

State of Vermont  
WATER RESOURCES BOARD

In re: Robert A. Gillin (Encroachment Permit)  
Docket No. MLP-94-01

Authority:  
29 V.S.A. § 406

MEMORANDUM OF DECISION AND ORDER  
APPELLANT'S MOTION TO CORRECT MANIFEST ERRORS OF THE BOARD

This decision pertains to a motion filed by Robert A. Gillin (appellant), requesting that the Water Resources Board (Board) correct manifest errors in its Findings of Fact, Conclusions of Law, and Order, issued on August 23, 1994, in the above-captioned appeal. As explained below, the Board denies the appellant's motion.

I. PROCEDURAL HISTORY

On August 23, 1994, the Board issued its Findings of Fact, Conclusions of Law, and Order in the above-captioned appeal. On September 8, 1994, the appellant filed a Motion to Correct Manifest Errors of the Board in the Finding[s] of Fact, Conclusions of Law, and Order. This motion was filed pursuant to Rule 29(B) of the Board's Rules of Procedure. On September 13, 1994, the Department of Fish and Wildlife (DFW), Agency of Natural Resources (ANR), filed a response, DFW's Opposition to Appellant's Motion to Correct Manifest Errors. On September 22, 1994, the Board received Appellant's Motion to Strike DFW's Response in Opposition to Appellant's Motion to Correct Manifest Errors.

The Board deliberated with respect to appellant's motion on September 22, 1994. This matter is now ready for decision.

II. DISCUSSION

Board Rule of Procedure Rule 29, entitled "Written Decisions," consists of three parts. Rule 29(A) addresses the content of a written decision of the Board. Rule 29(B) sets forth the procedure for correcting manifest error, mistakes, and typographical errors and omissions in a final decision of the Board. Rule 29(C) sets forth the procedure for filing motions to alter a decision.

The appellant filed his motion to correct the Board's decision pursuant to Rule 29(B) of the Board's Rules of Procedure. Rule 29(B) states:

Within 15 days of the date of a final decision, a party may file a motion to correct manifest error in the findings of fact, conclusions of law or order. The Board shall act upon such motions promptly. The running of the time in which

to appeal shall be stayed by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the Board whether or not to hold a hearing on a motion for a corrected decision or order. The Board may on its own motion, within 15 days from the date of a final decision, issue a corrected decision or order. Corrections shall be limited to instances of manifest error, mistakes and typographical errors and omissions.

The Board has reviewed the appellant's motion and other filings in this appeal. It has concluded that the motion should be denied. Besides being untimely filed,<sup>1</sup> the numerous errors identified by the appellant are not within the scope of a Rule 29(B) appeal. Mere disagreement with the Board's procedural and substantive rulings, its findings of facts and conclusions of law, is not a basis for correction of a decision. The term "manifest error" has a specific legal meaning; it is synonymous with the terms: "open, clear, visible, unmistakable, indubitable, indisputable, evident, and self-evident." Black's Law Dictionary, 4th Ed. Rev. (1975). Motions to correct manifest error are designed to correct obvious, patent errors in a decision, such as the misidentification of a party, the wrong citation to a case, or other defect that may readily be determined to be in error. A motion to correct manifest error is not intended be used to re-argue a case or expand its scope to relitigate matters determined in previous proceedings.

Even if the Board were to consider the appellant's filing as a motion to alter pursuant to Rule 29(C) -- the appropriate avenue for seeking substantive reconsideration of a Board decision -- the Board would have to deny appellant's request since his filing merely repeats arguments that have already been considered and rejected by the Board.

### III. ORDER

1. Appellant's Motion to Correct Manifest Errors of the Board is denied; Appellant's Motion to Strike DFW's Response in Opposition to Appellant's Motion to Correct Manifest Errors is denied.

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<sup>1</sup> Appellant's motion was filed on the 16th day following the issuance of the Board's Findings of Fact, Conclusions of Law and Order.

**Findings of Fact, Conclusions of Law, and Order**

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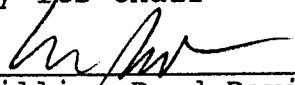
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2. The Board's Findings of Facts, Conclusions of Law, and Order (August 23, 1994), is deemed final.

3. Any person aggrieved by the Board's decision may appeal to the Grand Isle Superior Court within thirty (30) days of the date of this Memorandum of Decision, pursuant to 29 V.S.A. § 407. An appeal filed pursuant to 29 V.S.A. § 407 shall not stay the effectiveness of any order of the Board pending determination by the court unless the court so orders.

Dated at Montpelier, Vermont, this 14th day of October, 1994.

Vermont Water Resources Board  
by its Chair

  
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William Boyd Davies

Concurring:

William Boyd Davies  
Mark DesMeules  
Ruth Einstein  
Kathleen Scheele