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

RE: Raponda Landing Corporation Memorandum of Decision
c/o R. Bruce Freeman Land Use Permit
41 Roosevelt Road #2W0604-3-EB
Maplewood, NJ 07040

In December, 1987, Leroy and Helen Simpson appealed Land Use Permit #2W0604-3 issued to Raponda Landing Corporation by the District #2 Environmental Commission. The Simpsons object to the Commission's determination not to hold a hearing because no substantive issues had been raised justifying a hearing, pursuant to Board Rule 51. The Simpsons also believe that the Commission was in error in finding that the project will not have an undue adverse effect on the scenic or natural beauty and aesthetics of the area under Criterion 8 of 10 V.S.A. § 6086(a).

In March, 1988, Environmental Board Chairman Leonard U. Wilson held a prehearing conference at which the parties agreed that the Board would first decide -- based upon written briefs -- whether the Commission abused its discretion in deciding not to hold a hearing. On May 2 the Simpsons filed their brief and on May 5 the Permittee filed its brief.

Decision

Board Rule 51 allows certain applications to be processed as "minor" applications "if the district commission finds that the project appears to present no significant adverse impact under any of the 10 criteria of 10 V.S.A. § 6086(a)." If the Commission makes such a finding, it prepares a proposed permit with appropriate conditions. Notice of the application is published and sent, along with a copy of the proposed permit, to those entitled to written notice under 10 V.S.A. § 6084. Any request for a hearing shall state with specificity why a hearing is required and what additional evidence will be presented." Before scheduling a hearing, "the district commission shall determine that substantive issues requiring a hearing have been raised.'

The Board believes that the Commission did not abuse its discretion in deciding that no substantive issues had been raised requiring a hearing. The Simpsons argue that a hearing should have been held to review the noncompliance of the Permittee with its permit conditions. However, there is no authority in Act 250 for a district commission to hold a hearing on alleged violations of a permit. Authority for enforcing Act 250 is vested in the Board, and is limited to negotiating an Assurance of Discontinuance (10 V.S.A. § 6005), referring violations to the Attorney General's

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Office for civil enforcement (10 V.S.A. § 6006) or to the State's Attorney for criminal prosecution (10 V.S.A. § 6003), or revoking a permit after a hearing (Board Rule 38). The Commission was correct in declining to hold a hearing on an amendment application for the purpose of addressing alleged violations of the permit.

The Board does believe, however, that the Simpsons' appeal to the Board on substantive issues is proper. The Simpsons are adjoining property owners who requested a hearing and are therefore parties pursuant to 10 V.S.A. § 6085(c), entitled to appeal from a permit pursuant to 10 V.S.A. § 6089 and Rule 40. The Board will therefore schedule this matter for a hearing on whether the project will have an undue adverse effect on the scenic or natural beauty of the area and aesthetics under Criterion 8 of § 6086(a), as identified by the Simpsons.

Order

1. The District #2 Environmental Commission did not abuse its discretion in deciding that no substantive issues requiring a hearing had been raised.
2. The Board will convene a public hearing on the Simpsons' appeal on Thursday November 3, 1988 at 1:30 P.m. at Wilmington Vermont. ~~w i l l b e~~ before an administrative hearing officer pursuant to Board Rule 41 and 3 V.S.A. § 811. Any objection to the use of a hearing officer must be filed in writing with the Board on or before October 13, 1988, or the objection will be deemed waived.
3. On or before October 19, 1988, all parties shall file lists of the witnesses and exhibits they intend to present.
4. On or before October 19, 1988, all parties shall file summaries of the testimony they intend to present.

No individual may be called as a witness in this matter if he or she has not been identified above or identified in a supplemental witness list. All reports and other documents that constitute substantive testimony must be filed with the prefilled testimony. If prefilled testimony has not been submitted by the date specified, the witness will not be permitted to testify. Instructions for filing prefilled testimony are attached.

The Board may waive the filing requirements upon a showing of good cause, unless such waiver would prejudice the rights of other parties.

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Please note that you are required to file only lists identifying those exhibits you intend to present, rather than the exhibits themselves. Exhibits must be made available for inspection and copying by any parties prior to the hearing.

Parties shall file an original and ten copies of prefilled testimony, legal memoranda and any other documents with the Board, and mail one copy to each of the parties listed on the attached Certificate of Service.

The hearing will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing to have a stenographic reporter present or a transcript of the proceedings must submit a request by October 13. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

Dated at Montpelier, Vermont, this 4th day of October, 1988.

Leonard U. Wilson

Leonard U. Wilson, Chairman
Ferdinand Bongartz
Elizabeth Courtney
Jan S. Eastman
Arthur Gibb
Samuel Lloyd
W. Philip Wagner

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