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

RE: Finard-Zamias Associates by
C. Daniel Hershenson, Esq.
P.O. Box 909
Norwich, VT 05055

Memorandum of
Decision,
Land Use Permit
#1R0661-EB

Edward Dyer
P.O. Box 62
Rutland, VT 05701

Jane Woods
3504 Wilderness Blvd. W.
Parrish, FL 34219

Paul Handy
1907 Shelburne Road
Shelburne, VT 05482

This decision pertains to a motion to delete and/or modify permit conditions filed pursuant to Rule 31(A) by the Permittee on December 3, 1990. On December 27, the Permittee filed a correction to that motion. On January 3, 1991, the Vermont Natural Resources Council and Citizens for Responsible Growth - **Rutland** filed a response to the motion. The Board deliberated on January 9 in Montpelier.

DECISION

The motion is denied because it is inappropriate under Rule 31(A).

The motion concerns conditions contained in Land Use Permit #1R0661 issued by the District #1 Environmental Commission on November 8, 1989. The Permittee argues that these **conditions** are not supported by the Board's findings and conclusions on appeal. Implicit in this argument is the belief that the conditions relate to the appeal.

Land Use Permit #1R0661 was appealed to the Board on November 8, 1989. After many hearings and extensive deliberation, the Board issued a final decision and an amended permit on November 19, 1990. The appeal did not expressly include appeal of the permit conditions cited in the Permittee's motions. No argument was presented concerning the conditions to the Board during the course of the appeal or prior to final decision. This motion is the first time the Permittee has argued that those conditions should be struck or modified.

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Rule 31 is entitled "Reconsideration of Decisions." Rule 31(A) provides that within 30 days of final decision, parties may file such motions to alter as are appropriate to the decision. Rule 31(A) also states that "[a]lterations by board or district commission motion shall be limited to instances of manifest error, mistakes, and typographical errors and omissions." The Board has stated that motions to alter are appropriate for argument concerning improper procedure, or permit conditions issued by the Board, in the decision for which reconsideration is sought. Re: Berlin Associates, Application #5W0584-9-EB, Memorandum of Decision at 5 (April 24, 1990). The Board has also stated that it is inappropriate to use a motion to alter to raise new arguments. Id. at 4; Re: Swain Development Corp., et al., Application #3W0445-2-EB, Memorandum of Decision at 2, 5 (Nov. 8, 1990). This interpretation is based on the need to maintain the integrity of the Board's appeal **process** by ensuring that arguments and evidence are introduced prior to final decision.

The **Permittee's motion** is new argument. If the Permittee wanted the Board to change the District Commission's conditions, it should have appealed them or sought to raise them before the Board prior to final decision. It is inappropriate to wait until after a final decision to ask the Board to reconsider matters which it was not asked to consider in the first place. The District Commission is the proper forum for consideration of amendment of District Commission conditions which were not appealed or raised before the Board's decision.

Accordingly, the Board does not reach the merits of the **Permittee's** motion.

Dated at Montpelier, Vermont this 16th day of January, 1991.

ENVIRONMENTAL BOARD

Stephen Reynes

Stephen Reynes, Chairman
Rebecca Day
Arthur Gibb
Samuel Lloyd
Charles Storrow
W. Philip Wagner