

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001- 6092

RE: Stratton Corporation
Master Plan Application #2W0519-10-EB

MEMORANDUM OF DECISION ON MOTION TO ALTER

This proceeding concerns a master plan application for 1,370 housing units, restaurants, shops, a theater, redeveloped Golf Clubhouse and Base Lodge, ice skating rink, improved pedestrian and vehicular circulation and expansion of the Sports Center, replacement of existing lifts, installation of additional lifts (total of 15 lifts at build-out), ski trail expansion of 220 acres, construction of 32,000 square feet of additional Base Lodge facilities in the Sun Bowl area with expanded parking, renovation of the Village Base Lodge, construction of a new Welcome Center, and an overhead people mover system to transport people from the Welcome Center parking area directly to the Village ("Project"). The Project is located on Stratton Mountain in the Towns of Stratton and Winhall on approximately 3,350 acres of land.

I. PROCEDURAL SUMMARY

On February 11, 1997, The Stratton Corporation ("Applicant") filed Master Plan Permit Application #2W0519-10 with the District # 2 Environmental Commission ("Commission") seeking authorization for the Project.

On September 30, 1999, the Commission issued Partial Findings of Fact, Conclusions of Law, and Order ("Decision") for the Project.

On October 28, 1999, Applicant and Stratton Area Citizen's Committee filed motions to alter the Decision. On October 29, 1999, the Vermont Natural Resources Council ("VNRC") filed a motion to alter the Decision.

On March 28, 2000, the Commission issued Revised Partial Findings of Fact and Conclusions of Law ("Revised Decision").

On April 27, 2000, VNRC filed an appeal with the Vermont Environmental Board ("Board") from the Revised Decision alleging that the Commission erred in its conclusions concerning 10 V.S.A. §§ 6086(a) (1), (1)(A), (1)(B), (1)(E), (5), (8)(A), (9)(A), (9)(H), (9)(K), and (9)(L) ("Criteria 1, 1(A), 1(B), 1(E), 5, 8(A), 9(A), 9(H), 9(K), 9(L)") and by denying VNRC party status on Criteria 5 and 9(K). The appeal was filed pursuant to 10 V.S.A. § 6089(a) and Environmental Board Rule ("EBR") 6 and 40.

On June 15, 2000, Board Chair Marcy Harding convened a prehearing conference and on June 19, 2000, she issued a Prehearing Conference Report and Order ("PCRO"). In the PCRO, the Chair determined that Criteria 1 (water), 8(A), 9(A), 9(H), and 9(L) were ripe for this appeal because the District Commission had only made findings of fact sufficient to support conclusions of law on those Criteria. Subsequently, VNRC withdrew Criterion 8(A) from this appeal and no other party objected to it.

On August 1, 2000, the Applicant filed a motion to dismiss VNRC's appeal of Criterion 9(L).

On August 17, 2000, VNRC filed a reply to the Applicant's motion to dismiss VNRC's appeal of Criterion 9(L).

On September 20, 2000, the Board deliberated and issued a memorandum of Decision denying the Applicant's motion to dismiss VNRC's appeal of Criterion 9(L).

At the Second Prehearing Conference on October 6, 2000, the parties jointly requested that the hearing scheduled for October 11, 2000 be continued because of ongoing negotiations on Criterion 1.

On October 6, 2000, the Chair issued a Chair's Preliminary Ruling granting the parties' request.

On December 6, 2000, the Applicant, VNRC, and the Agency for Natural Resources ("ANR") submitted joint Findings of Fact and Proposed Settlement of VNRC's Appeal of Criterion 1.

On December 8, 2000 the Chair issued a Scheduling Order setting a hearing date of January 31, 2001 for the remaining Criteria.

On January 31, 2001, the Board convened an evidentiary hearing for the remaining Criteria. Present and participating in the hearing were the Applicant, VNRC, the Agency of Natural Resources, and the Windham Regional Commission.

On January 31, 2001, February 28, 2001, April 18, 2001, and April 25, 2001, the Board deliberated.

On May 8, 2001, the Board issued Findings of Facts, Conclusions of Law, and Order ("Board Decision").

On June 7, 2001, the Applicant filed a Motion to Alter the Board Decision.

On June 20, 2001, the Winhall Planning Commission filed a letter agreeing with the Board Decision on Criteria 9(H) and 9(L) and disagreeing with a few of the Findings of Facts in the Board Decision.

On June 27, 2001, the Board deliberated.

II. DISCUSSION

Applicant's Motion To Alter

Pursuant to EBR 31(A) the Applicant filed a Motion to Alter requesting a correction of the Board Decision concerning the total acreage of the Project and the conservation easement. No other parties filed a response to the Applicant's Motion to Alter.

In the introductory paragraph in the Board Decision, the Board relied on the figures for total acreage of the Project in the Towns of Stratton and Winhall listed in the Applicant's proposed findings of fact and conclusions of law. However, the Applicant subsequently filed a letter with the Board correcting the acreage from 2,340 to 3,350 acres. The Board will delete 2,340 acres and add 3,350 acres.

The Applicant also requests that the Board clarify Finding of Fact 27 which states: "The Master Plan includes approximately 1,000 acres preserved under a conservation easement because the land is important to wildlife." The Applicant's Motion to Alter clarifies that it signed a Memorandum of Understanding with ANR to permanently protect approximately 1,000 acres by recording a conservation easement within 60 days of the Board's decision in this matter.

The Board's language does not make it clear that the conservation easement has not yet been recorded. The Board notes that the Commission had already imposed a condition requiring the Applicant to record the conservation easement within 60 days and that requirement is binding on the Applicant. Therefore, the Board will clarify Finding of Fact 27 to make it clear that the land

will be preserved under a conservation easement. Finding of Fact 27 shall read: "The Master Plan includes approximately 1,000 acres to be preserved under a conservation easement because the land is important to wildlife."

Winhall Planning Commission's Letter

On June 20, 2001, the Board received a letter from the Winhall Planning Commission agreeing with the Board Decision on Criteria 9(H) and 9(L) and disagreeing with a few of the Board's Findings of Facts. Pursuant to EBR 31(A), parties may file a motion to alter a decision within 30 days of the Board's decision. The Board Decision was issued on May 8, 2001. Therefore, the last day to file a motion to alter was June 7, 2001.

Winhall Planning Commission's letter was not filed in time to be considered by the Board. Although EBR 31(A)(2) provides for reply memoranda to motions to alter, Winhall Planning Commission's letter does not address any of the issues raised in the Applicant's Motion To Alter. In addition, Winhall Planning Commission's letter did not contain a certificate of service documenting that all parties were served as required by EBR 12(J).

For the above reasons, the Board will not consider the letter from Winhall Planning Commission. The Board appreciates and encourages the participation of statutory parties. However, Winhall Planning Commission like all other parties must abide by the rules. Winhall Planning Commission chose not to participate in the hearing or submit memoranda. The Board would have been interested in Winhall Planning Commission's perspective on the Project. However, that is not sufficient justification for considering an untimely and improperly filed submission.

III. ORDER

1. The Applicant's Motion To Alter is granted although the Board does not adopt all of the Applicant's proposed language.
2. The Board hereby alters and amends the acreage in the last sentence of the first paragraph on page 1 of the Board Decision to read 3,350 acres.
3. The Board hereby alters and amends Finding of Fact 27 in the Board Decision to read as follows: "The Master Plan includes approximately

1,000 acres to be preserved under a conservation easement because the land is important to wildlife."

4. Winhall Planning Commission's letter was not timely or properly filed before the Board and was not considered or accepted as part of the record in this case.

5. Jurisdiction is hereby returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont this 9th day of July, 2001

ENVIRONMENTAL BOARD

___/s/Marcy Harding_____
Marcy Harding, Chair
Jill Broderick
George Holland
Samuel Lloyd*
W. William Martinez*
Alice Olenick
Gregory Rainville
Donald Sargent

Board members Lloyd and Martinez did not participate in the Board's June 27, 2001, deliberations but they reviewed and concur with the decision.