

State of Vermont
WATER RESOURCES BOARD

RE: Al J. Frank
Docket No. CUD-2000-02 (DEC #1999-524)
RE: Gregory C. Lothrop
Docket No. CUD-2000-03 (DEC #1999-524) (Consolidated)

STATUS CONFERENCE REPORT AND ORDER

On July 12, 2000, at 10:00 p.m., Water Resources Board ("Board") Chair David J. Blythe, Esq., convened a telephone status conference at the Board's Conference Room in Montpelier, Vermont, in the above-captioned matters, for the purpose of hearing from the parties what progress has been made to date in settlement negotiations. The Chair was assisted in the conduct of the prehearing conference by the Board's Associate General Counsel, Kristina L. Bielenberg, Esq. The following persons entered timely appearances and participated by teleconference:

Gregory C. Lothrop, Appellant, and Carole Lothrop by David L. Grayck, Esq.,
Cheney, Brock & Saudek, P.C.;
John Larkin and Larkin Realty, Applicant, by Carl H. Lisman, Esq., Lisman and
Lisman and Lance A. Llewellyn, P.E., Llewellyn-Howley;
Agency of Natural Resources ("ANR"), by Elizabeth Lord;
Randall Kay, pro se, in his individual capacity and as representative for the Dorset
Heights Water System Association ("DHWSA");
Leonard J. Gluck, pro se, for himself and Butler Farm neighbors.

Appellant Al J. Frank did not participate in the status conference. Board staff left a message on Mr. Frank's office voice mail on July 10, 2000, reminding him of his obligation to contact the Board's office to arrange a teleconference connection. Mr. Frank, however, did not communicate with the Board's o&e to make the necessary arrangements.

I. PROCEDURAL BACKGROUND

The procedural background of these consolidated appeals is discussed in the Prehearing Conference Report and Order at 1-2 (May 31, 2000) ("Prehearing Order") and Stay Order (June 13, 2000), both herein incorporated by reference.

II. INTRODUCTIONS AND APPEARANCES

Chair Blythe introduced himself and staff to those participating in the telephone status conference. He asked for appearances from those persons participating the conference. For a list of these persons, see above.

III. DISCLOSURES

Chair Blythe noted that a memo had been issued on July 7, 2000, and sent to all persons participating in this proceeding, identifying and making disclosures for three former Board members: William Boyd Davies, Ruth Einstein, and Gail Osherenko. He noted that he would need to appoint one or more of these persons to decide matters in the above-captioned appeals, pursuant to 10 V.S.A. §905(1)(F).

Chair Blythe noted that a deadline of July 17, 2000, had been set for the filing of any written objections to the participation of any of these former Board members. He asked, however, those persons participating in the status conference whether they were aware of any conflicts of interest or other disqualifying interests which might prevent one or more of the identified persons from serving as decision makers in this proceeding.

All persons participating in the status conference indicated that they or their clients were not aware of any apparent conflicts of interest or other circumstances requiring disqualification of one or more of the named Board members. Due to the fact that Appellant Frank did not participate in the conference, however, those present were advised that no appointments would be made until after July 17, 2000, to allow for the filing of any written objections.

IV. SETTLEMENT NEGOTIATIONS

The parties disclosed that they had been in settlement negotiations since the prehearing conference in May. Attorney Grayck reported that his clients, the Lothrops, and other Butler Farm residents had been meeting with the Applicant and that he was optimistic that negotiations would result in a settlement. He asked the Board Chair to grant an additional stay of 30 to 90 days to allow the parties to either (1) complete negotiations and formalize their agreement with a tiling to the Board disposing of the appeals or (2) determine that no agreement can be reached and advise the Board that this matter should be scheduled for a hearing. Attorney Lisman, for the Applicant, reported that his client was close to presenting the other parties with a revised Project plan and that a continuance of 45 days should be sufficient to determine whether the two appeals can be settled or whether the Board should proceed to a hearing on the merits. He indicated that the proposed plan, if accepted, might require a new or amended CUD ANR, DHWSA, and the Butler Farm neighbors agreed that a 45-day continuance should be sufficient to complete negotiations and determine whether the two appeals can be summarily dismissed or whether they should be scheduled for a hearing.

After further discussion, the Chair determined that a continuance would be granted until **4:30 p.m., Monday, August 28, 2000**; however, the parties would be expected to notify the Board on or before **4:30 p.m., Thursday, August 24, 2000**, whether a settlement had been reached or whether this matter should be scheduled for a hearing on the merits. He further indicated that if the Board received notice before the August 24 deadline from one or more parties that negotiations had broken down, he would likely issue a scheduling order to move this matter to a hearing, giving the parties an opportunity to object to the order's provisions,

The Board's counsel advised the parties that if the parties reach a settlement, three options were available for disposing of the two appeals without hearing: (1) the two Appellants could file notices of withdrawal of their respective appeals; (2) all parties could sign and file a motion or letter requesting dismissal of the pending two appeals; or (3), the parties could file a stipulated decision, consisting of proposed findings of fact, conclusions of law, and an order for the Board's consideration and possible adoption. She noted, however, that the third option did not appear to be appropriate in this instance if the Applicant was proposing a revised Project that might require a new or substantially amended conditional use determination ("CUD"), and that, in fact, a remand of this matter to ANR might be appropriate.

V. EX PARTE CONTACTS

The Board's counsel reminded the parties to this proceeding against communicating directly with both current and former Board members assigned to hear the two appeals during their pendency. 3 V.S.A. §813. All persons having procedural questions are directed to bring them to the attention of the Board's staff handling this case, Kristina L. Bielenberg, Esq. (Phone: 828-5443).

VI. EFFECT OF PRIOR PREHEARING CONFERENCE REPORT AND ORDER

The Board's counsel reminded the parties that aside from any changes in filing deadlines that might arise as an outcome of the status conference, the substantive provisions of the Prehearing Order (May 31, 2000) continue in full force and effect and the parties should refer to this document in preparing and filing any prefiled evidence or other documents with the Board.

VII. SERVICE LIST

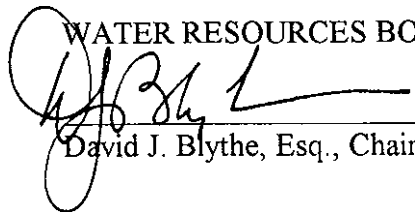
The Board's counsel advised the status conference participants that they should use the certificate of service accompanying the Status Conference Report and Order to determine who should receive copies of all filings, including any notices of withdrawal, motions to dismiss, and proposed decisions. The parties are not required to serve filings on persons listed under the "For Your Information" section of the certificate of service. She further noted that parties or their representatives are responsible for advising the Board of any changes in addresses, including changes related to the assignment of new 911 street numbers or seasonal changes in residence.

The Chair reminded the parties that an original and seven copies of any filing should be served on the Board by the stated deadline in the Status Conference Report and Order. A filing must be received at the Board's office by the stated deadline, not merely placed in the U.S. mail, in order to be considered timely filed.

VIII. ORDER

1. A continuance in this matter is granted until **4:30 p.m., Monday, August 28, 2000.**
2. On or before **4:30 p.m., Thursday, August 24, 2000**, the parties shall jointly file a written request that the two above-captioned appeals be dismissed or Appellants Frank and Lothrop shall file with the Board written notices of withdrawal of their respective appeals. A third option would be for the Applicant to notify the Board in writing that it withdraws CUD application DEC #1999-524, moves for dismissal of the two appeals, and seeks a remand of these matters to the ANR for a further determination whether a new or amended CUD should issue for its revised Project. If none of the above filings are made or a party notifies the Board in writing of the failure of negotiations, a scheduling order shall be issued to bring this matter forward to a hearing on the merits.
3. This order shall become binding on all parties, unless a written objection to its terms is filed, supported by legal memorandum, on or before **4:30 p.m., Thursday, July 20, 2000.**

Dated at Montpelier, Vermont this 12th day of July, 2000.

WATER RESOURCES BOARD


David J. Blythe, Esq., Chair