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

Re: Spring Brook Farm Foundation, Inc.
Land Use Permit **#2S0985-EB**

MEMORANDUM OF DECISION

This Memorandum of Decision pertains to a Motion to Alter (the **"Motion"**) filed pursuant to EBR 31(A) by Helen S. Mayer (the "Appellant") with regard to Re: Spring Brook Farm Foundation, Inc., **#2S0985-EB,** Memorandum of Decision (July 18, 1995) (the "Decision"). As is explained below, the Board denies the Motion.

I. BACKGROUND AND PROCEDURAL SUMMARY

The Decision contains a detailed summary of the background and procedural history preceding the Board's issuance of the Decision.

On August 17, 1995, the Appellant filed the Motion.

On August 23, 1995, Spring Brook Farm Foundation, Inc. (the **"Foundation"**) filed a response to the Motion.

On September 13, 1995, the Board deliberated relative to the Motion.

II. EBR 31(A)

EBR 31(A) authorizes parties to file, within 30 days of the date of a decision, such motions to alter as may be **"appropriate."** The rule provides:

> (A) Motions to alter decisions. A party may file within 30 days from the date of a decision of the board or district commission such motions to alter as may be appropriate with respect to the **decision.**
> The **board** or district commission shall act upon motions to alter promptly. The running of any applicable time in which to appeal to the board or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on any motion.
>
> The board or district commission may on its own motion, within 30 days from the date of a decision, issue an altered decision or permit.

> Alterations by board or district commission motion shall be limited to instances of manifest error, mistakes, and typographical errors and omissions.

The Board has issued several decisions which set out the nature of what is appropriate under EBR 31(A). In general, these decisions indicate that a motion to alter is in the nature of reconsideration and the Board should not be asked to "reconsider" matters it was not asked to consider in the first place. Re: Finard-Zamias Associates, #1R0661-EB, Memorandum of Decision (Jan. 16, 1991). A motion to alter also is to be based on the existing record. Re: Swain Development Corn., #3W0445-2-EB, Memorandum of Decision at 3-4 (Nov. 8, 1990). New hearings are not held and new evidence is not taken. Id. at 4; Re: Berlin Associates, #5W0584-9-EB, Memorandum of Decision at 7 (April 23, 1990).

In addition, new arguments are not acceptable, with the exception of arguing that a permit condition is unnecessary or that improper procedures were used. Finard-Zamias, supra at 2; Berlin Associates, supra at 5. The purpose of the exception is to fairly allow parties to present argument about matters they could not reasonably have known about before. Thus, if parties were or should have been aware of possible conditions or use of procedures before final decision, they should not wait until after decision to object through a motion to alter.

One reason for these limits on the use of EBR 31(A) is that parties should not be encouraged to use motions to alter to convert Board decisions into "proposed" decisions to which they can later respond. Evidence and argument should be given to the Board before decision so that it is fully informed and can make the best decision, and so that the process is not unnecessarily elongated by motions to alter. As the Board has previously stated:

> [The Board's] interpretation is based on the need to maintain the integrity of the Board's appeal process by ensuring **that arguments and evidence are introduced prior to final decision.**

Finard-Zamias, sunra at 2.

III. DECISION

The Board concludes that the Decision is sound for the reasons stated therein.

Party status determinations are made pursuant to 10 V.S.A. § 6085(c)(l) and EBR 14. The Decision denied the Appellant's request for party status under EBR 14(A)(3) and 14(B) (1) (b).

A. EBR 14(A) (3)

Under EBR 14(A)(3), an adjoining property owner is entitled to party status to the extent that the property owner demonstrates that the proposed development may have a direct effect on his or her property under any of the 10 Act 250 criteria. The request for party status must include a description of the location of the adjoining property in relation to the proposed project, including a map, if available, and a description of the potential effect of the proposed project upon the adjoiner's property with respect to each of the criteria under which party status is being requested. This is the standard by which the Board decides whether to grant party status to adjoining property owners.

As the Decision states, the Appellant's party status request fails to persuade the Board that she has demonstrated that the Foundation's 5,425 square foot student residence hall located on a 614 acre tract of land may have a direct effect on her property.

B. EBR 14(B) (1) (b)

Under EBR 14(B)(l)(b), a person may be entitled to party status by permission if that person's participation will materially assist the Board by providing testimony, cross-examining witnesses, or offering argument or other evidence relevant to the ten Act 250 criteria. This is the standard by which the Board decides whether to grant party status to a materially assisting party.

As the Decision states, this is a not a complex, novel, or unfamiliar project which requires the Board to seek assistance from persons with particular expertise. The Appellant's party status request fails to demonstrate otherwise.

IV. ORDER

The Appellant's motion to alter is denied.

Dated at Montpelier, Vermont, this 3rd day of October, 1995.

ENVIRONMENTAL BOARD

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