

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

Re: Arthur Marcus, Peter **Holl**, and William Gustafson
Land Use Permit Application #2S0809-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to an appeal filed with the Environmental Board by the Town of Ludlow on September 14, 1990 from Land Use Permit #2S0809 issued by the District #2 Environmental Commission on August 17, 1990. The permit authorizes the creation of seven single-family building lots with related infrastructure and the construction of 2,000~ feet of road off Town Farm Road in Ludlow.

The Board approves the creation of Lots 7 and 8 and the construction of the southerly access road to these lots, and denies the creation of **Lots** 9, 10, 11, and 12 and construction of the westerly access road to these lots.

I. BACKGROUND

This appeal was filed on September 14, 1990. A prehearing conference was convened on October 15, 1990, and a prehearing conference report was issued on October 23. At the prehearing conference, the parties agreed to file a stipulation of facts by November 30. Having received no stipulation, in January 1991 the Board scheduled an **evidentiary** hearing for March 14, 1991. With the agreement of the parties, that hearing was cancelled and rescheduled for May 23. The prefiled testimony of the Applicant's witnesses was not filed by the deadline; at the request of the parties, the hearing was again cancelled.

On November 20, 1991, an administrative hearing panel of the Board convened a public hearing in Ludlow, with the following parties participating:

Arthur Marcus (the Applicant) by William A. Hunter,
Esq.
Town of Ludlow (Town) by Douglas Richards, Esq.
Jerome Rodriguez

A proposed decision was sent to the parties on March 31, 1992, and the parties were provided an opportunity to file written objections and to present oral argument before the full Board. No party requested oral argument. On April 17, 1992, the Applicant submitted a response to the proposed decision. The Board deliberated concerning this matter on April 22, 1992. On that date, following a review of the proposed decision and the evidence and arguments presented

497

in the case, the Board declared the record complete and adjourned the hearing.¹ This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. ISSUES

The Town believes the project does not comply with 10 V.S.A. § 6086(a)(5) (traffic) or § 6086(a)(7) (governmental services) because the proposed subdivision road cause unsafe conditions with respect to the use of highways and will place an unreasonable burden on the ability of the Town to provide services. The Town believes that the subdivision road should be required to be built to Town highway specifications.

Jerome Rodriguez owns property that adjoins the proposed project. He is concerned about the location of the proposed road because his well is close by. Mr. Rodriguez has party status on Criterion 5.

The Board must resolve the following questions:

1. Whether the project will cause unreasonable congestion or unsafe conditions with respect to the subdivision road, pursuant to Criterion 5.
2. Whether the Board may conclude that the project complies with Criterion 5 if the road is not built to Town of Ludlow highway specifications.
3. Whether the project will place an unreasonable burden on the ability of the Town of Ludlow to provide municipal services such as fire protection and emergency vehicle access, pursuant to Criterion 7,

¹On April 23, 1992, the Town filed an objection to the Applicant's response because it was not filed within the time specified by the Board's Order. The Board did not consider the Town's objection because it was filed after the Board's deliberation. However, since the Board did not accept the Applicant's requests, the Town's objections are moot.

III. FINDINGS OF FACT

1. **The project consists of the construction of seven single-family homes** on an approximately 50-acre tract of land in Ludlow. The lots that will be developed are numbered 7 through 12.
2. The site consists of approximately 20 acres of open fields and brush, with the remainder in forest.
3. Three segments of internal roadway will serve the project. The first, which has already been constructed and is in use, is a stretch of about 750 feet from the Town Farm Road to a turnaround (the existing road). The existing road serves the four lots that were previously created. An additional 2,000 feet of road will be constructed in two segments: 1) a road is proposed from the turnaround in a southerly direction between lots 2 and 3 that will serve Lots 7 and 8 (the south road), and 2) a road from the turnaround to the west that will serve Lots 9 through 12 (the west road).
4. The south road will be relatively straight with no slopes in excess of eight percent. It will end in a **dead end** on Lot 8 and will have a hammerhead turnaround. The west road will follow an existing logging trail through the woods. Approximately 370 **feet of** the west road includes slopes up to 12 percent. At the end of this road a cul-de-sac with a 75-foot diameter will be constructed.
5. **The Town has developed 18 standards for town highway specifications.** These include the following: Roads **must** have a 24-foot travel way and a 75-foot radius for turnaround areas on dead-end roads. Sections of roads **with** grades between eight and twelve percent **must be paved**, and the maximum degree of curvature allowed is 21 degrees. A degree of curvature not greater than 21 **translates** to a radius of not less than 273 feet. **The Town's** policy requires that all highways, regardless of **ownership**, must be constructed to Town specifications.
6. **The proposed roads do not meet the Town highway specifications** in four respects: 1) the turnaround **proposed** at the end of the cul-de-sac on the west road **will** only be about 38 feet in radius rather than the **75-foot** radius required by the Town; 2) the south road **is** not proposed to be located in the middle of the designated right-of-way; 3) the stretches of road which **will** be between eight and 12 percent will not be paved; **and** 4) the west road will have one curve that is **sharper** than Town standards.

7. The purpose of the Town's highway specifications is to ensure that all public service equipment, including police, fire, electrical, and gas, will have reasonable and safe access to all residences, commercial buildings, and other structures for emergency and service purposes, and to ensure that the road is safe.
8. The Vermont Agency of Transportation's standard for maximum grade is 10 percent or steeper when waived by the local governing body; the American Association of State Highway and Transportation Officials' standard for maximum grade is 11 percent for 20 mph in rolling terrain.
9. The shoulder-to-shoulder road surface width of the south road will be 24 feet. A total width of approximately 36 feet will have to be cleared. The Applicant proposes to construct the road more on the eastern than the western part of the 50-foot wide right-of-way rather than the center. If the road were located in the center of the right-of-way, more trees would need to be cut and the road would be more visible from Lot #3, contrary to the wishes of the owners of Lot #3, Jerome and Susan Rodriguez. It would also put the road within 50 feet of the Rodriguezes' well if it were paved, in contravention of the Environmental Protection Rules which require a minimum of 25 feet between a well and the edge of a travelled **gravel-** surface road and 50 feet between a well and the edge of a paved road.
10. Construction of the west road will require three to four thousand cubic yards of fill. The cul-de-sac at the end of the west road will be built up eight feet vertically, using **approximately** 5,000 more yards of fill. It will be located at the bottom of a 12 percent grade, and will have steeply sloped sides. Part. of the cul-de-sac will be used for snow storage and the travel way will become restricted by snowbanks.
11. A sharp curve on the west road between Lots 9 and 11 will have a degree of curvature of approximately 60 degrees. Sight distances are affected by the horizontal curvature of a road. If a curve has too short a radius, the line of sight becomes reduced from obstacles such as vegetation, rocks, and snowbanks on the inside of the curve. A 60-degree of curvature has a radius too short to allow for a safe stopping sight distance. **The rock** outcropping and steep topography on the inside of this curve reduce visibility severely.

12. Eliminating the existing curve would require cutting a swath through the woods up to 400 feet long and up to 60 feet deeper in the woods than the current proposal.
13. If the Town were ever forced to accept the west road in the future, it would pose an undue hardship on the municipality in terms of providing services such as fire and other emergency protection. The cul-de-sac at the end of the road could not be enlarged in the future without permission from the future lot owners.
14. The Town does not have subdivision regulations. In the past, the Selectboard reviewed projects that were subject to Act 250, but private roads not subject to Act 250 escaped Town review and may not have been constructed to Town standards. The current Zoning Administrator will not issue access permits to Town highways unless the Town highway specifications are met.
15. The Town currently has a policy of not accepting any new town roads.
16. No homeowners' association has been established.

IV. CONCLUSIONS OF LAW

A. Criterion 5

Criterion 5 requires the Board to find that a project will not cause unreasonable congestion or unsafe conditions with respect to the use of highways. 10 V.S.A. § 6086(a)(5). The Board cannot deny a project if it fails to satisfy Criterion 5, but may impose reasonable conditions and requirements to alleviate the burdens created. 10 V.S.A. § 6087(b).

* The road to the south will run by the **Rodriguezes'** property. Locating the road in the center of the **right-of-way** would result in the road being unnecessarily close to their property line. If the road is paved, the necessary distance between a paved road and the well would not be maintained. Accordingly, the Board will require that the road be constructed as far as possible from the Rodriguezes' property line within the legal easement and not in the center of the right-of-way, and that it not be paved.

The south road will provide access to two lots but there is no cul-de-sac at the end of the road and no **provision** for a cul-de-sac has been made. The Board is **concerned** that should the Town ever take over the road and a **cul-de-sac** be required by the Town, there will be no ability

to construct one. The Board will therefore require that, prior to the sale of lots or commencement of construction, arrangements be made to allow for the future construction of a cul-de-sac with a 150-foot diameter right-of-way at the end of the south road. This will require an easement for this purpose on Lot 7 or Lot 8, or both. Such easement shall be submitted to the District Commission for its approval prior to commencement of any construction on this project.

With regard to the west road, the Board believes that the design of the road, as proposed, does not comply with Criterion 5 because it is unsafe. The grade is too steep, the sharp curve, with the rock outcropping and steep topography, results in inadequate sight distances, and the turn-around is too small given its location on an eight-foot pedestal at the bottom of a 12 percent grade with steep slopes dropping off.

The Board believes that modifications can be made to the west road to improve its safety, and that satisfying the Town highway specifications with regard to slope and sight distance will also satisfy the Board's concerns about safety. In order to accomplish this, new plans will have to be submitted to the District Commission for its review and approval under criteria that are not before the Board on this appeal, such as Criteria 4 (soil erosion) and 8 (scenic beauty). Thus the Board will require that an amendment to this application be obtained from the District Commission for construction of the west road prior to the creation of Lots 9, 10, 11, and 12. This application must include a plan for construction of the west road to Town standards with regard to the steepness of the grades and the radius of the curves. The Board believes that a properly designed and constructed hammerhead turnaround is adequate on a road that serves only a few houses. However, in the event the Town takes over the road in **the future**, the Board will require that arrangements be made, prior to construction of the west road, to allow for the future construction of a cul-de-sac that meets Town standards. If this requires an easement, such easement shall be in place prior to the sale of Lots 9, 10, 11, or 12.

The need for year-round safe access by large emergency vehicles dictates that the **Town** highway standards for adequate sight distances and maximum grade be complied with. Compliance with Town standards by reducing the grades or paving the road, and reduction in the sharpness of the curve to achieve safe sight distances, will make the road safe for drivers as well as accessible for emergency vehicles, and should allow this aspect of the project to comply with Criterion 5.

B. Criterion 7

Criterion 7 requires an applicant to demonstrate that its project will not place an unreasonable burden on the ability of the local government to provide municipal or governmental services. As explained above, the Board believes that as currently designed, the west road will not be safe and will create a hardship for the Town to provide such services as fire protection. With respect to the south road, if provision for a future cul-de-sac that meets Town standards is made, in the event the Town takes over the road in the future, the Board concludes that Criterion 7 is satisfied.

IV. ORDER

Land Use Permit Amendment #2S0809-EB is hereby issued. Jurisdiction is returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont, this 29th day of April, 1992.

ENVIRONMENTAL BOARD


Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Lixi Fortna
Arthur Gibb
Samuel Lloyd
Charles Storrow

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