

STATE OF VERMONT
WATER RESOURCES BOARD

In re: Stephen H. Dana (MGD Properties c/o Trueman Bryer)
Docket No. CUD-97-01

CHAIR'S PRELIMINARY RULING

I. BACKGROUND

On March 21, 1997, the Department of Environmental Conservation, Agency of Natural Resources ("ANR") issued Conditional Use Determination #94-148 ("CUD") to MGD Properties for the filling of 2,500 square feet of a Class Two wetland buffer zone for the construction of a road on the east side of Shantee Point, St. Albans ("Project").

On April 21, 1997, Stephen H. Dana ("Appellant") filed an appeal with the Water Resources Board.

On April 22, 1997, Executive Officer Bartlett issued a letter to the Appellant acknowledging receipt of the appeal.

On May 19, 1997, MGD Properties filed a letter enclosing a copy of a letter dated April 24, 1997, in which it challenges the timeliness of the Appellant's notice of appeal.

II. CHAIR'S PRELIMINARY RULING

Under Water Resources Board Rules of Procedure ("WBR") 21, the Board's chair may issue preliminary rulings as to matters of party status and other procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any party, in which case the ruling shall be reviewed by the Board. The Board may also, at the request of a party, consider the dismissal of any matter for reasons provided by its rules, by statute, or by law. The Board shall allow oral argument prior to any such dismissal.

The CUD can be appealed pursuant to 10 V.S.A. § 1269, and Vermont Wetland Rules ("VWR") § 9.

Under 10 V.S.A. § 1269, any person or party in interest aggrieved by an act or decision of the Secretary of ANR may "appeal to the board *within* thirty days." (Emphasis added.)

Under VWR § 9, any act or decision of the Secretary of ANR "may be appealed *within* 30 days to the Board pursuant to 10 V.S.A. Section 1269." (Emphasis added.)

Filing deadlines are jurisdictional and the Board has no discretion to waive a

deadline established by statute. In re Town of Putney Interim Solid Waste Certification, No. 93-185, slip. op. (Vt. Sept. 22, 1993); Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975). Unlike the Vermont Rules of Civil Procedure, the WBR and VWR do not provide that where the last day of a period is a Saturday, a Sunday, or a State or federal legal holiday, then the deadline runs until the end of the next day which is not one of the aforementioned days. See VRCP 6.

MGD Properties' May 19 filing (copy enclosed) seeks the dismissal of the Appellant's appeal based on the appeal being untimely filed. In fact, the Appellant filed its notice of appeal on Monday, April 21, 1997, which is thirty-one days after the issuance of the CUD. Accordingly, the Appellant's appeal should be dismissed as untimely under the thirty-day requirement provided for in 10 V.S.A. § 1269 and VWR § 9.

III. ORDER

1. The Appellant's appeal of CUD #94-148 is dismissed with prejudice, unless a timely objection to this Order, in whole or part, is filed with the Water Resources Board by any party or interested person on or before 4:30 p.m., Thursday, June 26, 1997.

2. If a timely objection is filed, then any party or interested person may file a written response to any such objection on or before 4:30 p.m., Monday, June 30, 1997. The Board will convene an oral argument regarding this Order, and all objections and responses thereto, from 1:30 p.m. to 2:00 p.m., on Friday, July 18, 1997, in Room R2B2, National Life Record Center Building, National Life Drive, Montpelier, Vermont.

3. If no objection is filed, then this Order shall become final without any further action by the Water Resources Board, and the Appellant's appeal of CUD #94-148 shall be DISMISSED WITH PREJUDICE.

Dated at Montpelier, Vermont this 17th day of June, 1997.

Water Resources Board



William Boyd Davies, Chair