

STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 V.S.A. CHAPTER 151

RE: Windsor Improvement Corporation  
P.O. Box 745  
Windsor, Vermont 05089

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER  
Application #2S0455-EB

This is an appeal of a decision of District #2 Environmental Commission dated February 14, 1980, denying a land use permit requested by the Windsor Improvement Corporation to develop a 44-acre industrial park on Route 5 north of Windsor Village in Windsor, Vermont. Appeals from the District Commission's decision were filed with the Environmental Board by the applicant on February 25, 1980 and by cross-appellant Ottauquechee Natural Resources Conservation District (ONRCD) on March 14, 1980. The prehearing conference was held on these matters on March 13, 1980 with Margaret P. Garland, Chairman of the Environmental Board, presiding. On March 21, 1980 ONRCD submitted a motion to return appellant's amended application to the District Environmental Commission. The Environmental Board heard testimony and oral argument on these matters on March 25, 1980. The Board heard evidence on the applicant's proposed plans for this project, participated in a site visit arranged by the applicant, with the approval of and in the presence of all parties, and heard oral argument on ONRCD's motion to return the application to the District Commission. This decision and order address that question alone.

The following parties were present at the hearing on this matter:

Applicant Windsor Improvement Corporation by Thomas M. Rounds, Esq. and Timothy Buzzell, project engineer  
Town of Windsor and Windsor Planning Commission by Timothy Buzzell  
Southern Windsor County Regional Planning and Development Commission by Matthew Birmingham, Esq.  
Ottawaquechee Natural Resources Conservation District by John Dunne, Esq.  
Town of Hartland Planning Commission by Dorothy H. Crandal  
State of Vermont Department of Economic Development, Agency of Development and Community Affairs by Curtis W. Carter  
State of Vermont Agency of Environmental Conservation by Stephen B. Sease, Esq.  
Connecticut River Watershed Council by William Stetson.

FINDINGS OF FACT

1. The applicant proposes to construct an industrial park on a 44-acre site approximately two miles north of the Village of Windsor, Vermont. Portions of the site are in primary agricultural soils. The site is located in an area of mixed residential, commercial, and agricultural uses.

2. The applicant's original proposal as submitted to the District Environmental Commission stated that wastewater disposal from the park would be handled by hooking into Windsor's community sewer system. However, in the proceedings before the District Commission, the applicant amended this proposal to provide for the on-site disposal of wastewater from a treatment system and a spray irrigation system. The District Commission heard evidence and argument on the criteria of Act 250 on the basis of the on-site disposal plan. The Findings of Fact and Conclusions of Law issued by the Commission on February 14, 1980 were based on the on-site proposal, considering neither the potential impacts of the community sewer line extension and hookup, nor the effects of removing the spray irrigation system from the plan.
3. At the prehearing conference held on this appeal, the applicant informed the Environmental Board and the parties that it intended to amend its proposal, removing the treatment system and spray irrigation system from the project plan, and hooking into a community sewer line extension instead.
4. We find that this alteration in the project design for this project is a substantial change in the project as reviewed by the District Commission. We find that the method of wastewater disposal which is planned for this project is a critical factor in the evaluation of the project under many of the criteria of Act 250, including criteria that were not before the Environmental Board in the present appeals, including, but not limited to, criteria 1, 2, 3, 4, 7, 8, 9(A), (B), (C), (F), (G), (H), (J), (K), (L), and 10.

We cannot find that this alteration would have no effect. on the substantive review of the project under these criteria, or the conditions that might be imposed on the project as a result of that review. Finally, we are unable to find that all of the parties affected by this project alteration who would have standing to present evidence on its **impacts** before the District Commission and, on appeal, to the Environmental Board, are before the Board in the present proceeding.

5. In the proceedings before the District Commission, the applicant chose not to present complete information and evidence on the design, location, and impacts of the on-site disposal plan that was a critical part of the development proposal. It requested a partial decision from the Commission on those criteria on which the Commission could make final findings in the absence of detailed information on the waste disposal plan. The District Commission complied with this request and issued a final decision with

respect to all criteria except criteria 1(B),(D),(E),(F), 4,8, and 9(K), stating that "(t)he hearing will be reconvened when this information is available." The appellants herein then brought appeals to the Board on criteria 6,7, and 9(B), on which the Commission had issued final findings: and on Criteria 4,8, and 9(K), on which the Commission had reserved final judgment.

#### CONCLUSIONS OF LAW

1. Based on the foregoing Findings of Fact, we conclude that this application must be returned to the District Environmental Commission for review of the present project plans under 'all of the criteria of Act 250. As stated above, we believe that the method of wastewater disposal is a critical feature of the proposal, and we are unable to predict how the plan's alterations would affect its substantive review under the criteria of the Act. Most of the potentially affected criteria were not before the Board on appeal. If the Board were to permit partial review on appeal of a substantially different project from that reviewed by the District Commission, the purposes of the Act could well be undercut. This could occur where an alteration is proposed in order to avoid a negative finding on a particular criterion that is before the Board, if that alteration has a negative impact under one or more criteria that are not before the Board on appeal. Unless the amended application is returned to the District Commission, neither the Board nor the Commission would have the opportunity to review the project under all of the criteria of the Act. We also observe that this incomplete review may prejudice the rights of the parties to the Act 250 proceedings. The parties' participation in the Commission's proceedings, and in some cases their actual presence at the hearings, depends upon their understanding of the nature of the project. Their decision whether or not to appeal the Commission's findings rests on the same understanding. There may be parties with standing in this matter who did not participate in the earlier hearings or the appeal, but who would have participated in the hearings if the extension of the community sewer line to this site had been part of the project proposal. Some of those parties who were present may have wished to address that aspect of the application, but with respect to criteria not open on the appeal. For these reasons, we conclude that the amended project must be reviewed pursuant to all criteria of the Act before the District Commission.

It is not necessary for the applicants to submit an entirely new application to the Commission to obtain this review. The Commission may proceed in this matter by reconvening the hearings as it announced it would do in its order of

February 14, 1980 and reviewing the record to determine whether and how the new wastewater disposal plan affects the findings and conclusions of that order. Alternatively, the applicant may choose to proceed under 10 V.S.A. 86087(c), and apply for reconsideration of the Commission's decision. We point out that in these proceedings it would not be necessary to re-hear the evidence now in the record on any of the criteria of the Act. The Commission can, and should, expedite its review of this matter by excluding testimony that is already in the Commission's record. In either case, we believe it will be necessary for the Commission to determine whether the proposed sewer extension is an integral part of the proposal. If so, the scope of the proposal would be expanded, potentially affecting the rights of additional persons to party status.

2. We are unable to find any authority in Act 250 or in our Rules that authorizes the piecemeal appeal of a Commission's findings under the 10 criteria, except for the provisions of 86086(b) and Rule 13(F), which authorize appeals upon final Commission orders on Criteria 9 and 10 alone. Although the applicant had never submitted to complete review under the 10 criteria, and intended to return to the Commission with additional information for subsequent review, it filed a notice of appeal with the Environmental Board on Criteria 4,6,7, and 8. Even if we had not returned this application to the District Commission, we would have been unable to hear appeals on these criteria. In 86086(b) the General Assembly authorized an expedited review process for findings solely under Criteria 9 and 10. We remind the applicant and the other parties to this proceeding that this expedited review process is available to facilitate an efficient and rapid resolution of the issues raised in these proceedings.

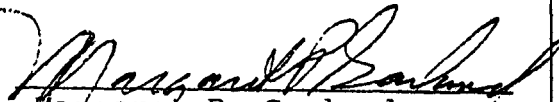
ORDER

These appeals are dismissed and the application is returned to the District Commission. The applicant may request the Commission to reconvene the hearings on this matter, or may submit a motion for reconsideration pursuant to 10 V.S.A. §6087(c).

Dated at Montpelier, Vermont this 27th day of March, 1980.

ENVIRONMENTAL BOARD

By

  
Margaret P. Garland  
Chairman

Members voting to  
issue this decision:  
Margaret P. Garland  
Ferdinand Bongartz  
Donald B. Sargent  
Leonard U. Wilson

Member opposed:  
Michael A. Kimack

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