

State of Vermont
WATER RESOURCES BOARD

In re: Vernon Squiers
(Appeal of Subdivision Permit #EC-8-0538)
Docket No. EPR-94-06

DISMISSAL ORDER

This order pertains to a Motion to Dismiss filed by the Agency of Natural Resources (ANR). As explained below, the ANR's motion is granted and this appeal is dismissed.

I. BACKGROUND

On May 12, 1994, the Water Resources Board (Board) received a notice of appeal filed by Vernon Squiers of Dorset, Vermont, from a decision of the Wastewater Management Division, Department of Environmental Conservation (DEC), Agency of Natural Resources (ANR). The decision denied an informal appeal filed by Mr. Squiers requesting that the DEC find that a permit previously issued to him authorized an existing well to serve a two-lot subdivision (part of the Butternut Glen subdivision) in Dorset, Vermont. This appeal was filed pursuant to 3 V.S.A. § 2873(c)(4) and Section 2-02F of the Environmental Protection Rules (EPR).

A Notice of Appeal and Prehearing Conference was issued on June 2, 1994, and published in the Bennington Banner on June 4, 1994. Rules 18(C) and 20 of the Board's Rules of Procedure. A prehearing conference was held on June 27, 1994. The following persons entered timely appearances and were granted party status: Vernon Squiers (appellant), the ANR, and Joseph and Marghenita Coppola. Prehearing Conference Report and Order at 7 (Sept. 30, 1994).

At the prehearing conference the ANR raised several preliminary issues concerning the standing of the appellant and the jurisdiction of the Board to hear this appeal. Prehearing Conference Report and Order at 2-3 (Sept. 30, 1994). In accordance with the Board's order, the ANR filed a Motion to Dismiss on October 28, 1994. The appellant timely filed a written response on November 14, 1994. No party requested oral argument in this matter. Rule 21 of the Board's Rules of Procedure.

On December 7, 1994, the Board reviewed the file in this appeal and determined that the ANR's Motion to Dismiss should be granted on the basis that the Board lacks jurisdiction to hear this appeal, pursuant to Rule 21 of the Board's Rules of Procedure.

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II. DISCUSSION

This case involves a subdivision permit (#EC-8-0538) issued by DEC/ANR in April 1986 to appellant Squiers. The permit required construction in accordance with plans that had been submitted in connection with the application for the permit. The ANR and the appellant dispute whether it was clear from those plans, and other communications between appellant Squiers and agency staff, whether the lot covered by the permit (lot 2) was to be served by a well providing water to that lot and another, pre-existing lot (lot 4) or whether the well would be dedicated to lot 2 only. In any event, the subdivision was constructed with the well serving both lots 2 and 4. Joseph and Marghenita Coppola are owners of lots 3 and 4, receiving water from the well on lot 2. The appellant no longer owns an interest in the subdivision.

Years after the issuance of permit #EC-8-0538, questions emerged concerning whether the well in question was legal under the permit and/or applicable rules. The appellant and DEC/ANR regional staff engaged in considerable discussion and correspondence concerning the correct interpretation of the permit and plans. ANR regional staff informed the appellant of their view that the subdivision violates the permit and applicable rules, because the well can legally serve only lot 2. In response, the appellant argued to regional staff and ultimately the DEC's Engineering Manager, Skip Flanders, that the ANR's interpretation of the permit was wrong. In an April 28, 1994, letter Mr. Flanders informed the appellant that he disagreed with his arguments and suggested four options for resolving the matter. One of the options identified by Mr. Flanders was an appeal of his decision to the Board. Mr. Squiers elected this option.

It is axiomatic that an administrative body has only those jurisdictional powers expressly granted by the Legislature, and nothing is to be presumed in favor of its jurisdiction. Trybulski v. Bellows Fall Hydro-Electric Corp., 112 Vt. 1, 7 (1941). The Board's appellate authority with respect to subdivision permit decisions is set forth in 3 V.S.A. § 2873(c)(4), which provides:

The Secretary may grant, deny, renew, revoke, suspend, annul or withdraw a permit granted under rules of the Secretary with respect to buildings or land.... Appeals shall be to the Water Resources Board.

The Board's jurisdiction therefore extends only to ANR decisions that "grant, deny, renew, revoke, suspend, annul or withdraw" a permit under ANR rules.

In this case, the event appealed from -- Mr. Flanders' April 28 letter -- is not within the scope of the statutory grant. The

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letter is a ruling on an informal appeal from a decision by a regional staff person relating to notice of alleged violation. As the ANR has stated in its Motion to Dismiss:

It is an opinion relating to the interpretation of a permit. It is part of an attempted negotiation of a dispute. It is not a grant, denial, renewal, revocation, suspension, annulment or withdrawal of a permit. Therefore, the Board lacks jurisdiction to hear this matter.

The Legislature has provided other mechanisms for resolving this matter. Some are suggested in the April 28 letter -- permit amendments that could legally accommodate the existing arrangement of the wells. Another might be a request for a declaratory judgment pursuant to 3 V.S.A. § 807. Ultimately, this sort of dispute might be handled as an enforcement action pursuant to 10 V.S.A. ch. 201, with the appellant raising his arguments as a defense.

The Board is sympathetic to the appellant's general concern that he has been ill-advised by DEC/ANR staff. By the ANR's own admission, Mr. Flanders incorrectly informed the appellant that he could appeal the agency decision to the Board. ANR's Motion to Dismiss at 2. Regrettably, this is not the first time that the Board has encountered appellants who have been misinformed concerning their appellate rights. See, for example, In re: Ronald and Deanne Morin, Docket No. EPR-93-07. The Board sincerely hopes that General Counsel for the ANR will remind agency technical staff and administrators of their continuing obligation to the public to abide by "the rule of law." This includes educating themselves as to the substantive and procedural legal requirements of the programs they administer.

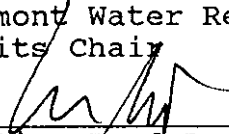
Nevertheless, because it would be an unwarranted expansion of the Board's authority to assume jurisdiction over this appeal, the Board grants the ANR's Motion to Dismiss.

III. ORDER

For the forgoing reasons, it is hereby ordered that the above-captioned appeal is dismissed.

Dated at Montpelier, Vermont, this 3rd day of January, 1995.

Concurring:
William Boyd Davies
Stephen Dycus
Ruth Einstein
Jane Potvin

Vermont Water Resources Board
by its Chair

William Boyd Davies