

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151

RE: John A. Russell Corporation by Memorandum of  
A. Jay Kenlan, Esq., Decision and  
**Abell, Xenlan, Schwiebert & Hall** Order  
P.O. Box 578 Land Use Permit  
**Rutland, VT 05702** #1R0257-2-EB-1

On March 27, 1990, the Environmental Board issued Land Use Permit Amendment #1R0257-2-EB with supporting findings of fact and conclusions of law. The decision granted the **Permittee's** request to delete a restriction on hours of operation from Land Use Permit Amendment #1R0257-2, allowed the Permittee to withdraw its appeal concerning a second driveway, required the Permittee to obtain a permit amendment prior to use or occupancy of the proposed project, ordered it to re-build an existing driveway to Vermont Agency of Transportation specifications, and determined that the Board did not have discretion to grant requests made by the Permittee to extend construction completion and expiration dates set in Land Use Permit Amendment #1R0257-2. The decision is incorporated by reference.

On April 11, 1990, the Permittee filed a motion for reconsideration. On April 24, 1990, adjoining landowner Joseph E. Kalakowski filed a response to the motion for reconsideration. The Board deliberated on May 9 in Chittenden, Vermont. This matter is now ready for decision. To the extent requests made by the parties in their submissions regarding the motion for reconsideration are not included below, they are hereby denied.

DECISION

On reconsideration, the Permittee makes the following requests and the Board makes the following decisions:

1. That the Board include as part of the permit certain "performance standards" for Lot #5 of the Clarendon Industrial Park which the Permittee filed with the Board on January 16, 1990 as part of proposed findings of fact, decision and order. Mr. Kalakowski does not object to this request.

The Board believes that the Permittee's request is reasonable to the extent the request does not conflict with the Board's decision in this matter. The Board notes that Land Use Permit #1R0257-2-EB requires compliance with all exhibits submitted to the Board as part of this proceeding. Accordingly, the Board will add the performance standards to the exhibits in this case as Exhibit 23. The Board intends that the performance standards be considered part of the

permit amendment to the extent they are consistent with Land Use Permit #1R0257 and all amendments thereto.

2. That the Board clarify whether, in requiring a permit amendment prior to use or occupancy of the proposed project, the Board intends to have all subsequent proposed uses or occupancies reviewed.

The Board does not intend to have all subsequent proposed uses or occupancies reviewed. The Board intends only that the initial proposed use or occupancy be reviewed. Subsequent uses or occupancies need only be reviewed if they constitute material or substantial changes pursuant to Board Rules 2(G), 2(O), and 34. This intent is consistent with so-called "umbrella permit" policies which are often applied to commercial and industrial parks such as that proposed by the Permittee. Under these policies, projects are approved in phases, with only the initial use of each phase typically being reviewed.

The Board notes that the Permittee is establishing a set of performance standards for this project which have become part of the permit. Accordingly, permit amendment applications for proposed use or occupancy may be appropriate for treatment under the minor application process pursuant to Rule 51.

3. That the Board interpret Rule 32 to give the Board discretion to consider and grant the Permittee's request to extend the construction completion and permit expiration dates contained in Land Use Permit Amendment #1R0257-2.

On reconsideration, the Board determines that Rule 32, which concerns the duration and condition of permits, gives it discretion to hear the **Permittee's** request.

The Permittee requests that the Board extend the construction completion date set by the District Commission of October 15, 1990 because this appeal has been pending for much of the time during which the project was to have been constructed. The **Permittee's** request is granted and the Board will extend the construction completion date to two years from the date of this decision.

The **Permittee's** request to extend the permit expiration date is denied. The Permittee contends that the date set by the District Commission of November 1, 2010 does not reflect the economically useful life of the project. The Permittee did not appeal the permit expiration date. Further, the Permittee presented no facts during the evidentiary hearings

in this matter concerning the proposed project's economically useful life on which the Board could make a different decision.

4. That the Board hold oral argument on its motion for reconsideration.

Pursuant to Rule 31(A), the Board has discretion whether or not to hold a hearing on the Permittee's motion. The Permittee's request for a hearing is denied.

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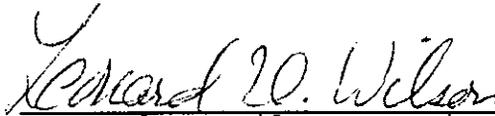
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ORDER

Land Use Permit Amendment #1R0257-2-EB  
(Reconsideration) is hereby issued. Jurisdiction over this  
matter is returned to the District #1 Environmental  
Commission.

Dated at **Montpelier**, Vermont, this 14th day of June,  
**1990.**

ENVIRONMENTAL BOARD



Leonard U. Wilson, Acting Chairman  
Ferdinand Bongartz  
W. Philip Wagner  
Samuel Lloyd  
Stephen Reynes

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