

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 47-4-19 Vtec

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| BlackRock Construction LLC ACT 250 |
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ENTRY REGARDING MOTION

Count 1, Act 250 District Commission Decision (47-4-19 Vtec)

Title: Motion for Order to Show Cause (Motion 5)

Filer: BlackRock Construction LLC

Attorney: Christopher D. Roy

Filed Date: June 11, 2019

Response in Opposition filed on 06/23/2019 by Lori Marino, Appellant

The motion is DENIED.

BlackRock Construction, LLC (BlackRock) files a motion for order to show cause which in substance is a motion to dismiss the pending appeal. The basis of dismissal is the alleged failure by Appellant Lori Marino to timely publish a copy of the notice of appeal in a newspaper of general circulation. See V.R.E.C.P. 5(b)(4)(B). Appellant responds to the motion providing a copy of the publication.

V.R.E.C.P. 5(b)(4)(B) requires publication within 14 days of service of the notice of appeal. Ms. Marino's appeal was filed on April 5, 2019. Timely service and publication of the appeal was required by the end of April 2019. On April 24, 2019, Ms. Marino sent a request for publication of her appeal to the Williston Observer. Publication of the notice of appeal occurred in the May 2, 2019 Williston Observer.

The only step in the filing of an appeal with this Court that is jurisdictional is the timely filing of the notice of appeal. V.R.E.C.P. 5(b)(1) provides that the "[f]ailure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal." We conclude that Ms. Marino contacted an appropriate newspaper of general circulation, the delay in publication was minimal, and there is no allegation that the delay was due to the fault of Ms. Marino. We therefore decline to take any action that would penalize her.

Furthermore, we note that the purpose of the publication requirement is the give notice to persons potentially affected by a proposed project who are not already parties to the proceedings before the Court. See In re Three Church St. Act 250 Land Use Permit, No. 174-7-06, slip op. at 3 (Vt. Env'tl. Ct. Jan. 3, 2007) (Wright, J.). No potentially interested party has moved to intervene, and should a party move to intervene at this time, the Court would consider the delayed publication without prejudicing the moving party. The minimal delay in publication of this matter does not warrant dismissal of the appeal.

BlackRock's motion is **DENIED**.

So ordered.

Electronically signed on July 12, 2019 at 10:40 AM pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink that reads "Tom Walsh". The signature is written in a cursive, flowing style.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Appellant Lori Marino

Elizabeth Lord (ERN 4256), Attorney for Interested Person Agency of Natural Resources

Evan P. Meenan (ERN 1632), Attorney for Interested Person Natural Resources Board

Christopher D. Roy (ERN 1352), Attorney for Appellee BlackRock Construction LLC