

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

RE: Okemo Mountain, Inc. Findings of Fact, Conclusions
R.F.D. #1 of Law, and Order
Ludlow, VT 05149 Application #2S0351-8-EB
(Reconsideration)

This decision pertains to a request for reconsideration filed by Okemo Mountain, Inc. (**Okemo**) pursuant to § 6087(c) of 10 V.S.A., Chapter 151 (Act 250) from the Findings of Fact, Conclusions of Law, and Order, Application #2S0351-8-EB issued by the Environmental Board (Board) on December 18, 1986. That decision denied Okemo's application for a land use permit for a project known as the "Snowbridge" development which included the creation of a seven-lot subdivision, the construction of seven single family houses, and the construction of 1200 feet of road including the construction of a bridge over **Sachum** Trail.

On January 9, 1987, Okemo filed a Motion for Reconsideration with revised site plans and other documents with the Board for the purpose of overcoming the deficiencies cited by the Board in its decision of December 18, 1986. Specifically, the changes proposed by Okemo include the replacement of the skier bridge over **Sachum** Trail with a skier tunnel to be constructed in **Sachum** Trail under the subdivision roadway; the construction of guardrails along the subdivision roadway beginning south of the house on Lot #39 and extending to the west side of **Sachum** Trail; the relocation of the driveway access, parking area and building entrance to the house on Lot #39; and the removal of the balcony from the easterly side of the house on Lot #39.

A public hearing on this motion for reconsideration was convened by the Board on March 11, 1987 in White River Junction, Vermont. The following parties participated in the hearing:

Petitioner Okemo Mountain, Inc., by George W. Nostrand, Esq. and Lawrence G. Slason, Esq.
Adjoining Property Owners Michael Fassler, Thomas Edwards, and Robert Rossini, by Frederick M. Glover, Esq.

The hearing was recessed on March 11, 1987, pending the filing of proposed findings of fact and conclusions of law and memoranda of law by the parties, and deliberation by the Board on April 8 and April 22, 1987. On April 22, 1987 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 proposed by the parties, they are incorporated herein; otherwise, the requests to find are hereby denied.

I. ISSUES IN THE RECONSIDERATION REQUEST

Petitioner Okemo contends that the proposed changes in the project as outlined above effectively resolve the **deficiencies** cited by the Board under Criterion 5 - highway congestion and safety and 8 - aesthetics and scenic and natural beauty and, consequently, the Board should find positively on these criteria and issue a land use permit. Appellants Fassler, Edwards, and Rossini argue that even with the change in the project from a skier bridge to a skier tunnel, the changes to the access to the house on Lot #39, and the addition of the guardrails along the road, the project will still result in unreasonable congestion and unsafe conditions with respect to traffic for both pedestrians and skiers, and it will also continue to have an undue adverse effect on the aesthetics of the area.

The Appellants also argue that this reconsideration request was improperly filed because it was made to the Board and not to District #2 Environmental Commission (Commission) as specified in 10 V.S.A. § 6087(c) and Board Rule 31(B) (1).

II. FINDINGS OF FACT

Criterion 5 - Congestion and Safety

1. The originally planned skier bridge over the subdivision's access road will be replaced by a skier tunnel. The existing access road will be kept at its existing grade, and a tunnel will be installed under the road. The tunnel will be a multi-plate arch tunnel 12 feet high, 25 feet wide, and approximately 100 feet long. **Sachum** Trail will be excavated uphill and downhill of the tunnel for a distance of approximately 200 feet and 100 feet respectively to gradually slope the trail into and out of the tunnel.
2. The house on Lot #39 will be altered to improve safety around it by moving the main entrance to the west side (away from the road) by relocating the driveway access and parking lot to the south, and by removing the deck on the road side of the house.
3. Although the Applicant does not propose to increase the existing ten-foot distance between the house and the road, guardrails will be **installed** on both sides of the access road as specified in Board Exhibit #10 to ensure that vehicles remain in the designated roadway and that conflicts between the buildings, pedestrians, and skiers are minimized. The road will remain in its existing location and will be no closer than 25 feet from the well on Lot #38.

4. Other than the findings relating to the road on Lot #39 and the road crossing of **Sachum** Trail, the remaining findings of fact in the Board's earlier decision regarding criterion 5 - highway congestion and safety, remain unchanged and are hereby incorporated by reference.

Criterion 8 - Aesthetics and Scenic and Natural Beauty

5. The access road as it crosses **Sachum** Trail will remain on its existing grade. The only significant change in its appearance will be the addition of two-foot high wooden guardrails which conform to State highway specifications. The roadway will not significantly alter the existing views from any of the adjoining lots.
6. Excavation of **Sachum** Trail and the installation of the ski tunnel will also not significantly alter the views of adjoining lot owners. Because the structure will be below the existing grade, both "near" and "long" views from these lots will not be significantly changed. Although the ends of the steel tunnel will be visible from **both** the Fassler and Rossini residences, these features will not dominate the views from these houses.
7. Skier tunnels are a common feature at ski areas, and are therefore not out of context with their **surroundings**.
8. There are no known written community plans or standards by which to evaluate visual or aesthetic impact of the construction of a skier tunnel at a ski area.
9. Other than the findings relating to the skier bridge as originally proposed, the remaining findings of fact in the Board's earlier decision regarding criterion 8 - aesthetics and scenic and natural beauty, remain unchanged and are hereby incorporated by reference.

III. CONCLUSIONS OF LAW

The Board concludes that the changes in this project proposed by the Applicant as outlined above satisfy the concerns expressed in our earlier decision on this appeal. Consequently, the Board is now able to find that the project as amended will not result in unreasonable congestion or unsafe conditions with respect to highways, and it will not have an undue adverse effect on the aesthetics or the scenic or natural beauty of the area.

Traffic safety problems have been resolved because it is now clear that the potential for conflict between pedestrians in the vicinity of the house on Lot #39 and the

cars on the road will be minimized by the installation of the guardrails, the relocation of the building entrance away from the road, and the relocation of the driveway and parking lot for the house. The Board's earlier requirement that the road must be located at least 15 feet from the house is no longer necessary because all of the changes proposed when considered together adequately address the traffic safety concerns which led to the imposition of this requirement.

Regarding the Appellants' suggestion that the construction of a skier tunnel will result in unsafe conditions for the downhill skiing mode of transportation in this location, the Board concludes that it lacks jurisdiction to consider this question based upon its interpretation of 10 V.S.A.

§ 6086(a)(5). Jurisdiction over downhill skiing safety is not one of the modes of transportation listed or even contemplated in this section of the statute. This conclusion does not apply, however, to instances where a conflict may develop between skiers and other modes of transportation such as at on-grade trail crossings of roads. Because skiers and automobiles will be well separated by the skier tunnel and fencing along the Chair 2 Lift Line, no **such** potential for conflict exists with this project as proposed.

Because of the Board's lack of jurisdiction over skier safety issues, the requirement articulated in the Board's earlier decision that fencing must be installed around the houses on Lots L-1 and S-1 is no longer relevant and will not be included in any amended land use permit issued for this project.

In terms of the impacts of this project under criterion 8 (aesthetics, scenic and natural beauty), the substitution of the tunnel for the bridge has significantly improved the aesthetic impact of this project. Where in the earlier proposal there would have been a large structure looming at least 26 feet above the existing grade of **Sachum** Trail which would have had an undue adverse effect on the area when viewed from trailside residences, the revised plan places almost the entire structure below the existing grade, thereby preserving the views from these residences. As a result, it is clear to the Board that the impact of this project is no longer "undue" as outlined in the three tests articulated in the Board's original decision for this project.

Regarding the Appellants* argument that the Board lacks jurisdiction to consider this reconsideration request because **§ 6087(c)** requires requests for reconsideration to

be heard by the Commission, the Board affirms its authority to hear this request because it specifically retained jurisdiction over this matter until further notice in its original decision on this appeal.

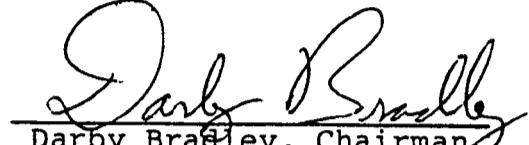
Based on the foregoing Findings of Fact, it is the conclusion of the Board that the project as referred to in the application and as amended in this reconsideration request will not result in a detriment to public health, safety or general welfare under criteria 5 and 8 as described in 10 V.S.A. § 6086(a).

IV. ORDER

Land Use Permit Amendment #2S0351-8-EB is hereby issued in accordance with the findings of fact and conclusions of law herein. Jurisdiction over this matter is returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont this 24th day of April, 1987.

ENVIRONMENTAL BOARD


Darby Bradley, Chairman
Ferdinand Bongartz
Elizabeth Courtney
Jan S. Eastman
Roger N. Miller

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