

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

RE: Champlain Oil Co., Inc. and McDonald's Corporation
Land Use Permit Amendment Application #1R0862-1-EB

MEMORANDUM OF DECISION

This proceeding concerns Land Use Permit Amendment Application # 1R0862-1 seeking authorization to convert the previously approved Subway shop to a McDonald's drive-thru restaurant involving on-site and off-site infrastructure and traffic changes, all to be located on the north end of Brandon Village, Vermont west of Route 7.

This Memorandum of Decision sustains Champlain Oil Co., Inc. and McDonald's Corporation's ("Applicants") limited objection to the Continuance Order and grants Applicants request to modify the Order.

I. PROCEDURAL SUMMARY

On May 11, 2000, Champlain Oil Co., Inc. received Act 250 Permit #1R0862 for a project generally described as construction of a 2300 square foot addition to the existing "Jiffy Mart" to house a "Subway" deli sandwich outlet, seating for 36, an increase in fuel pumps from 2 to 3, along with infrastructure improvements. On September 12, 2000, Applicants filed Land Use Permit Amendment Application # 1R0862-1 with the District #1 Environmental Commission ("Commission") seeking authorization to convert the previously approved Subway shop to a McDonald's drive-thru restaurant involving on-site and off-site infrastructure and traffic changes, all to be located on the north end of Brandon Village, Vermont west of Route 7 ("Project"). On January 4, 2001 the Commission issued Findings of Fact, Conclusions of Law, and Order ("Decision") denying the amendment application for the Project.

On February 2, 2001, Applicants filed an appeal with the Vermont Environmental Board ("Board") from the Decision alleging that the Commission erred in its conclusions concerning 10 V.S.A. § 6086(a)(5) and (9)(K). The appeal was filed pursuant to 10 V.S.A. § 6089(a) and Environmental Board Rule ("EBR") 6 and 40.

Along with the Notice of Appeal, Applicants requested a continuance pending resolution of the criteria on appeal.

In a February 26, 2001 Continuance Order, Chair Harding granted Applicants request for a continuance with conditions.

On March 13, 2001, Applicants filed a limited objection to the Continuance Order.

II. DISCUSSION

The February 26, 2001 Continuance Order states the following:

Applicants' request for continuance is granted on the following conditions. Because the taking of an appeal from a commission decision to the Board removes jurisdiction relative to an application from a commission and places it solely with the Board, should Applicants seek reconsideration of a revised project, Applicants must first successfully seek dismissal of their appeal before the Board. The Board will also require that Applicants provide bi-monthly status reports concerning their efforts with a revised project and their intent to seek a reconsideration before the Commission.

Applicants object to the Continuance Order and request that the words "or remand" be inserted in the above-quoted language after "dismissal."

The Board grants Applicants request as set forth in Section III. Order below.

III. ORDER

1. Applicants' request to revise the February 26, 2001 Continuance Order is GRANTED.

2. Section III. Discussion of the February 26, 2001 Continuance Order is revised as follows:

Applicants' request for continuance is granted on the following conditions. Because the taking of an appeal from a

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commission decision to the Board removes jurisdiction relative to an application from a commission and places it solely with the Board, should Applicants seek reconsideration of a revised project, Applicants must first successfully seek dismissal or remand of their appeal before the Board. The Board will also require that Applicants provide bi-monthly status reports concerning their efforts with a revised project and their intent to seek a reconsideration before the Commission.

The remainder of the February 26, 2001 Continuance Order remains unmodified.

Dated at Montpelier, Vermont this 28th day of March, 2001

ENVIRONMENTAL BOARD

Marcy Harding, Chair
Jill Broderick
Jack Drake
George Holland
Samuel Lloyd
William Martinez
Alice Olenick