

State of Vermont  
WATER RESOURCES BOARD

PREHEARING CONFERENCE REPORT AND ORDER

RE: George Carpenter, Jr.  
3174 North Road  
Waitsfield, VT 05673

Docket Number:  
SAP-99-06  
(Appeal of ANR Permit #SA-7-0614)  
Statutory Authority  
10 V.S.A. §1024

On August 31, 1999, Water Resources Board ("Board") Chair Gerry Gossens, pursuant to Procedural Rule 28, convened a prehearing conference in Montpelier, Vermont, in the above-captioned matter. The following persons participated:

Doug Turner, Permit Applicant, *pro se*;  
George Carpenter, Jr., Appellant, *pro se*; and  
Agency of Natural Resources ("ANR") by Jon Groveman, Esq.

**I. BACKGROUND**

On August 9, 1999, the Water Resources Board ("Board") received a letter characterized as an appeal, pertaining to ANR's issuance of Stream Alteration Permit ("SAP") #SA-7-0614 ("Permit"). The appeal was filed by George Carpenter, Jr. ("Appellant") and the filing of such appeal stays the effectiveness of the Permit pursuant to 10 V.S.A. §1024(a). The permit applicants are Doug and Sharon Turner of Waitsfield ("Applicants"). The Applicants seek to excavate approximately 2500 cubic yards of gravel from an exposed deposition located on the Mad River in the Town of Waitsfield in conjunction with an effort to stabilize a stream bank abutting their property.

**II. STATEMENT OF PRELIMINARY ISSUES AND FILING DEADLINES**

At the conference, the parties agreed that there were a number of preliminary issues to be addressed in this matter prior to scheduling the filing of pre-filed testimony, or conducting a site visit and hearing, should a hearing be necessary. The preliminary issues are as follows:

A. Appellant must identify the statutory provision under which he seeks to appeal ANR's issuance of the Permit.

1. Appellant must identify the specific statute, and statutory sections pursuant to which this appeal has been filed.

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The prehearing conference was scheduled to begin at 3:00 p.m. As of approximately 3:10 p.m. Mr. Carpenter had not appeared in person. Rather than delay the conference, Board counsel attempted to contact Mr. Carpenter at his residence in Waitsfield. Mr. Carpenter was provided with an opportunity to participate by telephone which he opted to do. There was no objection to this approach.

2. In addition, Appellant shall file a written statement of the issues with the Board and all other participants to enable the applicant and the ANR to determine the grounds upon which the Appellant seeks to appeal.
  3. The "statement of issues and grounds for appeal" shall be filed on or before **4:30 p.m.** on Thursday, **September 23, 1999**. To the extent any provision or sub-section of the relevant statute is not at issue, Appellant is encouraged to limit the scope of the appeal accordingly.
  4. ANR and the Applicant shall have an opportunity to review and rebut the Appellant's statement of the issues. Replies **to the statement of issues are due on or before 4:30 p.m.** on Tuesday, **October 5, 1999**. The Chair will review the statement of issues and any objections to the statement of issues in advance of a subsequent prehearing conference.
- B. Whether ANR, the Applicant or the Appellant objects to the participation of any Board member who will be hearing this matter?
1. Accompanying this Preheating Conference Report and Order is a double-sided single page "Biographical Sketch" of the Water Resources Board Members. Participants are directed to review that document and identify any conflicts of interest and to identify any personal interests that may be seen as a disqualifying interest.
  2. Any such objection to the participation of any Board member shall be due on or before **4:30 p.m.** on Thursday, **September 23, 1999**.
- C. Whether sufficient notice was provided to George Carpenter, Sr. and Elwin Neill, Jr.?
1. Applicant agreed at the prehearing conference that the notice issue could be addressed (and thereby eliminated as an issue in this proceeding) through Applicant's supplementation of the notice that had previously been **provided.**<sup>2</sup>
  2. Applicant agreed to provide such notice. Applicant shall provide a copy of the permit **on or before Tuesday, September 21, 1999 with the** following persons:

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Appellant does not dispute that a copy of the Permit was Provided to the residence of Mr. Carpenter, Jr. and Mr. Neill, Sr. but he objects to the **failure** to provide a **separate actual notice** to his father - George Carpenter, **Sr. as well as Mr. Elwin Neill, Jr.**

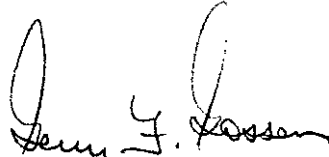
George Carpenter, Sr.  
Elwin Neill, Jr.

Applicant shall also file a statement with the Board and all parties **not later than 4:30 p.m. on Thursday, September 23, 1999** explaining the particulars of service upon the above-named individuals.

### III. ORDER

This Order establishes deadlines for the filings referred to above, as discussed at the prehearing conference. Any participant objecting to the manner in which preliminary issues are stated in this Order, or to any other provisions of this Prehearing Conference Report and Order, shall file such objection **not later than 4:30 p.m. on Monday, September 20, 1999**. A second preheating conference will be scheduled after all filings have been reviewed. Written notice of any subsequent prehearing conference will be issued separately.

Dated at Montpelier, Vermont, this 13th day of September, 1999.

  
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Gerry F. Gossens  
Chair