

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

RE: Northern Resort Development      MEMORANDUM OF DECISION  
P.O. Box 308                              Land Use Permit #2S0598-EB  
Ludlow, VT 05249

On September 22, 1986 the Environmental Board (Board) received a petition to revoke Land Use Permit #2S0598 from George W. Lamb, Esq. on behalf of C. J. and Janet Stewart of Ludlow, Vermont. Land Use Permit #2S0598 authorized the Permittee to construct a 32-unit condominium development in six buildings with site improvements off Route 103 in Ludlow. On November 6, Board Chairman Darby Bradley sent a memorandum to the parties requesting more information on the alleged violation and a statement in response to the allegation that the permit had been violated.

On November 21, C. J. and Janet Stewart submitted a memorandum restating their allegation that Building #6 was not constructed in accordance with the permit because it was built with a solid wall foundation rather than on piers. In support of its claim that the permit was violated, the petitioners attached to their memorandum the prehearing comments of the Agency of Environmental Conservation (Agency), a memorandum from Karl Jurentkuff of the Agency, and a letter from April Hensel, District Coordinator, to George W. Lamb, Esq. The petitioners contend that Finding of Fact #1(D)(1) states that the buildings will be raised to allow water to flow under them; that findings of fact are incorporated into the permit; that Building #6 was built with a solid wall foundation; and that therefore Building #6 was constructed in violation of the permit.

On December 1, the Board received the reply of Timber Enterprises Corp. (the assignee of Northern Resort Development) to the petition for revocation. The Permittee contends that Building #6 was not constructed in violation of the permit and in support of its position cites Condition #13 of the permit which requires that the lowest portion of the buildings and bridge be one foot above the 100-year flood elevation. Building #6, the Permittee asserts, is above the flood zone level and is therefore in compliance with the permit despite its solid wall foundation. Because there is no violation, the Permittee requests the Board to dismiss the petition without further action.

DECISION

The Board hereby dismisses the Petition for Revocation of Land Use Permit #2S0598. In reviewing the permit and other documents submitted by the parties and on file with the District Commission, it is apparent that Building #6 was constructed in compliance with the permit and that there is no basis on which to proceed with a hearing.

The obvious concern of the Agency, as articulated in the prehearing comments and Karl Jurentkuff's memorandum, was to prevent damage to the buildings that would likely occur were they built below the 100-year flood elevation. Accordingly, the permit required, in Condition #13, that "[t]he lowest portion of the buildings and bridge shall be one foot above the 100-year flood elevation." The 100-year flood elevation at that location is 975'. The findings of fact did not mention Building #6 specifically and appear to suggest that all the buildings would be located within the floodway. However, the site plans submitted with the application, and subsequently approved by the Commission and incorporated into the permit, show only Buildings #1 through #5 to be located on land lying below the 100-year flood elevation and therefore to be constructed on piers. Building #6 lies above the 100-year flood elevation, and was therefore shown on the site plans to be built slab on grade. Moreover, the Permittee's engineer, Morris J. Root, submitted a letter to April Hensel in July, 1986 certifying that the slab elevation of Building #6 is 978.96' above mean sea level. Since Building #6 is not in the 100-year flood zone, there would be no reason to require that building to be built on piers.

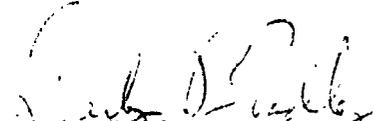
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ORDER

The Petition for Revocation in this matter is hereby dismissed.

Dated at Montpelier, Vermont this 11th day of March, 1987.

ENVIRONMENTAL BOARD

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Darby Bradley, Chairman  
Ferdinand Bonqartz  
Arthur Gibb  
Samuel Lloyd III  
Roger N. Miller