

state of Vermont  
WATER RESOURCES BOARD

In re: Gordon Whitman (Appeal of Conditional Use  
Determination #94-099), Docket No. CUD-94-12

DISMISSAL ORDER

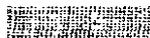
On July 25, 1994, the Water Resources Board (Board) received a notice of appeal filed by Gordon Whitman of Bennington, Vermont, seeking review of a decision of the Agency of Natural Resources (ANR) granting Conditional Use Determination (CUD) #94-099 to Robert L. Tatro, Sr., (the applicant). The CUD authorized the relocation of a small stream in the fifty-foot buffer zone of a Class Two wetland near Park Street, Bennington, Vermont, and alternatively approved the use of culverts or an open channel to conduct the stream's waters through the applicant's property. The appellant challenged the ANR's findings, conclusions and conditions with respect to Function 5.1 (water storage for flood water and storm runoff) of the Vermont Wetland Rules. The appellant specifically claimed that culvertization of the stream would result in flooding and damage to private property and sources of potable water. This appeal was filed pursuant to 10 V.S.A. § 1269 and Section 9 of the Vermont Wetland Rules.

A prehearing conference was held in this matter in Bennington, Vermont, on October 12, 1994. At this prehearing conference, the applicant indicated that he had installed all or a portion of the culvert authorized by CUD #94-099, but that he was prepared to remove it and restore the stream bank in exchange for the appellant's withdrawal of the above-captioned appeal.

On October 17, 1994, the appellant filed with the Board a notice of withdrawal and a copy of the stipulated agreement signed by himself and the applicant, in which the appellant agreed to withdraw his appeal provided that the applicant not use culverts in implementing the CUD. In accordance with the Prehearing Conference Report and Order issued October 26, 1994, the parties were given until November 7, 1994, to file written comment concerning the stipulated agreement and proposed withdrawal. On November 7, 1994, the ANR notified the Board that it did not object to the stipulation, however, it made several specific recommendations concerning the content of any dismissal order.

The only parties to the proceeding are the appellant, the applicant, and the Agency of Natural Resources (ANR). No party has requested oral argument concerning the final disposition of this appeal, pursuant to Rule 21 of the Board's Rules of Procedure.

n On November 16, 1994, the Board reviewed the record in this matter. After considering the parties' filings, the Board deter-



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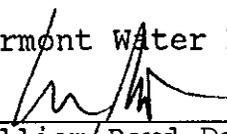
mined that withdrawal of the appeal based on the stipulation between the appellant and the applicant is not contrary to the intent and purposes of the Vermont Wetland Rules, provided that removal of any culverts within the fifty-foot buffer zone is performed under the supervision of the ANR so as to minimize adverse impacts to the protected Class Two wetland.

**ORDER**

1. Pursuant to Rule 21 of the Board's Rules of Procedure, this appeal is hereby dismissed.
2. Conditional Use Determination #94-099 remains in full force and effect. No activities within the Class Two wetland or its associated buffer zone., other than those approved by Conditional Use Determination #94-099, are authorized by this order.
3. If the applicant removes any culverts previously installed by him within the wetland buffer zone, said removal shall be performed under the supervision of the ANR so as to minimize adverse impacts to the protected Class Two wetland.

Dated at Montpelier, Vermont, this 21<sup>st</sup> day of November, 1994.

Vermont Water Resources Board

  
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William Boyd Davies, Chair

Concurring:

~/William Boyd Davies  
Stephen Dycus  
Ruth Einstein