



Capital Heights Associates, Declaratory Ruling #167 (issued March 27, 1985), depends upon the particular circumstances of each case.

2. Deeryard as "Necessary Wildlife Habitat." The Board also declines to rule on this issue until after a hearing on the merits, for two reasons: First, the question of whether the deeryard at the Carrara site is or was "necessary wildlife habitat" depends upon the facts presented in this case, and thus must await an evidentiary hearing. Second, the question of whether any deeryard may be considered "necessary wildlife habitat" under Criterion 8(a) of Act 250, unless the loss of that deeryard threatens the survival of the whitetail deer as a species in Vermont, is currently being contested in another appeal pending before the Environmental Board (In re Southview Associates, Land Use Permit Application #2W0634-EB). The question raised here has been fully briefed by both sides of that appeal. Because the Southview hearings will be completed in April, and the Board expects to render its decision prior to the completion of this case, the Board will defer a decision on the Applicant's motion at this time.

3. Party Status of Shrewsbury. As to Shrewsbury's request for party status under Criteria 1 (air and water pollution) and 5 (traffic congestion and safety), the Board did not have sufficient information to make a decision under Rule 14(B). The Board will therefore require the Town to submit a written statement demonstrating how the interests of the Town may be directly affected under these criteria, or how the Town's participation will materially assist the Board. The statement must be specific and must include a list of witnesses which the Town would present and a synopsis of each witness's testimony. The statement should also include a map showing the boundaries of the Town in relation to the proposed quarry and the location of any highways, intersections, and waterways which the Town claims may be affected. The Board will provide the Applicant with an opportunity to respond prior to ruling on the request.

As to Criterion 8(a) (necessary wildlife habitat), the Board has noted that the February 12 Prehearing Report and Order inadvertently failed to cite Shrewsbury's request for party status under this criterion. The Board finds, however, that the Town did not state a sufficient interest in its March 1 letter to be granted party status under Board Rule 14(A). In addition, it appears that the Vermont Fish and Wildlife Department intends to actively participate in this appeal, and that the Town has failed to demonstrate how it would materially assist the Board in providing testimony or

cross-examination beyond that provided by the Department. The Board therefore denied Shrewsbury's request for party status under Criterion 8(a).

4. Issues on Appeal. The Applicant seeks to limit the issues on appeal only to those findings and decisions of the District Commission which were stated in the Notice of Appeal, specifically, Criteria 8(a), 9(E) and 10. The Town of Shrewsbury seeks to add Criteria 1 and 5, as discussed above. The Estate of Joseph Coccia, which is an adjoining property owner, seeks to appeal the Commission's findings under Criteria 1, 8 (aesthetics), 8(a), 9(E) (i) and (ii), and 10.

The Board sent a notice of the appeal to the parties on January 21, 1987. The Town of Shrewsbury announced its intention to appeal under Criteria 1, 5 and 8(a) at the January 28 prehearing conference. The Estate of Joseph Coccia delivered a letter to the Chairman at the prehearing conference, requesting review of the criteria listed above. Because the prehearing conference was held within the 14 day period required for the filing of cross-appeals under Board Rule 40(D), and because the oral and written representations made by the Town and the Estate at the conference were sufficient to put the Applicant on notice, the Board ruled that these criteria are potentially open for appeal, provided that the person seeking to appeal these criteria has party status.

As an adjoining property owner, the Estate is entitled to party status on all criteria raised in the appeal or cross-appeals, to the extent its property is directly affected by the proposed development. Based upon its letter of January 28, the Estate has demonstrated such an interest under Criteria 1 (air and water pollution), 8 (aesthetics), and 9(E) (extraction of earth resources). The Board will require the Estate to submit further information pertaining to its request for party status under Criterion 10 (regional plan) before rendering a decision.

To summarize, the criteria which are at issue before the Board in this appeal, and the parties having status in those criteria, are as follows:

Criterion 1 (air and water pollution) - Statutory parties; Estate of Coccia. Decision on Shrewsbury request deferred.

Criterion 5 (traffic) - Decision on Shrewsbury request deferred.

Criterion 8 (aesthetics) - Statutory parties; Estate of Coccia.

Criterion 8(a) (wildlife habitat) - Statutory parties.

Criterion 9(E) (extraction of earth resources) - Statutory parties: Estate of Coccia.

Criterion 10 (regional plan) - Statutory parties; Decision on Estate's request deferred.

"Statutory parties" include the Applicant, Town, Town Planning Commission, Regional Planning Commission, and State agencies.

5. Deferral of Commission Findings. The Applicant claims that because the District Commission deferred its findings under Criteria 9(D) (earth resources) and 9(E) (extraction of earth resources), the Commission must be deemed to have made favorable findings on those criteria. No party has appealed the Commission's findings under Criterion 9(D). Since the Commission found that the project will not interfere with the future extraction of earth resources (page 8 of the Commission's Findings and Conclusions), the Board considers this issue to be resolved in the Applicant's favor.

As to Criterion 9(E), the parties have appealed the Commission's decision on both subparagraphs of that criterion, namely, the impact of the project upon the environment and surrounding land uses, and the adequacy of the reclamation plan. Because the hearing before the Board is de novo, any failure by the Commission to make findings under this criterion is harmless error.

6. Conformance with the Local or Regional Plan. Finally, on the question of whether the project is by definition in conformance with the local or regional plan, the Board will defer its decision until after the hearing on the merits.

## II. PARTY STATUS OF MARGIE CONGDON

On March 30, the Board received a letter from Margie Congdon, an adjoining landowner. Due to the death of her mother, she did not submit a timely request for party status in this proceeding but is making such a request at this time. She had party status in the Commission proceedings under Criteria 1, 2, 3, 5, 8, 9, and 10.

As an adjoining landowner, Ms. Congdon is entitled to party status pursuant to 10 V.S.A. § 6085(c) and Board Rule 14(A) (3) to the extent that the proposed project would have a direct effect on her property. She could be given party status under Rule 14(B) (1) if she demonstrates that the proposed project may affect her interests under any of the criteria or under Rule 14(B)(2) if her participation would materially assist the Board.

The Board will provide an opportunity for Ms. Congdon to submit a statement of the criteria under which she requests party status, the specific effects that the project would have on her property or interests, and how her participation could materially assist the Board as described in the Rule.

### III. SCHEDULE FOR FURTHER PROCEEDINGS

The Board will allow the Town of Shrewsbury until April 20 to submit an additional statement pertaining to its party status request under Criteria 1 and 5. The Estate of Coccia must submit an additional statement pertaining to its request under Criterion 10 by that same date. The Applicant shall respond to these requests by May 4. The Board expects to deliberate on the matter at its ~~May 14~~ meeting, and will announce its decision shortly thereafter.

The Board will require the submittal of prefiled testimony of all witnesses whom the parties intend to call on their behalf in these proceedings. Deadlines for updating witness and exhibit lists, and for the filing of prefiled testimony, are set forth in the Order below. The witnesses must be present at the public hearing for cross-examination and for questioning by the Board.

The Board intends to establish time limits for each of the parties for direct examination, cross-examination and rebuttal. These limits will be announced at a later date.

The Board will convene a public hearing on the merits of this appeal on Wednesday, June 10 at 9:30 a.m. in the Clarendon area. A formal notice will be issued at a later date.

### IV. ORDER

1. On or before April 20, the Town of Shrewsbury and the Estate of Joseph Coccia shall submit further written statements and material in support of their requests for party status, and Margie Congdon shall submit written

material in support of her request for party status, as described above. The Applicant shall file its response to those statements on or before May.

2. On or before May 27, the parties shall submit a list of all persons whom they intend to call as witnesses in this proceeding.

3. On or before June 3, the parties shall submit a list of exhibits which they intend to introduce at the public hearing. Copies of the exhibits shall be sent to the other parties or, if reproduction of an exhibit is impractical, shall be made available for inspection.

4. On or before June 3, the parties shall submit the prefiled written testimony of each witness whom they intend to call. The prefiled testimony may be in report, question-answer or other form as the witness chooses. This requirement shall not pertain to the project overview, testimony in conjunction with visual exhibits (such as slides or photographs), or rebuttal testimony, to the extent such written testimony is infeasible.

5. A public hearing will be convened on Wednesday, June 10 at 9:30 a.m. in the Clarendon area at a place to be announced. The Board will take a site visit during the day.

6. The parties shall submit an original and ten copies of all prefiled testimony, legal memoranda and other documents filed with the Board, and shall mail one copy to the other parties listed on the Certificate. A copy of all materials shall be mailed to the Town of Shrewsbury until a decision on Shrewsbury's party status request has been issued.

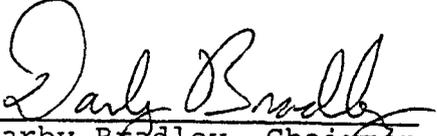
The hearing will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing to have a stenographic reporter present or a transcript of the proceedings shall make his or her own arrangements for the same. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

Participants must contact the Board by April 13 concerning any scheduling conflicts.

Pursuant to Board Rule 16, this Order will be binding on all parties who have received notice of the prehearing conference, unless there is a timely objection to, a showing of cause for, or fairness requires that a requirement of this Order be waived. Any objections must be filed by April 13.

Dated at Montpelier, Vermont this 3rd day of April,  
1987.

ENVIRONMENTAL BOARD

  
Darby Bradley, Chairman

MDJPC14