

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

RE: Paul L. Handy by
Allen D. Webster, Esq.
Lisman & Lisman
P.O. Box 728
Burlington, VT 05402-0728

MEMORANDUM OF DECISION
Application #1R0572-1-EB

H. Edward Dyer
Jane D. Woods
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Rutland, VT 05701-0062

I. INTRODUCTION

On December 12, 1986 an appeal was filed with the Environmental Board (Board) by Paul L. Handy (Applicant) from the Findings of Fact, Conclusions of Law, and Denial of Permit issued by District #1 Environmental Commission (Commission) dated November 14, 1986. The Commission denied approval to the Applicant for the sign it illegally erected outside of its restaurant and ordered the Applicant to remove the unapproved sign within four weeks of the decision.

On December 9, 1986 the Applicant filed a Motion to Stay the Commission's order to remove the sign, pursuant to Board Rule 42. The Applicant's position is that removing the sign and constructing another in its place would cost approximately \$10,000 and that the economic hardship to the Applicant is not justified when weighed against the minimum effect of leaving the sign in place pending the appeal before the Board.

II. BACKGROUND OF THE CASE

On September 4, 1985 the Commission issued Land Use Permit #1R0572 to the Applicant approving the construction of a Ponderosa restaurant and an outdoor sign. Condition #12 of the permit reads:

"The project sign shall resemble the sign used for a similar restaurant in Shelburne, Vermont, as shown on Exhibit #47. The sign shall not be internally illuminated."

The approved sign was to be 14'4" tall and 7'4.5" wide.

Instead of constructing the approved sign, the Applicant, without requesting an amendment from the Commission, constructed a sign 7'1" high and 15' wide, mounted on two steel poles for a total height of 21'10". A menu board of approximately 4'x8' is mounted between the poles. Both the

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sign and the menu board are internally illuminated. Accord-
] ing to the Applicant, the sign that was constructed at the
Shelburne restaurant is no longer available from the franchi-
sor.

The Applicant applied for an amendment for approval of
the larger sign after the District Environmental Coordinator
required that it do so. On November 14, 1986, the Commis-
sion issued its decision denying approval of the larger sign
and ordering its removal. The Commission's denial was based
upon its finding that the larger sign does not comply with
Criterion 8 because it creates an undue adverse impact upon
the scenic beauty of the area.

III. DECISION

The Applicant's Motion for a Stay is hereby denied.
The Board is not persuaded that the economic hardship to the
Applicant caused by removal of the sign outweighs the harm
to the public caused by allowing the Applicant to continue
to enjoy the benefits of violating Act 250. As the Appli-
cant admits in its Notice of Appeal, the Applicant disregarded
the conditions of its Land Use Permit and intentionally
constructed a sign substantially different from the one
approved in its permit. The Applicant should not have
constructed the larger sign before obtaining a permit
amendment from the Commission and could be subject to civil
penalties for having done so.

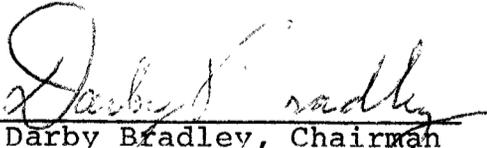
The Board will not reward a willful and intentional
violation of Act 250 by sanctioning its continuation. We
will therefore require the Applicant to comply with the
Commission's November 14 order and remove the sign pending
the outcome of the appeal before the Board.

IV. ORDER

The Applicant's Motion for a Stay is denied. The
Applicant shall remove the illegal sign within one week of
the issuance of this decision, and shall not erect any sign
different from the design approved in Land Use Permit
#1R0572 until further order of the Board.

Dated at Montpelier, Vermont this 12th day of January,
1987.

ENVIRONMENTAL BOARD


Darby Bradley, Chairman