

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001 - 6092

Re: Andrew and Peggy Rogstad et al. Land Use Permit
Hidden Valley Campground #2S1011-EB
Mattson Road
Chester, Vermont

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

In this decision, the Environmental Board ("Board") accepts a settlement agreement, including permit conditions, to which all parties consent, authorizes certain improvements associated with the Hidden Valley Campground, located in Chester, Vermont, and issues Land Use Permit #2S1011-EB pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250").

I. BACKGROUND

On May 10, 1996, the District #2 Environmental Commission ("Commission") issued Findings of Fact, Conclusions of Law, and Land Use Permit #2S1011 ("Permit") to Andrew and Peggy Rogstad, Ingwald and Dorothy Rogstad, Katherine Lagios, and George and Marion Mattson (collectively "Permittees"). The Permit authorized the construction and operation of 56 additional campsites, four new bathhouses, a new office/store/recreational room/manager's residence building, a swimming pool, a pavilion, and infrastructure improvements ("Project"), all of which are associated with a 36-site campground, known as the Hidden Valley Campground, which pre-existed the adoption of Act 250. The Permit also authorized gravel extraction from a portion of the approximately 109 acre tract upon which the Project is located ("Project Tract").

On June 7, 1996, the Chester Concerned Citizens, adjoining landowners Anthony Weinberger and Ron and Layne Herschel, as well as persons who were granted permissive party status in the Commission proceeding, William and Marie Harm, Cheryl Patch, and Rebecca Johnson (collectively "Appellants") filed a Motion to Alter the Permit ("Motion").¹ The Motion sought alterations with respect to blasting, gravel extraction, road improvements and other traffic issues. In some instances, the Motion attempted to clarify perceived inaccuracies in the findings, or to shore up conditions and conclusions with those findings. The Commission reviewed the Motion and on June 26, 1996 issued Land Use Permit #2S1011 (Revised) ("Decision").

On July 26, 1996, Appellants filed an appeal from the Decision ("Appeal"). The Appellants in their Notice of Appeal allege that the Commission erred with respect to the following criteria of 10 V.S.A. §6086(a):

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John Vigneault and Henry Haber are not appellants in the present appeal but they did join in the Motion to Alter.

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Criterion 5 - Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

Criterion 9(K) - Development affecting public investments.

On August 7, 1996, the Permittees filed a cross appeal. The Permittees maintain that although the Commission was correct in issuing the Permit, certain conditions were not necessary to foster the values protected by Act 250. On August 13, 1996, the Board published a notice of prehearing conference. The conference was scheduled for September 3, 1996.

On August 30, 1996, James P.W. Goss, the Permittees' attorney, contacted the Board's staff and indicated that all parties in this matter had reached a settlement agreement, provided that certain additional conditions were added to the Permit. Accordingly, the previously scheduled prehearing conference was canceled. By a memorandum dated September 3, 1996, Board Chair, John T. Ewing, established September 20, 1996 as the deadline by which the parties were required to file proposed stipulated permit conditions. On September 16, 1996, Appellants and Permittees jointly filed their Motion for Inclusion of Stipulated Amended Permit Conditions and Dismissal of Appeal ("Stipulated Permit Conditions"). Appellants and Permittees supplemented their Stipulated Permit Conditions on October 21, 1996 by jointly filing Proposed Findings of Fact and Conclusions of Law.

On October 23, 1996, the Board deliberated concerning this matter. On November 14, 1996, a draft decision was circulated to parties and to the Commission's Coordinator to determine whether, in the view of the Coordinator, any of the Stipulated Permit Conditions or the supporting findings of fact and conclusions of law proposed by the Appellants and Permittees contravened the findings and conclusions reached, or the conditions imposed, by the Commission. Having provided the Coordinator and all parties with an opportunity to review and comment on the proposed findings, conclusions, and conditions, and having found that they are not contrary to the values sought to be protected by Act 250, this matter is now ready for decision. To the extent that any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied. Petition of Village of Hardwick Electric Department, 143 Vt. 437, 445 (1983).

II. FINDINGS OF FACT

1. The Project involves the expansion of a pre-existing campground located between Mattson and Trebo Roads in Chester, Vermont.
2. The Project received an Act 250 Permit from the Commission on May 10, 1996. A revised permit was issued on June 26, 1996. Thereafter, an Appeal of the Permit was filed by certain parties in opposition.
3. Subsequent to filing the Appeal, the Permittees and Appellants reached an accommodation of differences and submitted proposed Stipulated Permit Conditions to the Board. In summary, those proposed Stipulated Permit Conditions involve the following:
 - a. Submission of a traffic report following of buildout of Phase II of the Project;
 - b. Disapproval at this time of Phase IV of the Project with a provision that an amendment application to permit Phase IV may be submitted in the future;
 - c. Disapproval at this time of 17 of the applied for campsites and a portion of Loop Road No. 3 with the provision that an amendment application with an alternative design of the sites may be submitted in the future; the new Permit Condition further states that the Permittees shall not reapply for approval of these sites for a period of 10 years from the date of this Permit or until abutter, Anthony Weinberger, no longer resides at his property, whichever occurs first;
 - d. Certification prior to any construction of Phase III of the Project that the travelway of Mattson Road from Mile .1 as referenced in the findings associated with the original Act 250 Permit is 18 feet wide and has shoulders where practical;
 - e. A description of the various phases of the Project; and
 - f. Provision for replacement of any cultivated shrubs or bushes disturbed at an adjoiner's residence in connection with any road improvements.
4. None of the proposed Stipulated Permit Conditions substantially alters or impacts any of the positive findings and conclusions contained in the Act 250 Permit issued for this Project by the Commission. None of the Stipulated Permit Conditions adopted herein will have an adverse impact on any of the values sought to be protected by Act 250.

III. CONCLUSIONS OF LAW

Act 250 requires the Board to find that a proposed project is in conformity with the 10 criteria of 10 V.S.A. § 6086 and is not contrary to the public health, safety and welfare. In prior cases, the Board has held that, in order to accept a settlement agreement between parties on appeal, the Board must make affirmative findings with respect to the ten criteria of Act 250. See, Faucett Builders, #4C0763-2-EB (Aug. 6, 1996); Cersosimo Lumber Co., Inc., #2W0957-EB (Nov. 29, 1995).

In this case, the Project has received affirmative findings and supporting conclusions of law and has been issued a Permit by the Commission pursuant to Act 250. The proposed Stipulated Permit Conditions in most cases represent additional restrictions on the Project which curtail or delay aspects of the Project. They do not permit an expansion or an intensification of the Project. Consequently, the underlying positive findings and conclusions of the Permit remain sound. The proposed Stipulated Permit Conditions in no way modify the assumptions upon which those affirmative findings and conclusions were based.

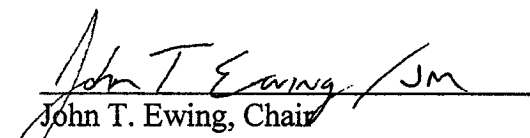
This Board has previously allowed stipulated permit conditions to be incorporated into Act 250 permits on settlement of an appeal where those conditions represent accommodations between parties and have no adverse impact on the values sought to be protected by Act 250. See Faucett Builders, Inc. and Cersosimo Lumber Co., Inc., supra. In this case, none of the underlying assumptions of the Commission's decision below will be disturbed and none of the values sought to be protected by Act 250 will be contravened. Therefore, the Board has concluded that it will incorporate the Stipulated Permit Conditions with minor modifications, and it will issue Land Use Permit #2S1011-EB.

IV. ORDER

The Board hereby incorporates the proposed Stipulated Permit Conditions and issues Land Use Permit #2S1011-EB. Jurisdiction is returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont this 19th day of December, 1996.

ENVIRONMENTAL BOARD


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