

State of Vermont
Superior Court – Environmental Division

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ENTRY REGARDING MOTION

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In re Chaves Londonderry Gravel Pit
(Appeal of Act 250 District 2 Environmental Commission Decision)

Docket No. 60-4-11 Vtec

Title: Motion to Postpone Trial Due to Scheduling Conflict (Filing No. 4)

Filed: October 11, 2011

Filed By: David Grayck, Attorney for Cross-Appellants Riverside Farm and Thomas Ettinger

Response in agreement filed on 10/20/11 by Hans Huessy, Attorney for Interested Persons
Kraig Hart and Doreena Hart

Response in opposition filed on 10/24/11 by C. Daniel Hershenson, Attorney for Appellants
Chaves Londonderry Gravel Pit and David Chaves

☐ Granted

☒ Denied

☐ Other

Chaves Londonderry Gravel Pit, LLC and David Chaves (“Appellants”) appeal the District 2 Environmental Commission’s (“the Commission”) March 4, 2011 Findings of Fact and Conclusions of Law concerning an Act 250 permit they obtained, subject to certain conditions, for the operation of a pre-existing quarry in Londonderry, Vermont. They also appeal the Commission’s April 11, 2011 Memorandum of Decision on Appellants’ Motion to Alter. Thomas Ettinger, individually and as a representative of Riverside Farm (“Cross-Appellants”), cross-appeals.

Cross-Appellants have now filed a motion to postpone trial due to scheduling conflicts involving two witnesses, Thomas Ettinger and Frank Petralito. They have also filed a supplement to that motion.

First, Cross-Appellants contend that Mr. Ettinger “has commitments to be out-of-state for the winter.” In their supplemental motion, they specify that Mr. Ettinger’s dog breeding and training activities require his absence from Vermont through February. However, by his motion, Mr. Ettinger represents that his schedule is uncertain for mid-February and beyond. Thus, in order to accommodate both parties, we have scheduled the trial for early March, 2012. This will avoid a lengthy delay and will give Mr. Ettinger sufficient notice so that he may schedule his winter travels around the March trial date.

Second, Cross-Appellants argue that Mr. Petralito cannot travel to Vermont during the winter months due to a heart condition. In their supplemental motion, they provide a doctor’s recommendation that Mr. Petralito not travel to Vermont in the winter. They also discuss the parties’ agreement that, if trial is not postponed, Mr. Petralito could testify by telephone rather than by deposition. Although it is not ideal to hear testimony by phone, due to Mr. Petralito’s

medical condition and in order to avoid postponing the trial, the Court will permit his telephonic testimony.

Accordingly, the Court **DENIES** the motion to postpone trial due to scheduling conflicts. Trial has been scheduled to commence on March 5th. Mr. Petralito's testimony will be heard by telephone.

This matter is scheduled for trial **beginning on March 5, 2012** and concluding on **March 9, 2012¹ at the Windham Superior Courthouse in Newfane, Vermont.** The Court directs the parties to plan accordingly.

Thomas S. Durkin, Judge

November 3, 2011

Date

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Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

C. Daniel Hershenson, Attorney for Appellants Chaves Londonderry Gravel Pit and David Chaves

David Grayck, Attorney for Cross-Appellants Riverside Farm and Thomas Ettinger

Hans Huessy, Attorney for Interested Persons Kraig Hart and Doreena Hart

Cross-Appellant Nancy Kemper

Interested Person Angelique Jarvis

Interested Person David A. Jarvis

Interested Person David M. Rathburn

For Informational Purposes Only Natural Resources Board

For Informational Purposes Only Agency of Natural Resources

¹ The trial has been scheduled for consecutive days. However, the Newfane Courthouse will be closed on Tuesday, March 6, 2012, which is Town Meeting Day.