April 18, 1990) and Water Resources Board decision In re: Appeal of Richard and Alice Angney Docket No. 89-14 (February 12, 1991). First the reviewing agency must determine that a project is affirmatively in accord with the purposes of the public trust (29 V.S.A. § 401); and second, it must determine whether the adverse effects of the project are so great as to make it inconsistent with the public good (29 V.S.A. § 405).

Exhibits

The following exhibits were admitted as part of the Board's record in this proceeding:

Exhibit A. The prefiled rebuttal testimony of Carl W. Pagel of the Department of Environmental Conservation.

Exhibit B. An office memo regarding the Holcomb Pt. Department of Fish & Wildlife Access Area from Carl Pagel to Andre Rouleau dated December 11, 1990.

Exhibit C. A copy of that portion of the National Wetlands Inventory map showing the approximate location of the project site as indicated in pencil.

Exhibit D. The application filed by the Department of Fish & Wildlife for the proposed Holcomb Bay access dated February 15, 1990, and further identified as application #90-13.

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.

Exhibit I. The prefiled testimony of Andre Rouleau of the Department of Environmental Conservation.

Exhibit J. A memorandum from Jon Anderson of the Department of Fish and Wildlife to Andre Rouleau dated March 19, 1990.

Exhibit K. The decision and permit issued on September 20, 1990, by the Department of Environmental Conservation in response to Application #90-13 (Exhibit D).

Exhibit 1. A boundary map showing the boundaries of property in Isle La Motte purchased from Ira Bombard by the Department of Fish and Wildlife.

Exhibit 2. A map entitled "Holcomb Bay Fishing Access" last dated April 4, 1989, prepared under the supervision of John R. Guilmette P.E.

Exhibit 3. A collection of 14 photographs showing the Holcomb Bay Access area and environs.

Exhibits offered by Robert Gillin

Exhibits 21g - 30g. Ten color photographs of the site of the proposed Holcomb Bay access area and environs including the access road.

Exhibit 31g. A brochure published by the Vermont Department of Fish and Wildlife entitled "Vermont Guide to Fishing" with a map of Vermont annotated to show various features including public fishing and boating access areas.

Findings of Fact

1. The Department of Fish and Wildlife proposes to both substantially refurbish an existing boat ramp by creating an eighty (80) foot by ten (10) foot wide ramp (north ramp) and to construct a new 64 foot by 16 foot reinforced concrete boat access ramp (south ramp). The two ramps would be located at the same boat access area on property owned by DFW on the shore of Holcomb Bay, Lake Champlain, in the Town of Isle LaMotte. (Exhibits #1 and D).
2. Construction of the north ramp will involve the excavation of silt and gravel from a thirty-five hundred square foot area extending below the Lake's mean water level of 95.5 feet above mean sea level (mean water level). Thirty cubic yards of crushed gravel will be placed over the existing north ramp surface. All construction below the mean water level will occur between Labor Day and November 1. (Exhibits 2 and D).

3. Construction of the south ramp will involve the excavation of silt and gravel from a ten thousand square foot area extending below the Lake's mean water level. A temporary haul road will be constructed to facilitate excavation work. A portion of the haul road will be left to serve as part of a temporary coffer dam around the south ramp construction area in order to allow installation of the reinforced concrete ramp in the dry. A strip of graded stone will be placed along each side of the proposed south ramp for erosion protection. All construction below the mean water level will occur between Labor Day and November 1. A silt screen fence will be placed in the water around the work area during construction. All excess material used in the coffer dam will be disposed of at an upland site. (Exhibits 2, 3, and D).

Effect on water quality

4. The proposed construction will result in turbid water within the silt screen fenced area for a short period of time. Turbidity will be localized and minimized by the construction of the temporary coffer dam and use of the silt screen fence. (Exhibits 3 and K).
5. The existing use of the Lake as a source of water by nearby shoreline property owners will be protected by the measures to control turbidity described above, by the timing of construction activities and by the fact that the nearest water supply is several hundred feet from the proposed encroachment. (Exhibits I and 25g).

Effect on Fish and Wildlife Habitat

6. The proposed encroachment has been scheduled so as to avoid potential impacts during the fish spawning period. The State fishery manager has reviewed the proposed construction and schedule and has concluded that concerns regarding potential impacts on fisheries have been adequately addressed. (Exhibits J and K).

Effect on aquatic and shoreline vegetation

7. The proposed encroachment will have only minimal impacts on aquatic and shoreline vegetation. Some trees will be removed along approximately sixty feet of shoreline. Erosion control measures will be employed to compensate for the tree removal. No wetlands designated as "significant wetlands" under Vermont law will be affected by this project. The construction of parking facilities well above the mean water level will have a minor impact on a nonsignificant wetland (Exhibits A, B and C). The impact on aquatic vegetation will be limited to the foot print of the proposed encroachment as described in findings 1-3 above.

Effect on navigation and other recreational and public uses, including fishing and swimming

8. The purpose of the project is to meet a need for increased public access to Lake Champlain for recreational boating and fishing purposes. There is only one other boat launch ramp available to the public on Isle LaMotte which is located at Knight's Point. The Knight's Point boat access is unprotected from the prevailing winds and therefore is often very difficult to utilize because of the resultant wave action and shallowness of the water. The proposed Holcomb Bay ramps compliment the Knight's Point ramp and are considered necessary for adequate access in this area because they are sheltered from the prevailing winds, and will therefore allow boat launching under protected conditions at virtually any time. (Exhibits H and I).
9. The access ramps are not intended to be used for swimming which is prohibited at such facilities by DFW regulation for safety reasons. Further, there is no natural beach on the DFW property that is conducive to or suitable for a public swimming area.

Consistency with the natural surrounds

10. The proposed encroachment is located in an area that has been developed as residential house lots. Many of the residences are occupied primarily as summer residences. The proposed encroachment involves the rehabilitation of a site already in limited use as an access ramp and the installation of a second ramp nearby. No significant change will occur to the natural surroundings. While nominal amounts of shoreline vegetation will be removed, the degree of alteration to natural condition of the surrounding area is the minimum necessary for the project's intended purpose. The degree and extent of this alteration is consistent with the removal of shoreline vegetation on adjacent properties related to the development of lawns and buildings. (Exhibits 3 and 25g).

Consistency with municipal shoreland zoning ordinances of any applicable state plans

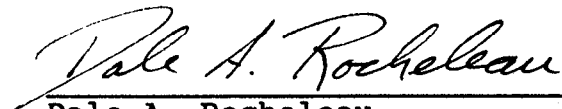
11. There are no shoreline zoning ordinances in Isle LaMotte. (Exhibit F). There is no state plan applicable to this area of Lake Champlain which has a bearing on the proposed encroachment. (Exhibit K).

Conclusions of Law

Based on the above Findings of Fact, the Board concludes that this project is consistent with the public trust status of Lake Champlain and the lands lying thereunder and the requirement that these waters and lands be managed to serve the public good (29 V.S.A. § 401). Based upon the above Findings of Fact the Board concludes that this project will not adversely affect the public good within the meaning of 29 V.S.A. § 405(b).

Dated at Burlington, Vermont, this 26th, day of September, 1991.

Vermont Water Resources Board



Dale A. Rocheleau
Chair

Board members concurring:

Dale A. Rocheleau
Elaine B. Little
William Boyd Davies