

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

RE: J. P. Carrara & Sons, Inc. by Memorandum of Decision
A. Jay Kenlan, Esq. Land Use Permit #1R0589-EB
P.O. Box 578
Rutland, VT 05701

At the close of the hearing on August 26, 1987 in the above matter, the parties agreed to submit briefs on the issue of whether, under Criterion 10, the Board should review conformance of the project with the policies of the **Rutland** Regional Plan, and if so, whether the project conforms with those policies. The Board received on September 4 a Motion for Summary Order Re Criterion 10 and supporting memorandum from the Applicant and on September 8 a Memorandum re Criterion 10 from adjoining landowner Margie Congdon.

ISSUES

The Applicant argues that because the **Rutland** Regional Plan expired as of January 1, 1987, no regional plan was in effect on January 9, the date this appeal was filed. The Applicant asserts that a law that lapses during an administrative proceeding no longer has any effect, especially when the law operates to restrict the rights of the applicant. Therefore, the Applicant claims, the question of whether this project is in conformance with the regional plan is inapposite. Since the Town of Clarendon also has no plan in effect, Criterion 10 does not apply.

The Applicant argues, in the alternative, that even if the Regional Plan applies, the project conforms with its policies and therefore satisfies Criterion 10.

Adjoining property owner Margie Congdon believes that the Board must review conformance of the project with Criterion 10 because the **Rutland** Regional Plan was in effect when the Commission issued its decision and that the Applicant placed the question of conformance with Criterion 10 at issue before the Board. Ms. Congdon also contends that the project does not conform with the Regional Plan.

DECISION

The Board believes that the Applicant is correct in its assertion that the **Rutland** Regional Plan does not apply to this project because it expired before the Notice of Appeal was filed. The so-called "vesting" rule that the Vermont Supreme Court announced in Smith v. Winhall Planning Commission, 140 Vt. 178 (1981), serves to protect the

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applicant from changes in zoning ordinances enacted after the applicant had filed its application, that restrict the applicant's rights. The purpose of the court's adoption in Smith of the minority rule, that the law and regulations that govern are those in effect at the time an application is filed, is to provide certainty to applicants regarding the laws under which they must operate, and to protect them from subsequent changes in the law that are enacted to thwart their development plans. There would be no reason to apply the same rule to changes in laws that are less restrictive of applicants' rights, since no protection against this type of change is needed.

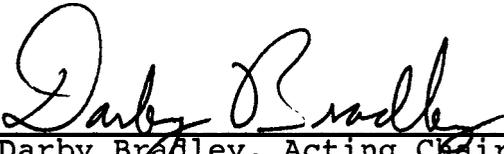
Since the Board has determined that the **Rutland** Regional Plan is not applicable to this project, it is not necessary to address the other issues briefed by the parties.

ORDER

The **Rutland** Regional Plan is not applicable to this project since it expired before the date of filing of this appeal. Since the Town of Clarendon also has no plan in effect, conformance with Criterion 10 is not an issue in this proceeding and no further evidence on Criterion 10 will be considered.

Dated at Montpelier, Vermont this 28th day of September, 1987.

ENVIRONMENTAL BOARD


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