

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

Re: Roger Loomis d/b/a Green Mountain Archery Range  
and Richard H. Sheldon  
# 1 R0426-2-EB

MEMORANDUM OF DECISION

This decision pertains to a Motion to Alter that was timely filed by John Colvin pursuant to Environmental Board Rule ("EBR") 3 I(A). As explained in more detail below, the Motion to Alter is denied in its entirety.

I. BACKGROUND

On December 18, 1997, the Vermont Environmental Board ("Board") issued Land Use Permit #1R0426-2-EB to Roger Loomis and Richard H. Sheldon ("Permit") together with supporting Findings of Fact, Conclusions of Law, and Order ("Order"). The Permit and Order are incorporated herein in their entirety.

On January 20, 1998, Mr. Colvin filed a Motion to Alter ("Motion") the Permit.

On January 28, Mr. Loomis filed a letter in opposition the Motion ("Opposition").

On February 25, 1998, the Board deliberated relative to the Motion and Opposition.

On February 23, 1998, Mr. Colvin filed a letter in response to the Opposition ("Response").

On February 25, 1998, the Board deliberated.

II. ANALYSIS

The Motion first requests that the Board amend Permit condition 3 to authorize only the 10 existing parking spaces to the northwest of the building. The Permit authorizes 24 spaces in the expanded parking lot together with 8 "overflow" spaces along the southern half of the southeast property line (collectively, the "Permitted Spaces"). This number of spaces will be sufficient to accommodate the approved capacity of the permitted project. The vehicles are located in areas of the subject property where they are least likely to be observable from Mr. Colvin's property. For the reasons stated more fully in the Order, authorization of the Permitted Spaces is supported by the Board's findings and conclusions of law as to 10 V.S.A. § 6086(a)(5), (8), and (10) ("Criteria 5, 8, and 10).

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Second, the Motion requests that the Board add a condition requiring Mr. Loomis to plant evergreen trees along the bank of the parking area rather than along the hedgerow that currently exits on the boundary of Mr. Colvin's property. Nothing in the record supports the alteration requested by Mr. Colvin. For the reasons stated more fully in the Order, the existing hedgerow, the additional evergreens, and the confinement of vehicles to the Permitted Spaces, enables the Board to make an affirmative conclusion as to Criterion 8.

Third, the Motion requests that the Board delete Permit condition 6, regarding the location of the privy, and reinstate condition 9 of the District #1 Environmental Commission's Permit issued March 31, 1997 ("Commission Permit"). When Mr. Colvin appealed the Commission Permit as to 10 V.S.A. § 6086(a)(1)(B) ("Criterion 1 (B)") and Criterion 8, "all issues generally within the scope of the criteri[a were] properly before the Board." In re Taft Corners Associates, 160 Vt. 583, 590-91 (1993). See also Re: Raymond James and Leslie Rowley, #4C0534-1-EB, Findings of Fact, Conclusions of Law, and Order at 8 (Dec. 1, 1993)[EB #577]. A Commission Permit condition addressing the location of the privy is quite naturally within the scope of Criteria 1 (B) and 8, and is therefore within the scope of Mr. Colvin's appeal. Board Permit condition 6 is well-supported by the findings of fact and conclusions of law contained in the Order.

Finally, in the Response, Mr. Colvin argues that because the co-applicancy condition must be met prior to operation and use of the **outdoor archery range**, the Permit and Order can be read to authorize the construction and operation of the Permitted Spaces and the indoor archery range irrespective of the co-applicancy condition. Because he asserts that this interpretation is contrary to Environmental Board Rule ("EBR") 10, he urges the Board to "seriously consider" the points raised in his Motion. In fact, the Board carefully drafted the Permit so that the construction and operation of the Permitted Spaces and the indoor range could proceed regardless of whether the co-applicancy condition is met. Contrary to what Mr. Colvin asserts, EBR 10 does not require the joinder of a co-applicant prior to the issuance of a permit. See, e.g., Re: George and Mariorie Drown, Amended Land Use Permit #7C0905-EB, at 2 (June 19, 1995)[EB #607]; Re: Pilgrim Partnership, #5 W0894-1-EB, Findings of Fact, Conclusions of Law, and Order at 4-5 (Oct. 4, 1988)[EB #373], aff'd, In re Pilgrim Partnership, 153 Vt. 594 (1990). Allowing one segment of the permitted project to proceed prior to satisfaction of the co-applicancy condition is appropriate where the operation and use of the Parking Spaces and indoor archery range can occur without any reference to those Permit conditions which solely concern the outdoor range and which necessitate co-applicancy of the owner of the real property on which the outdoor range is situated.

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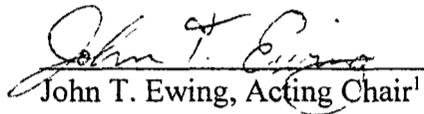
The Board concludes that the Order is sound for the reasons stated therein and that the Permit shall not be altered. The Motion is denied in its entirety.

III. ORDER

John Colvin's Motion to Alter is hereby DENIED in its entirety.

Dated at Montpelier, Vermont, this 26th day of February, 1998.

ENVIRONMENTAL BOARD

  
John T. Ewing, Acting Chair<sup>1</sup>

Arthur Gibb  
Marcy Harding  
Samuel Lloyd  
William Martinez  
Rebecca M. Nawrath  
Robert H. Opel

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On January 1, 1998, Marcy Harding assumed the office of Chair of the Board and John T. Ewing became a Member of the Board. Because Mr. Ewing was the Chair of the Board during the pendency of this proceeding, he served as Acting Chair in connection with Mr. Colvin's Motion.

Board Member Robert G. Page, M.D., who resigned from the Board effective January 1, 1998, did not participate in the deliberations concerning the Motion.