

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

RE: Okemo Mountain, Inc. Findings of Fact, Conclusions  
RFD #1 of Law and Order  
Ludlow, VT 05149 Application #2S0351-8-EB

This decision pertains to appeals filed with the Environmental Board ("Board") on August 8, 1986 by Michael Fassler, Thomas Edwards and Robert Rossini ("Appellants") from the decision of the District #2 Environmental Commission ("Commission") dated July 3. That decision approved the issuance of Land Use Permit #2S0351-8 authorizing a project, known as the "Snowbridge" development, including the creation of a seven-lot subdivision and the construction of seven single-family homes, 1200 feet of road and a ski bridge. The Commission denied the Appellant's motion for reconsideration on July 30. Appellant's objections to the permit relate to Criteria 1(A) (headwaters), 2-3 (water supply) 5 (traffic) and 8 (aesthetics).

A public hearing was convened by the Board in this matter on October 15, 1986 in Ludlow, Vermont with the following participants in attendance:

Permittee Okemo Mountain, Inc. by George Nostrand, Esq.  
Appellants Fassler, Edwards, and Rossini by Frederick J. Glover, Esq.

The hearing was recessed on October 15, pending a site visit, the filing of proposed findings of fact and conclusions of law by the parties, and deliberation by the Board on November 5. The Board conducted a site visit on October 15. At its deliberative session, the Board determined that additional information was required regarding the railings proposed for the ski bridge. The Permittee provided the requested information which was incorporated into the record without objection from the parties. On December 3 the Board determined the record complete and adjourned the hearing. This matter is now ready for decision. The following findings of fact and conclusions of law are based upon the record developed at the hearing. To the extent that the Board agrees with and found necessary any findings prepared by the parties, they are incorporated herein; otherwise, the requests to find are hereby denied.

I. ISSUES IN THE APPEAL

Party Status

At the Prehearing Conference, the Permittee questioned the standing of the Appellants as proper parties to bring this appeal. The Chairman made the preliminary ruling that

the Appellants were properly granted party status in the Commission proceedings and have the right to bring this appeal because all of the Appellants own property which adjoins the project site and have interests that will be directly affected by the project and are the subject of this appeal. Having heard no objection to the Chairman's preliminary ruling, the Board confirms the standing of the Appellants to bring this appeal.

#### Substantive Criteria

The Appellants waived their appeal on Criteria 1(A) (headwaters) and 2 (sufficiency of water supply). Under Criterion 3, Appellant Fassler is concerned about the impact of the access road on an existing well serving the lot owned by Fassler which adjoins the project site, as well as two other lots. He is also concerned that the drilling of additional wells to serve the seven residences to be built under the permit will cause an undue burden on his water supply.

Under Criterion 5 (traffic), the Appellants believe that traffic on the access road will create a hazard to pedestrians and skiers as well as to occupants of an adjacent house.

Under Criterion 8 (aesthetics) the Appellants object to the cutting and removal of trees along the **Sachum** Trail and argue that the bridge and abutments will obstruct the views from their homes.

#### II. FINDINGS OF FACT

1. The project as proposed consists of a seven-lot subdivision for seven single-family residences with 1200 feet of road and a ski bridge located on lands of Okemo Mountain, Inc. between the **Sachum** Trail and the Chair Two Lift Line. The road and subdivision are adjacent to a pre-existing subdivision located along West Village Road (Town Highway #21).
2. The subdivision road extends across Lot #39 from its intersection with Town Highway #21, crosses **Sachum** Trail, and proceeds into the lands to be subdivided. As the road increases in elevation it turns toward the west and extends into the Chair Two Lift Line. The road ends at a cul-de-sac about 1200 feet from its **beginning. Slopes of the road do not exceed 12%.** Okemo owns approximately 25 acres uphill and to the west of the cul-de-sac which could have access via the road.

3. The ski bridge to be constructed in the **Sachum** Trail over the subdivision road will be 60 feet long and 25 feet wide. It will extend from concrete wing walls at the ends of built-up earth ramps. The deck of the bridge will be approximately 14½ feet above the road surface. Side slopes of the earth ramps will be riprapped under the bridge.

Criterion 3 - Burden on an Existing Water Supply

4. Water will be supplied to the residences within this subdivision by deep bedrock wells drilled on each lot. Wells already drilled on Lots **S1** and **L1** are 265 feet and 400 feet deep and yield 8 and 2 gallons per minute respectively.
5. The Department of Water Resources issued a Certification of Compliance #2S0351-8 on June 10, 1986, after finding that the proposed project is in conformance with the Department's Environmental Protection Regulations for Subdivisions which pertain to sewage disposal and water supply.
6. The closest existing well is located on Lot #39. It is a deep bedrock well which supplies water to three dwellings: the house on Lot #39 owned by Okemo, the adjacent Fassler residence, and the Edwards residence. When originally drilled, the well yielded approximately 20 gallons per minute. The well is located downslope from the access road, and it is surrounded by a large galvanized steel culvert approximately 6 feet in diameter and 10 feet deep. As currently installed, groundwater is able to infiltrate the culvert and reach the well casing. Because the top of the well casing is not sealed, and because it does not extend more than 6 inches, more or less, above the bottom of the culvert, water is able to enter the well casing at the top. Visual evidence suggests that groundwater has reached this level in the past.
7. The well is located 25 feet from the edge of the roadway as required by the Certification of Compliance. Runoff from the road will not flow toward the well because the roadside ditch will direct surface water away from the well. The access road will not be paved and only sand will be used for winter road maintenance.
8. The Permittee indicated that it would grout the steel culvert which surrounds the well to reduce surface water infiltration if required to do so.

9. While there was some evidence that water flows from the Fassler well had dropped from 20 gpm when drilled in the 1960s to 8 gpm in 1986, there was not substantial evidence upon which the Board could conclude that these flows would be further reduced by the proposed project or that there would be insufficient water from the Fassler well to supply the three existing residences.
10. Based upon the Certification of Compliance and the findings above, the Board finds it **unlikely** that the drilling of the seven new wells will unreasonably burden the existing water supply which supplies the Fassler well.

Criterion 5 - Highway Congestion and Safety

11. The subdivision access road has been designed with grades and curves which are sufficient for use by emergency vehicles. The sight distances at the intersection with Town Road #21 are adequate in both directions given the 25 MPH speed limit on the Town road.
12. It is estimated that there are currently 100 vehicle trips per day on the Town road. This subdivision will generate approximately 42 trips per day. During the "design hour," the project will add approximately 4 trips to the existing 20 design hour trips on the Town road, an amount which will not result in significant congestion or unsafe conditions. Level of Service "A" will be maintained at all times on the Town road.
13. As the road crosses Lot #39, it curves around and passes within five feet of the existing house on this lot. Although the house's driveway off the access road terminates on the west side of the house, well away from the road, conflicts between motorists and pedestrians are very possible because one major entrance to the house is located on the east side facing the road and the other is located on the north also within a few feet of the road. Given the close proximity of the house to the access road and the fact that the road curves around the house, the potential also exists for safety problems for vehicles traveling on the access road. The minimal distance of five feet from the edge of the traveled portion of the road to the house provides almost no margin for driver error in this location.

14. The ski bridge as designed would be safe for skiers and motorists. Orange snow fencing 4 feet high will be installed along the uphill approaches on **Sachum** Trail to direct skiers safely toward the bridge and away from the road.
15. The Permittee will also install durable fencing along the north side of the access road where it swings into the lift line trail under Chair Two. Because the houses constructed on Lots **S1** and **L1** also extend into this ski trail, the same kind of durable fencing is also required along the sides of the residences on Lots **L1** and **S1** to maintain safe conditions for skiers. This fencing, when combined with trail grooming, will keep skiers well away from both the roadway and the houses.
16. Construction of the road and ski bridge will not **significantly** disrupt the access of existing lots to the ski trail network. Skiers from these lots will continue to have direct access to the trails. However, in some instances a small amount of climbing or traversing may be required.
17. The Board finds that unless appropriate conditions are added to the permit to increase the separation between the house on Lot **#39** and the access road and to require the installation of durable fencing along the access road where it swings out into Chair Two Lift Line and along the houses constructed on Lots **L1** and **S1**, unsafe conditions will result from this project as proposed.

Criterion 8 - Aesthetics and Scenic and Natural Beauty

18. Given the low intensity of development proposed, when viewed from distant perspectives, this subdivision will not be readily distinguishable from other ski area related development on Okemo Mountain.
19. The subdivision itself will be in keeping with the existing residential development on this part of the mountain. The residences will have a consistent architectural theme which will be compatible with the existing vacation home type residences in the area.
20. Cutting on each lot will be kept to a minimum to retain the wooded character of the site.
21. Construction of the ski bridge on the **Sachum** Trail over the access road will significantly alter the view from some of the adjoining lots in the existing subdivision.

Lots owned by Greene and Fassler will be most significantly affected because their existing near views of the ski trail and woods and long views over the valley north of Ludlow will be changed to a view which is totally dominated by the ramps leading to and from the bridge and by the bridge itself. Furthermore, the ramp in front of the Greene residence will have a 4 foot high orange snowfence installed on both sides of the top during the winter months. The ski bridge as proposed would have a 60 foot long wooden rail fence installed on both sides that would extend to about 5½ feet above the bridge deck. The proposed elevation of the top of the railing would be 1594.2 feet, or approximately 26 feet above the existing grade of the **Sachum** Trail, thereby almost completely obscuring the views from these two lots. Although the views of this structure from the Rossini and Edwards lots would not be as dominant and obtrusive as those from the Greene and Fassler residences, the ramps and bridge will also significantly change the nature of the views from their residences. Instead of views of a ski trail which follows the natural terrain, the views from the Rossini and Edwards properties will be disrupted by the intrusion of the unnatural man-made ski bridge structure protruding well above the natural terrain.

22. The Permittee proposes to mitigate the impact of the construction of the ramps to the ski bridge by planting birch, spruce and pines along the sides of the ramps in the direction of Greene and Fassler residences as specified on Exhibit #8. Although these plantings are designed to soften the appearance of these slopes, they will not significantly obscure or hide ramps or the bridge.
23. The Applicant plans to have a landscape architect monitor the clearing required for the installation of all improvements for this subdivision to insure that it is constructed as planned and as approved.
24. There are no written community standards or plans which specifically discuss the aesthetic impacts of ski area related development such as ski bridges over subdivision roadways.
25. Based upon **the above** findings, the Board finds that the ski bridge and ramps as proposed would have an undue adverse effect on the aesthetics and scenic and natural beauty of the area.

III. CONCLUSIONS OF LAW

Criterion 3 - Burden on an Existing Water Supply

We have found that the project has been approved by the Department of Water Resources under the Subdivision Regulations. Under Board Rule 19, as amended effective August 21, 1986, the Department's issuance of a Certification of Compliance for this project creates a presumption that the drilling of the seven additional wells will not unduly burden the existing wells located in the area. However, because of the proximity of the road to the well, the fact that the road is slightly up slope from the well, and the fact that surface water can currently penetrate the culvert around the well and enter the well casing, we conclude that should a permit be issued for this project, it would be reasonable to require the Permittee to grout the culvert around the well and weld at least four feet to its casing to reduce the probability that surface water will enter the well. With these improvements, the existing water supply will not be unreasonably burdened.

Criterion 5 - Traffic Congestion and Safety

Given the design of the access road, we have found that this project will result in unsafe conditions with respect to highways if the Permittee is not required to install and maintain a substantial fence along the access road where it swings out into the Chair Two Lift Line and along the north sides of the houses constructed on Lot L1 and S1. We therefore conclude that should a permit be issued for this project, the installation and maintenance of such a fence should be required by permit condition. We would also impose a condition which maintains continuing jurisdiction over this issue by the Commission so that additional conditions can be imposed regarding this fencing if unanticipated problems develop in the future.

We have also found that the location of the road in relation to the existing house on Lot #39 will result in unsafe conditions with respect to traffic. Consequently, by permit condition we would require that at least a 15 foot distance must be maintained between the house and the road. This separation will have to be created either by moving the house to the west or by moving the road to the east. A move of the road to the east would necessitate moving the well on Lot #39. If no such distance can be obtained on the lot, the house must be removed. Given the Board's conclusions under Criterion 8 below, the Applicant may wish to completely redesign the access road to this subdivision.

Criterion 8 - Aesthetics and Scenic and Natural Beauty

Because we have found above that the construction of the ski bridge with its related ramps will so significantly alter the views of the ski area from the four pre-existing lots fronting on **Sachum** Trail, we must conclude that this element of the project will have an adverse effect on the aesthetics and scenic and natural beauty of the area in the vicinity of these lots. Although this project is located in the midst of housing and ski-related developments, a wall of earth, cement, steel and wood rising as much as 26 feet above the natural terrain cannot be said to "fit" within the context of the neighborhood. Having concluded that the impact will be adverse from an aesthetic standpoint, we must therefore decide whether this adverse effect will be "undue." In making this determination, we turn to the three tests outlined in our analysis in Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB issued November 4, 1985 and as amended on January 13, 1986:

- 1) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? Such standards may, for example, be set forth in the local or regional plan, or be adopted in the creation of an historic design district, or be incorporated into a municipal or State scenic road designation. If the Board or Commissions find that such standards do exist, and that the project as designed would violate those standards, the adverse impact would be undue.
- 2) Does the project offend the sensibilities of the average person? The Legislature has directed the Commissions and this Board, composed of lay people from many different communities within Vermont, to determine what is acceptable in terms of new developments' impact on aesthetics and scenic and natural beauty. If our sensibilities are, collectively, offended by a project, its impact under Criterion 8 is undue. It is not enough that we might prefer to see a different design or style of building, or that we might prefer a different type of land use, but that the project, when viewed as a whole, is offensive or shocking, because it is out of character with its surroundings, or significantly diminishes the scenic qualities of the area.
- 3) Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with



its surroundings? Such steps may include selection of less obtrusive colors and building materials, implementation of a landscaping plan, selection of a less obtrusive building site within the project area, or reduction of the mass or density of a project. If there are reasonable alternatives available to the Applicant that would mitigate the adverse impact of the project, failure to take advantage of those alternatives may, in some circumstances, render undue an otherwise acceptable aesthetic impact.

If we find positively on any of these tests, we must conclude that the effect of this project will be undue and consequently it must be denied.

Regarding the first test, the ski bridge and its related construction will not violate any written community or town standard or plan because no such standard or plan exists for this specific type of development.

We conclude, however, that the ski bridge with its related ramps would be shocking and offensive as proposed when viewed from any of the adjoining pre-existing lots. Not only will the bridge and ramps almost completely block the view from the Greene and Fassler lots by protruding as much as 26 feet above the existing ski trail, but also the effect of constructing this massive structure directly adjacent to a residential subdivision will significantly change the immediate area in which it is located. Instead of a pleasant view of a ski trail, the woods beyond and views over the valley, the views from these adjoining lots would be completely transformed. In the case of the Greene and Fassler lots, the views would be almost completely blocked. In the case of the Rossini and Edwards lots, the quality of the views would be significantly diminished.

Criterion #8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever. Change must and will come, and Criterion #8 will not be an impediment. Criterion #8 was intended to ensure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. In this case we conclude that the project was designed with virtually no consideration for the visual impact on the neighbors. To a person, this Board finds that even within the context of concentrated residential development at a ski area, the ski bridge and ramps, as designed, are shocking and offensive. The Board therefore concludes that the adverse impact is "undue."

Finally, although the Applicant has taken some steps to attempt to mitigate the visual impact of this project from the adjoining lots, it has not done all that might be possible to reduce the overall effect that construction of the ski bridge and ramps would have on the area in which they are proposed. Because of the size of the structure, the proposed landscaping will do little to reduce the adverse effect that it has on the adjoining lots. Only a significant reduction in the overall height of the bridge and ramps would effectively mitigate the impact of the project on surrounding lots.

Based upon the foregoing Findings **of** Fact, it is the conclusion of the Environmental Board that the project described in the application referred to above will result in a detriment to public health, safety or general welfare under Criteria 5 and 8 described in 10 V.S.A. § 6086(a).

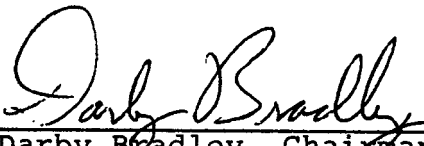
---

IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit Application #2S0351-8 is hereby denied. Further sale of, construction of dwellings **on**, or occupancy of dwellings previously constructed, is prohibited until revised plans for the ski bridge structure and roadway have been submitted to and approved by the Environmental Board pursuant to Section 6087(c) and a land use permit for the overall project has been issued by the Board. The Board shall retain jurisdiction over this appeal until further notice.

Dated at Montpelier, Vermont this 18th day of December, 1986.

ENVIRONMENTAL BOARD



Darby Bradley, Chairman  
Ferdinand Bongartz  
Lawrence H. Bruce, Jr.  
Jan S. Eastman  
Samuel Llovd III  
Roger N. Miller  
Donald B. Sargent