

*Claron*

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

Re: Rome Family Corporation by  
Eugene Rakow, Esq.  
Biederman & Rakow  
Rutland, VT 05039

Memorandum of  
Decision,  
Application  
#1R0410-3-EB

This decision pertains to motions for reconsideration filed with respect to a final decision of the Environmental Board issued on October 11, 1990, denying the above application pursuant to Criteria 5 (traffic) and 9(K) (impact on public facilities) of 10 V.S.A. § 6086(a). As is explained below, the motions are granted in part and denied in part, and the application remains denied.

BACKGROUND

In its decision, the Board found that the project limits the sight distance to less than 560 feet for drivers on the Killington Access Road attempting to turn west onto Route 4. The Board concluded that a minimum 560-foot sight distance is necessary for drivers to safely make this turn, and that the project's limit on sight distance materially jeopardizes the safety of the intersection of Route 4 and the Killington Access Road.

On October 22, 1990, the Town of Sherburne filed a motion for reconsideration pursuant to Rule 31(A), requesting that the Board: (1) revise Finding 20 and the conclusions of law on page 8 of the Board's decision to support its contention that sight distance should be calculated from a point 3.75 feet above pavement; (2) modify the decision to state that sight distance should be based on a design speed of 50 miles per hour (mph) for Route 4 rather than the posted speed of 40 mph; and (3) issue a permit conditioned on achieving a solution to the traffic safety problems found by the Board.

On October 24, 1990, the Applicant filed a reply to the Town's motion and a cross-motion for reconsideration. The Applicant agrees with the Town's request concerning measuring sight distance from a point 3.75 feet above the pavement. The Applicant disagrees with the Town's request to use design rather than posted speed. The Applicant urges the Board to issue a permit with a condition to achieve a 560-foot sight distance, stating that it is left in "limbo" by the Board's decision: it would like to correct the traffic safety problems at the above intersection, but cannot do so without a permit amendment authorizing construction to correct the problems.

10/24/90  
H16M

On November 1, 1990, the Town filed a response to the Applicant's reply and cross-motion. The Board deliberated on November 29 in Berlin.

DECISION

The Board grants the parties' motions to change Finding 20 and the conclusions of law to state that sight distance should be measured from point 3.75 feet above pavement, and accordingly is issuing revised pages 6 and 8 of the decision.

The Board denies the remainder of the parties' motions. With respect to the issue of design versus posted speed, the Board believes its decision is sound for the reasons stated therein. With respect to the question of issuing a permit with conditions, no plan to achieve a 560-foot sight distance was submitted by any party to the appeal. Moreover, requiring reconstruction of the proposed project to achieve a 560-foot sight distance would likely affect Act 250 criteria which are not on appeal. As indicated by plans submitted by the parties to achieve other sight distances, regrading and reconfiguration of existing improvements will likely be necessary, thereby potentially affecting such criteria as soil erosion and aesthetics. 10 V.S.A. § 6086(a) (4), (8).

The Board believes therefore that it is more appropriate for the District Commission to initially consider a plan to achieve a 560-foot sight distance. In this regard, the Board notes that the Applicant is not left in "limbo." 10 V.S.A. § 6087(c) and Rule 31(B) allow the Applicant to file an application for reconsideration with the District Commission within six months of this decision. Such an application must remedy the deficiencies noted by the Board. For this reason, the Board has been specific in its findings and conclusions as to what sight distance the Applicant must achieve and how that distance should be measured.

The Board commends the Applicant's desire to remedy the traffic safety problems caused by its project and urges the Applicant to file a plan with the District Commission to remedy those problems.

---

Memorandum of Decision  
Rome Family Corporation  
Application #1R0410-3-EB  
Page 3

ORDER

The motions for reconsideration are granted in part and denied in part, as described above.

Dated at Montpelier, Vermont this 8th day of January, 1991.

ENVIRONMENTAL BOARD



Stephen Reynes, Chairman  
Ferdinand Bongartz  
Rebecca Day  
Arthur Gibb  
Charles F. Storrow  
W. Philip Wagner

A:ROME.MEM (AWP1)