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

RE: James Davenport, Jr.
Barbara Davenport by
John A. Facey III, Esq.
P.O. Box 975
Rutland, VT 05701

Memorandum of Decision
Land Use Permit
#1R0667-EB

This decision pertains to the scope of this appeal and to various requests for party status. As is explained below, the Board defers its decision on whether this appeal may include Criterion 1(B) (waste disposal). The Board determines that the scope of this appeal is otherwise limited to Criteria 2 and 3 (water supply), 5 (traffic) and 8 (aesthetics). The Board grants party status to Lee B. Houghton on Criterion 5, to William S. Dolt on Criteria 5 and 8, and to Charles P. Huddleston on Criteria 2 and 3. The Board denies party status to **Manya** Relo, but urges that Messrs. Houghton and Dolt call her as a witness on Criteria 5 and 8 if appropriate.

BACKGROUND

The District #1 Environmental Commission issued Land Use Permit #1R0667 on June 5, 1989. That permit authorizes the Permittee to subdivide 72 acres located in Wallingford into 25 lots, including 23 residential lots, a community leach field, a firepond, 3,100 feet of roadway, and deer wintering areas. Lee B. Houghton and William S. Dolt (the Appellants) filed an appeal of this permit on July 3, 1989. The Appellants challenge the findings of the District Commission on Criteria 1 (air pollution), 2 and 3 (water supply), 5 (traffic), 8 (aesthetics) and 9(K) (public investment in highways) of 10 V.S.A. sec. 6086(a). Charles Huddleston and **Manya** Relo filed requests to participate in the appeal on July 23, 1989. Mr. Huddleston requests to participate on Criteria 1(B) (**waste disposal**), 2 and 3. Mrs. Relo requests to participate on Criteria 5, 6 (educational services) and 8. Criteria 1(B) and 6 are not otherwise on appeal.

On August 1, 1989, Environmental Board Chairman Leonard U. Wilson convened a prehearing conference in Wallingford, Vermont. At the prehearing, preliminary issues were **identified concerning** the scope of the appeal and party status. Various **deadlines** were set at the prehearing, include deadlines for submissions on the scope of appeal and **on qualification for party status**. On **August 7**, Mr. Huddleston filed a submission regarding party **status**. A prehearing conference report was issued by the Board on **August 10**. The Permittees filed a memorandum of law on August 18. No submissions were received from the Appellants and Mrs. Relo beyond that which they submitted prior to the prehearing.

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Mr. Houghton was granted party status by the District Commission on Criteria 2, 3 and 5. Mr. Houghton resides nearby but not next to the proposed project and seeks to appeal and to participate on Criteria 1, 2, 3, 5, and 9(K). Mr. Houghton did **not request** party status before the **District** Commission on Criteria 1 and 9(K). The Permittees object to Mr. Houghton's party status on all criteria but 5.

Mr. Dolt was granted party status by the District Commission on Criteria 5 and 8. Mr. Dolt resides on land adjoining the site of the proposed project and seeks to appeal and to participate on Criteria 1, 2, 3, 5, 8, and 9(K). Mr. Dolt did not request party status before the District Commission on Criteria 1, 2, 3, and 9(K). The Permittees object to Mr. Dolt's party status with respect to all criteria but 5 and 8.

Mr. Huddleston was granted party status by the District Commission on Criteria 2 and 3. Mr. Huddleston resides nearby but not next to the proposed project and seeks to participate on Criteria 1(B), 2, and 3. The Permittees object to Mr. Huddleston's request for party status.

Mrs. Relo was not granted and apparently did not seek party status before the District Commission. Mrs. Relo resides nearby but not next to the proposed project and seeks **to participate** on Criteria 5, 6, and 8. The Permittees object to this request.

DECISION

The issues before the Board are:

1. Whether the Appellants, Mr. **Huddleston**, or Mrs. **Relo** have the right to appeal certain criteria on which they did not have party status before the District Commission. The criteria at issue here are: for Mr. Houghton, 1 and 9(K); for Mr. Dolt, 1, 2, 3, and 9(K); for Mr. Huddleston, 1(B); and for Mrs. Relo, 6.
2. Whether the Board should grant party status pursuant to Board Rule 14(B) to the Appellants, Mr. Huddleston, and Mrs. Relo. The criteria at issue here are: for Mr. Houghton, 1, 2, 3, 5, and 9(K); for Mr. Dolt, 1, 2, 3, **5, 8, and 9(K)**; for Mr. Huddleston, 1(B), 5, and 6; and for Mrs. **Relo, 5, 6, and 8.**

The Board determines these issues as follows:

1. The Board defers the question of whether Mr. Huddleston can appeal Criterion 1(B). The scope of the appeal is otherwise limited to Criteria 2 and 3 (water supply), 5 (traffic), and 8 (aesthetics).

In previous rulings, the Board has determined that persons may appeal criteria on which they did not have party status under limited circumstances. These circumstances are: (1) if the persons requested party status from the district commission on the criteria which they are seeking to appeal and were denied such status; or (2) if substantial inequity or injustice would result if the persons were not allowed to appeal those criteria. Re: Sherman Hollow, Inc., Application #4C0422-5-EB, Memorandum of Decision at 4 (February 3, 1988); Re: Maple Tree Place Associates, Application #4C0775-EB, Memorandum of Decision at 12-13 (December 22, 1988); and Re: Swain Development Corporation, Land Use Permit #3W0445-2-EB, Memorandum of Decision at 4-7 (July 31, 1989). The reasoning of these decisions applies here.

The Appellants have not demonstrated standing to raise any criteria on appeal but those on which they had party status before the District Commission. They have made no submissions on this issue and have not attempted to prove either that they made requests for party status which were denied or that substantial injustice or inequity would occur if the appeal is disallowed on Criteria 1 and 9(K). Accordingly, the Appellants may maintain an appeal only on Criteria 2, 3, 5, and 8.

Mrs. Relo and Mr. Huddleston have each asked to participate on criteria which are not otherwise on appeal. The Board treats these as **requests** to appeal the relevant criteria. Mrs. Relo seeks to raise Criterion 6. The Board determines not to hear Criterion 6 because Mrs. Relo has not demonstrated either that she requested party status on this criterion and was denied it or that disallowing her from raising Criterion 6 would work a substantial injustice or inequity.

Mr. Huddleston seeks to raise Criterion 1(B). The Board is unable at this time to reach a decision on this request and will defer decision until its next meeting scheduled for September 6, 1989, at which time it will further deliberate. If necessary because of the Board's decision, deadlines set at the prehearing conference for submission of testimony will be adjusted with respect to Criterion 1(B).

2. Mr. Dolt is denied party status on Criteria 2 and 3 because no showing was made of his qualification for party status on those criteria. As set out in the prehearing conference report of August 10, Mr. Dolt has party status on Criteria 5 and 8.

Mr. Houghton is denied party status on Criteria 2 and 3 because no showing was made of his qualification for party status on those criteria. As set out in the prehearing conference report, Mr. Houghton has party status on Criterion 5.

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Based on his submission received August 7, 1989, Mr. Huddleston is granted party status pursuant to Board Rule 14(B)(1) on Criteria 2 and 3 as a party whose interest may be affected under those criteria.

Manya Relo is denied party status in this appeal because no adequate showing was made of her qualification for party status. The Board is concerned that Mrs. Relo did not attend the prehearing conference but nonetheless desires to be heard on Criteria 5, 6, and 8. In this respect, the Board notes that she can seek to be called as a witness by Messrs. Houghton and Dolt on Criteria 5 and 8. The Board also advises her that she can request the Board to reconsider its decision.

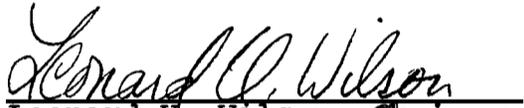
At the prehearing conference, a deadline of September 5, 1989 was set for submission of lists of witnesses and exhibits. Because of the date this decision is being released, that deadline is changed to September 12, 1989.

ORDER

1. With the possible exception of Criterion 1(B), the scope of the appeal is limited to Criteria 2, 3, 5, and 8.
2. The Board will further deliberate on whether Criterion 1(B) may be raised in this appeal at its next meeting scheduled for September 6, 1989. Such deliberation will not be in a public hearing.
3. Lee B. Houghton is granted party status pursuant to Board Rule 14(B)(1) on Criterion 5. He is denied party status with regard to Criteria 2 and 3.
4. William S. Dolt is granted party status pursuant to Board Rule 14(B)(1) on Criteria 5 and 8. He is denied party status with regard to Criteria 2 and 3.
5. Charles P. Huddleston is granted party status pursuant to Board Rule 14(B)(1) on Criteria 2 and 3.
6. **Manya** Relo is denied party status. The Board encourages Messrs. Houghton and Dolt to call her as a witness on Criteria 5 and 8 if appropriate.
7. The prehearing conference order is modified as follows: On or before September 12, 1989, parties shall file final lists of witnesses and exhibits.

Dated at Montpelier, Vermont this 30th day of August, 1989.

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman
Ferdinand Bongartz
Elizabeth Courtney
Arthur Gibb
Samuel Lloyd
W. Philip Wagner

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