

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. § 6001-6092

Re: Herbert and Patricia Clark
#1R0785-EB

MEMORANDUM OF DECISION AND ORDER

On January 3, 1997, a three member hearing panel ("Panel") of the Environmental Board ("Board") issued Proposed Findings of Fact, Conclusions of Law and Order ("Proposed Decision"). On January 17, 1997, Ernst and Louise Pedersen, James and Donna DiSabito, Edward and Lauren Schwiebert, Alex and Sharon Green and the representative of the Estate of Robert Field ("Appellants") filed a Request for Oral Argument and Memorandum Objecting to Recommendations of the Panel ("Appellants' Objections"). On January 20, 1997, Herbert and Patricia Clark ("Applicants") filed a Memorandum of Law in Opposition to the Appellants' Request to Admit Additional Testimony ("Applicants' Objections"). On January 22, 1997, the Board heard oral argument pertaining to the objections and deliberated thereon.

I. SUPPLEMENTAL EVIDENCE

The Board would like supplemental evidence from the parties regarding the Project's compliance with Criterion 1(B) (waste disposal) ("1(B)") which provides:

A permit will be granted whenever it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulations regarding disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

10 V.S.A. § 6086(a)(1)(B). The Board's interest in such evidence is based, in large part, upon pages 16-20 and footnotes 3 and 4 of the Proposed Decision.

The Board would also like limited supplemental evidence regarding the Project's compliance with Criterion 8 (aesthetics) and Criterion 10 (town plan). The Board will conduct a site visit and exercise its authority under Environmental Board Rule ("EBR") 4 to obtain such evidence. No supplemental evidence from the parties regarding Criterion 8 (aesthetics) and/or Criterion 10 (town plan) or any of the criteria, other than that which pertains to 1(B) as noted above, is required from the parties or will be considered by the Board.

II. RECONVENED HEARING

Pursuant to EBR13, the Board will reconvene the hearing in this matter to receive the supplemental evidence ("Hearing").

Docket #652M1

III. BURDEN OF PROOF AND 1(B)

The WW Permit is in evidence. It creates a rebuttable presumption that the Project complies with 1(B) ("Presumption"). The Appellants challenge the Presumption. In doing so, they carry the burden of proof. See EBR 19. If the Appellants' challenge is successful, the burden of proof shifts back to the Applicants and the WW Permit serves only as evidence of compliance with 1(B). Id. and MBL Associates, Inc., #4C0948-EB, Findings of Fact, Conclusions of Law, and Order at 22-27 (May 2, 1995).

IV. SUBMITTAL OF EVIDENCE BY PARTIES AND BOARD REVIEW

At the Hearing, the Board will first consider any evidence submitted by the Appellants regarding the Presumption, then the Board will consider any evidence submitted by the Applicants regarding the Presumption. Thereafter, the Board will consider any rebuttal evidence submitted by the Appellants regarding the Presumption.

Upon receipt of the admissible evidence submitted by the parties regarding the Presumption, the Board will immediately recess the Hearing and deliberate on whether or not the Presumption is rebutted. Immediately thereafter, the Board will reconvene the Hearing and state on the record its conclusion regarding whether or not the Presumption is rebutted. If the Board concludes that the Presumption is not rebutted, the hearing will be recessed. If, on the other hand, the Board concludes that the Presumption *is* rebutted, the Board will consider any evidence submitted by the Applicants regarding the Project's 1(B) compliance, and then the Board will consider any evidence submitted by the Appellants regarding 1(B) compliance. Thereafter, the Board will consider any rebuttal evidence submitted by the Applicants regarding 1(B) compliance.¹

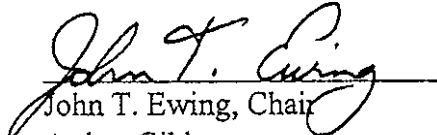
¹ *The Appellants may choose to submit to the Board at the February 25, 1997 hearing the evidence offered/attached to their September 18, 1996 Motion to Admit. Consequently, the Motion is, at this point in the proceedings, moot, and the Board will not rule on it.*

V. ORDER

1. On or before Wednesday, February 19, 1997, each party shall file the original and ten copies of any exhibit which the party intends to present at the hearing.
2. On or before Wednesday, February 19, 1997, each party shall file a list of witnesses that the party expects to present at the hearing and an estimate of the amount of time each person will require to present direct testimony.
3. The Board will convene a hearing in this matter on Tuesday, February 25, 1997 at 9:30 a.m. in the Ballroom of the **Brandon** Inn at 20 Park Street, **Brandon**, Vermont.
4. The Board will conduct a site visit on Tuesday, February 25, 1997 promptly after convening the hearing.

Dated at Montpelier, Vermont this 5th day of February, 1997.

ENVIRONMENTAL BOARD


John T. Ewing, Chair
Arthur Gibb
Samuel Lloyd
Rebecca Nawrath
Marcy Harding
Steve E. Wright
William Martinez

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