

**VERMONT ENVIRONMENTAL BOARD
10 V.S.A. ' ' 6001-6092**

**RE: Green Meadows Center, LLC, Land Use Permit
The Community Alliance, and #2W0694-1-EB
Southeastern Vermont Community Action**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

I. Introduction

This proceeding concerns an application by Green Meadows Center, LLC, the Community Alliance, and Southeastern Vermont Community Action ("Permittees") for a Land Use Permit pursuant to 10 V.S.A. ' ' 6001-6092 ("Act 250") to convert the former Green Meadows School to a multi-use community center to be owned and operated by a consortium of non-profit interests ("the Project").

The Project involves the use of eight existing buildings on the tract, a community garden, senior housing, lodging facilities for visitors, classrooms, offices, meeting rooms, a gymnasium, commercial kitchen and other similar uses. The Project includes upgraded water and sewer systems, improved parking, landscaping, and lighting. The Project is located on Stowe Hill Road in the Town of Wilmington, Vermont.

The Vermont Environmental Board ("Board") concludes in this decision that the application for a Land Use Permit pursuant to Act 250, as described and conditioned herein, complies with 10 V.S.A. ' ' 6086(a)1(B)(waste disposal), 2(sufficient water available), 3(burden on existing water supply), 4(soil erosion), 5(traffic), 7(municipal services), 8(aesthetics), 9(A)(impact of growth), 9(B)(primary agricultural soils), 9(H)(costs of scattered development, 9(K)(public investments and facilities) and 10(conformance with local and regional plans).

II. Procedural History

On May 19, 1999, Permittees filed a land use permit application for the Project with the District #2 Environmental Commission ("Commission") pursuant to Act 250.

On February 1, 2000, the Commission issued Land Use Permit #2W0694-1 ("Permit"), together with supporting Findings of Fact, Conclusions of Law, and Order ("Decision").¹

On March 1, 2000, Michael and Ellen Gilberg, Patricia Tierney, John Scott and Louis and Cynthia Beaudette (the "Neighbors") filed an appeal with the Board contending that the Commission erred by finding that the Project complies with 10 V.S.A. ' 6086(a)1(B)(waste disposal), 1(C)(water conservation), 2(sufficient water available), 3(burden on existing water supply), 4(soil erosion), 5(traffic), 6(impact on schools), 7(municipal services), 8(aesthetics), 8(A)(necessary wildlife habitat), 9(A)(impact of growth), 9(B)(primary agricultural soils), 9(C)(forest and secondary agricultural soils), 9(G)(private utility services), 9(H)(costs of scattered development, 9(K)(public investments and facilities) and 10(conformance with local and regional plans) ("Criteria 1(B), 1(C), 2, 3, 4, 5, 6, 7, 8, 8(A), 9(A), 9(B), 9(C), 9(G), 9(H), 9(K) and 10"). The appeal also contended that the Commission erred by denying the Neighbors party status with respect to Criteria 8(A) and 9(G), and raised ancillary issues concerning notice, ownership and financing.

Following a April 7, 2000 prehearing conference, Board Chair Marcy Harding issued a Prehearing Conference Report and Order ("PHCRO") on April 18, 2000. In the PHCRO, the Chair ruled that the Board would not address issues related to criteria 1(C) or 6 and that issues related to notice, ownership and financing would not be considered for reasons stated in Section III. of the PHCRO.

Subsequent to the issuance of the PHCRO, the Neighbors withdrew their appeal with respect to criterion 8(A).

On April 27, 2000, the Neighbors filed a petition for Party Status in Regard to Criterion 9(G); they filed a Memorandum Regarding Criterion 9(C) on May 3, 2000. Permittees filed a Memorandum Concerning Appellants- Party Status Under Criterion 9(G) and a Memorandum Concerning Appellants- Party Status Under Criterion 9(C) on May 4, 2000.

On May 24, 2000, the Board issued a Memorandum of Decision on Preliminary Issues ("MOD"), wherein the Board declined to expand the scope of

¹ The Board notes that the Commission assigned permit application number -1 (dash one) to the application because a prior project had been applied for on the same tract of land. That earlier application was withdrawn prior to final decision.

the appeal to include criterion 9(C) and denied party status to the Neighbors under criterion 9(G).

On August 7, 2000, Permittees filed a Motion seeking the admission of all exhibits submitted in the Commission proceedings on this matter ("Permittees-Motion"). On August 8, 2000, the Neighbors filed an Objection to Permittees-Request to Submit Additional Exhibits.

A hearing was held and a site visit was conducted on August 8, 2000, in Wilmington, Vermont, with the following persons participating:

- . Raymond P. and Richard Perra, Esqs., representing Green Meadows, LLC ("Green Meadows"), the Community Alliance ("Alliance"), and Southeastern Vermont Community Action ("SEVCA");
Janet Boyd, the Alliance;
Gloria Dawson, SEVCA; and
Robin Stern, Esq., representing the Neighbors.

During the hearing, the Board heard argument and deliberated on Permittees-Motion; the Board then denied the Motion.

Following the hearing, the parties submitted Proposed Findings of Fact and Conclusions of Law, Supplemental Proposed Findings of Fact and Conclusions of Law, a Closing Statement, and revised site and parking plans.

The Board deliberated on August 9, and November 15 and 29, 2000.

As a result of its November 15 deliberation, the Board issued a November 22, 2000 Memorandum of Decision, in which it admitted certain documents submitted by the parties and sought further information concerning the landscaping plans. No objections to the Board-s action were filed, and the following documents are admitted into the record and assigned the following exhibit numbers:

Overall Site Plan (August 13, 2000):	Exhibit GM-P
Site/parking Plan (August 13, 2000):	Exhibit GM-Q

Memorandum from Eric Nelson: (August 17, 2000) Exhibit N22

**Letter from Sonia Alexander to Vermont Agency
of Transportation ("VAOT") (March 23, 2000): Exhibit N23**

**Letter from David Wilcox to Permittees concerning
WW-2-1137 (May 4, 1999): Exhibit GM-R**

**Following the receipt of the information which it requested in its
November 22 Memorandum of Decision, the Board deliberated again on
December 20, 2000 and admitted the following documents into the record², with
the following exhibit numbers:**

**Overall Site Plan (August 13, 2000), revised
(December 11, 2000) Exhibit GM-S**

**Memorandum from Eric Nelson (December 15, 2000)
with attached site plan Exhibit N24**

**Based upon a thorough review of the record, related argument, and the
parties= proposed findings of fact and conclusions of law, the Board declared
the record complete and, following final deliberations, adjourned the hearing on
December 20, 2000. This matter is now ready for final decision.**

²

**When they filed their information, the Neighbors requested a hearing
in order to explore the information provided by the Permittees. The Board
believes that it can determine the necessary landscaping without the need
for such a hearing and therefore denies the Neighbors' request.**

III. Issues

- A. Whether, pursuant to 10 V.S.A. ' 6086(a)(1)(B), the Project meets applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or harmful or toxic substances into ground water or wells.**
- B. Whether the Project has sufficient water available for its reasonably foreseeable needs pursuant to 10 V.S.A. ' 6086(a)(2), and whether it will cause an unreasonable burden on the existing water supply pursuant to 10 V.S.A. ' 6086(a)(3).**
- C. Whether, pursuant to 10 V.S.A. ' 6086(a)(4), the Project will cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.**
- D. Whether, pursuant to 10 V.S.A. ' 6086(a)(5), the Project will cause unreasonable congestion or unsafe conditions with respect to transportation along Adams Lane³ or Stowe Hill Road, including Stowe Hill Road's intersection with Route 100.**
- E. Whether, pursuant to 10 V.S.A. ' 6086(a)(7), the Project will place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.**
- F. Whether, pursuant to 10 V.S.A. ' 6086(a)(8), the Project will have an undue adverse effect on the aesthetics or scenic or natural beauty of the area.**
- G. Whether, pursuant to 10 V.S.A. ' 6086(a)(9)(A), the Project will significantly affect the town's and region-s existing and potential financial**

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The Board notes that Adams Lane has been referred to at various times in these proceedings as "Adams Lane," "Adams Drive," "Adams Road," and "Adams Hill Road." For the sake of clarity the Board will hereafter refer to the road as "Adams Lane."

capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the Project if approved.

- H. Whether, pursuant to 10 V.S.A. ' 6086(a)(9)(B), the Project will significantly reduce the potential of primary agricultural soils.
- I. Whether, pursuant to 10 V.S.A. ' 6086(a)(9)(H), the additional costs of public services and facilities caused directly or indirectly by the Project will outweigh the tax revenue and other public benefits of the Project.
- J. Whether, pursuant to 10 V.S.A. ' 6086(a)(9)(K), the Project will unreasonably endanger public or quasi-public investment or materially jeopardize or interfere with the functional efficiency, safety, public enjoyment of, or access to Stowe Hill Road, including its intersection with Route 100.
- K. Whether, pursuant to 10 V.S.A. ' 6086(a)(10), the Project conforms with the Wilmington Town Plan and Windham Regional Plan.

IV. Findings of Fact

The findings of fact below are organized into a general section followed by sections related to the specific issues. Because many findings are relevant to more than one issue, the findings should not be read as applicable only to the specific issue(s) under which they are contained. Where findings from the general category or another specific category are relevant, they are assumed and not repeated. In the instant case the Board has noted significant overlap in relevant findings among Criteria 7, 8, 9(A), 9(H), and 10.

To the extent that any proposed findings of fact are included herein, they are granted; otherwise they are denied. *See, Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 167 Vt. 228, 241-42 (1997); *Petition of Village of Hardwick Electric Department*, 143 Vt. 437, 445 (1983).

General Findings

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- 1. The Project is located on approximately 28 acres of land on Stowe Hill Road in the Town of Wilmington, approximately 1.2 miles east of Stowe Hill Road's intersection with Vermont Route 100.**
- 2. Green Meadows owns the Project property. The Alliance, an unincorporated association with non-profit interests, and SEVCA, a 501(c)(3) non-profit organization, hold an option to purchase the property, and intend to operate the Project as a non-profit entity. SEVCA will serve as the Project's initial sponsor, with the Alliance working under SEVCA's 501(c)(3) umbrella. SEVCA will remain a permit holder until the Project is stable and the Alliance incorporates as a non-profit.**
- 3. There are eight existing buildings on the Project site. These include a farmhouse, three converted barns (one very large), a workshop, an open-sided lean to/storage patio and two other outbuildings. A fenced tennis court, as well as gravel driveway and 37 car parking area also exist on the site.**
- 4. The Project site was a working dairy farm until the late 1960's. It has also served as a nightclub, a private school and day camp (Palisades School) and, more recently, a boarding school for special needs children (Green Meadows School). The Green Meadows School program included gardening, animal care, a workshop and art studio, classroom work, a gymnasium, large activity room and commercial kitchen. Two buildings on the property were used as dorms for housing staff and students.**
- 5. Green Meadows School closed and buildings in the barn complex were vacated in June, 1997. The farmhouse was vacated in December, 1998. They have been vacant since that time.**
- 6. Permittees propose to use the site's eight existing buildings as a multi-generational community center for community activities and resources for residents of the Deerfield Valley, specifically Wardsboro, Dover, Wilmington, Searsburg, Whitingham and Halifax.**
- 7. Part of the rolling meadows on the property will be used for a community garden and other parts for play and haying or pasturing farm animals.**

8. The farmhouse will provide common and assisted living for up to six senior citizens.
9. A 3,000 square foot building identified in Permittees' site plans as the "small dorm" will provide overnight accommodations for up to six individuals participating in community programs, such as visiting artists.
10. The large barn, identified in Permittees' site plans as the "big barn," will consist of classrooms, multipurpose rooms, a gymnasium, offices, a commercial kitchen and a greenhouse. The big barn will be used for meeting rooms; offices for human service and other programs; serving senior meals; preparation of meals for the community Meals-On-Wheels program; a day care and child development programs; a computer lab; a large community room for senior programs; after school and young adult activities; the gym for tap, jazz and ballet classes, aerobics and community play; the greenhouse for agricultural activities, and other similar activities appropriate to a community center.
11. The workshop building will be used for woodworking and as an artists' studio.
12. A barn to the northwest of the farmhouse ("new barn") will be used in conjunction with the community garden program and for storage, and another barn ("small barn") west of the farmhouse will be used for other agricultural activities.
13. There will be a fenced-in playground on the west side of the maintenance shed and the existing tennis court will be available for community use.⁴

⁴ Uses enumerated by the Permittees for all of the buildings on the site included: offices, first aid, town nurse, foot care clinic, childhood early education programs, day care, Baby and Toddler Jubilee, human services counseling, photography dark room, meeting space with a kitchenette, tap classes in the gymnasium, jazz dance lessons, ballet, aerobics, yoga, after school activities for students, computer lab, dining area and kitchen, adult day care, mentoring programs, residential facility for six full time senior citizen residents, dorm with six bedrooms for participants in local programs, wellness programs, arts and education

14. Community organizations that will use the office space and facilities offered by the Project include 4-H, Baby and Toddler Jubilee, the Council on Aging for Southeastern Vermont, Valley Youth Sports and the Deerfield Valley Prevention Partnership, among others. The Project will offer after school programs, a teen center and senior center, mentoring programs, human services and counseling and a first aid/town nurse/foot care clinic.
15. Louis and Cynthia Beaudette live north by northeast and above and behind the Project, approximately 200 yards away from project activities.
16. Patricia Tierney and John Scott's property abuts the proposed project for approximately 1000 feet. Their house is located approximately 200 feet due east of the Project and at a higher elevation.

Specific Findings

Criterion (1)(B)

17. The existing septic system failed at the Green Meadow School around 1997.
18. Two on-site pressurized mound-type septic systems have been designed to replace existing failed systems on the site. Permittees have submitted detailed plans for the new systems which have been reviewed and approved by the Regional Engineer for the Agency of Natural Resources ("ANR").

programs, community garden, agricultural activities, and residence for artists-in-residence.

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- 19. ANR grandfathered pre-existing wastewater flow maximums of 3,500 gallons per day ("gpd") for the barn complex (big barn, workshop and small dorm) and 450 gpd for the farmhouse. As is typical for such replacement projects, the State has waived requirements for full hydrologic studies, construction of dual 100 percent size leach fields, and demonstration of the existence of approved replacement areas. It has also allowed a reduction in the minimum separation to a downslope well from 500 feet to approximately 400 feet because of the hydrologic separation created by a year-round stream and roadway ditches located between the leach field site and well.**
- 20. Professional Engineer Michael Foster designed the new wastewater systems around the grandfathered flow maximums after verifying soil conditions, performing percolation tests and completing a topographic survey of the site, in accordance with the Vermont Environmental Protection Rules, Chapter 1, Small Scale Wastewater Treatment and Disposal Rules.**
- 21. The new wastewater systems are designed to maintain the required separation distance from leaching trench bottom to seasonal high water table and ledge of three and four feet, respectively, as required in the Rules.**
- 22. The total design flows for the barn complex and farmhouse are within the grandfathered wastewater flow limits.**
- 23. ANR has approved the Project's wastewater disposal and water supply systems and Dan Wilcox, Regional Engineer for ANR, has authorized installation of the Project's wastewater disposal systems. Given the history of the failed system (which was not approved) ANR will not issue a final permit until the new systems are installed and certified by a professional engineer to conform with the approved design.**
- 24. Storm water runoff will be treated by overland flow through heavily grassed fields and pasture. No storm water discharge permit is required because less than one acre of new parking area is being proposed.**

Criteria 2 and 3

- 25. The Project will be served by two existing on-site bedrock wells and one new bedrock well. Existing Well 2 will be sealed and abandoned.**
- 26. The barn complex (big barn, workshop and small dorm) will be served by an existing drilled well, identified as "Well 3." This well has a well-driller's estimated yield of 9 gallons per minute ("gpm"). For design purposes, however, one half of the estimated yield, or 4.5 gpm, are considered to be available. Maximum daily demand for Well 3 is 4.86 gpm. An underground concrete water storage tank with 24 hours of emergency supply has been included in the design of this well system, and reduces the required maximum well yield to 3.26 gpm.**
- 27. Well 3 has passed water quality testing in accordance with the Vermont Water Supply Rule, Table E. In addition, it was tested for volatile organic compounds and no contaminants were found. A fence will be constructed around Well 3 to maintain a 25 foot isolation distance between this well and any activity.**
- 28. The farmhouse will be served by a new drilled well, identified as "Well 4." Maximum daily demand for this well is 0.62 gpm. State well records show that other area well yields range from 2 to 20 gpm; therefore it is reasonable to expect that a well can be developed providing a minimum of 0.62 gpm. No emergency water storage is required for the farmhouse because its average daily demand is less than 500 gpd.**
- 29. An existing drilled well, identified as "Well 1," will serve the Project's fire protection system, pumping directly into an existing fire protection system storage tank. In the event of a fire, booster pumps will pump from the storage tank into the sprinkler system. The storage tank and fire protection system have been sized to accommodate a fire event, and the system has been approved by the Vermont Department of Labor and Industry.**

30. The proposed water systems for the barn complex and the farmhouse meet the requirements of the Vermont Water Supply Rules. Interference testing for neighboring wells is not required because there are no neighboring wells within 500 feet.
31. As noted above, ANR has approved the Project's water supply systems and Dan Wilcox, Regional Engineer for ANR has authorized installation of the Project's water supply system. ANR will not issue a final permit until the new systems are installed and certified by a professional engineer to conform with the approved design.

Criterion 4

32. The Project will use the eight existing buildings on the site. No new buildings will be constructed.
33. Earth disturbance will be limited to expansion of the parking lot and driveway, installation of the new wastewater and water supply systems and landscaping and screening at various locations on the Project tract.
34. Soil erosion during construction will be controlled through the use of silt fencing, hay bales and mulch. The Permittees will comply with the erosion control requirements of the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites.
35. Immediately after construction is completed, disturbed areas will be covered with three inches of topsoil, which will be seeded and mulched with hay or straw to provide a dense growth of permanent grass vegetation.

Criterion 5

36. The Project is located approximately 1.6 miles northeast of the center of the Town of Wilmington. It is accessed by Stowe Hill Road, a well-maintained, two-lane paved town highway off Route 100.

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- 37. Stowe Hill Road has a posted speed limit of 40 mph. Grades along the road are up to 12% with the grade descending to the Route 100 intersection at approximately 7%.**
- 38. Adams Lane is a Class 3 town highway running north/south which connects Stowe Hill Road to Route 100. Beginning at Stowe Hill Road, Adams Lane descends approximately 800 feet northerly to Route 100 at approximately a 6% grade. It currently provides access for some vehicles seeking to head north on Route 100 off Stowe Hill Road in the non-winter months. Adams Lane is a single-lane gravel road, 12 feet wide, with large, mature trees on both sides and no shoulders, signage or drainage ditches. The Town of Wilmington closes Adams Lane during the winter months due to its narrow width and insufficient room for snow plowing and storage.**
- 39. The Wilmington Selectboard has reduced the speed limit on Stowe Hill Road from Route 100 to Riverview Cemetery from 40 mph to 30 mph, and from Riverview Cemetery to Top of the Hill Road from 40 mph to 35 mph based on the recommendations of Wilmington Police Chief Joseph Szarejko, who recommended the reduction after conducting a traffic and speed survey of the area in accordance with 23 V.S.A. ' 1007. These changes will be implemented when the Wilmington Traffic Ordinance is readopted.**
- 40. Adequate sight distance looking left of the project driveway (eastbound) can be achieved with vegetation trimming, and sight distance looking right is sufficient at a 40 mph speed limit, given that approaching traffic from the right is moving uphill.**
- 41. There has been only one serious accident on Stowe Hill Road in recent years, and that accident involved a drunk driver. It is not a high accident location. With the exception of its intersection with Route 100, the design of Stowe Hill Road is not unsafe.**
- 42. Stowe Hill Road currently serves automobile, bus, van and truck traffic including food delivery trucks. The Project will generate increased car, van, bus and truck traffic, but the size of the vehicles will not be larger than that of vehicles already traveling Stowe Hill Road. The "Moover"**

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shuttle bus service operated by the Deerfield Valley Transit Association will provide bus service to and from the Project. School buses already travel Stowe Hill Road, and their use has not been problematic. Meals prepared on the Project site for the Meals-on-Wheels program will be transported off-site by a van.

43. Approximately 77% of traffic exiting the Project will turn right out of the Project driveway toward Route 100 as that is the direction of the population centers the Project will serve.
44. The Project driveway is presently inadequate to handle two-way traffic. As part of the Project, the driveway will be widened from its current width of approximately 13 feet, 9 inches, to approximately 20 feet.
45. Stowe Hill Road intersects Route 100 at an acute angle, approximately 1.2 miles away from the project entrance driveway. Due to the configuration of the intersection, trucks and buses cannot safely negotiate a right hand turn off Stowe Hill Road onto Route 100 northbound without crossing over into the oncoming southbound traffic lane, creating an unsafe condition.
46. The Stowe Hill Road/Route 100 intersection is planned to be reconstructed to improve the intersection's geometry as part of a State project to improve Routes 9 and 100 at an undetermined future date.
47. The Town of Wilmington is not presently maintaining Adams Lane in conformance with the requirements of 19 V.S.A. ' 302(a)(3)(B). Improvements are planned by the Town.
48. Speed limit signs and signs on Stowe Hill Road will be posted, directing traffic bound for Route 100 northbound to use Adams Lane.
49. Route 100 north can also be accessed from the Project by turning left out of the Project driveway and following Stowe Hill Road east to Lake Raponda and Higley Hill Roads. These roads are well-maintained and recently paved, but the route is circuitous as well as hilly, curving and steep in places.

- 50. Operating hours for the Project will be 7:00 a.m to 9:30 p.m. Sunday through Thursday, and 7:00 a.m. to 10:30 p.m. Friday and Saturday.
- 51. The Project has been designed to serve a maximum of 187 users per day.⁵ This limitation is mandated by the barn complex's grandfathered septic design flow maximum of 3,500 gpd.
- 52. Permittees have designed Project programs and scheduling to keep participation within the 187 users per day maximum. Programs will run on a staggered schedule which will limit peak hour traffic generation.
- 53. Based upon the 187 users per day maximum and the Project's planned programs and uses, the maximum traffic generated by the Project (on those days when all of its activities are operating) will be 588 trip ends (one way trips) per day, spread over the course of a day as follows:

<u>Time of Day</u>	<u>Total Trips</u>	<u>Time of Day</u>	<u>Total Trips</u>
7:00 a.m.	11	3:00 p.m.	23
7:30	22	3:30	18
8:00	20	4:00	14
8:30	23	4:30	42
9:00	17	5:00	30
9:30	18	5:30	41
10:00	34	6:00	33
10:30	24	7:00	26
11:00	21	7:30	44
11:30	22	8:00	6
12:00 p.m.	16	8:30	5

⁵ Each person on the Project site who uses the Project facilities for any period of time during the course of a day is counted as one user. Users do not include persons making drop-offs, pick-ups, or deliveries.

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12:30	6	9:00	25
1:00	8	9:30	15
1:30	4	10:00	8
2:00	3	10:30	<u>3</u>
2:30	6	TOTAL	588

54. Approximately 200 to 220 vehicles per day currently use Stowe Hill Road.
55. Stowe Hill Road has the capacity to handle 1,951 vehicles per hour. This capacity was estimated based on the 1997 Highway Capacity Manual.
56. Using the Institute of Transportation Engineers ("ITE") methodology for trip generation estimates, the Neighbors estimate that the Project will generate 605 vehicles per day, and at peak hours, 76 vehicles per hour in the morning and 81 vehicles per hour in the afternoon. In reaching these projections, the Neighbors relied on ITE trip generation estimates for uses described as Elderly Housing, Hotel, and Recreational Community Center.
57. Stowe Hill Road has the capacity to serve additional traffic even at the higher levels projected by the Neighbors.
58. Current peak hour of traffic on Stowe Hill Road in the vicinity of the Project is between 3:00 p.m and 4:00 p.m., during which 20-30 vehicles pass by.⁶

⁶ This information comes from a traffic count performed by the Windham Regional Commission ("WRC"). Data collection for this traffic count was incomplete because the counter did not record information at all times during the period the traffic count was conducted. However, as information was gathered for five full days (including a Monday, a Friday, a Saturday and two Sundays) and six partial days (one-half day on a Monday, a Tuesday, a Thursday, a Friday and two Saturdays), the counts are sufficient for purposes of evaluating the Project's compliance with Criterion 5.

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59. The Project will generate a maximum of 44 trip ends per hour during the morning peak hour of traffic on Stowe Hill Road (from 7:30 a.m. and 8:00 a.m.) and will add approximately 41 trip ends to the Road during the afternoon peak hour (between 3:00 p.m. and 4:00 p.m.).
60. VAOT guidelines ordinarily require formal traffic studies if a project will generate more than 75 vehicle trips per hour during the peak hour of adjacent street traffic. A full traffic study is not required here because 41 vehicles per hour during the peak hour are projected to result from the Project.
61. The roadway level of service ("LOS") on Stowe Hill Road, with the additional vehicles from the Project, is projected to be LOS "B."
62. The present configuration of the Stowe Hill Road/Route 100 intersection is unsafe for trucks and buses turning northbound on Route 100 from Stowe Hill Road. To address this condition Adams Lane must be reconstructed and widened to accommodate traffic northbound for Route 100 off of Stowe Hill Road. Further, northbound motorists must be directed to use Adams Lane until such time as the intersection is improved.

Criterion 7

63. Wilmington's Police Department is presently providing police services to the Project tract; the Project will not require the acquisition of any new equipment for the Police Department and will not result in any increase in the Department's budget. The Project will provide wholesome activities for Wilmington's youth. The Department has the present capacity to provide routine police services to the Project.
64. Wilmington's Fire Department is presently providing fire protection for the buildings on the Project tract; the Project will not require the acquisition of any new equipment for the Fire Department, nor will it result in any increase in the Department's budget. The fire prevention and detection

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systems which presently exist at the Green Meadows Center will have a positive effect on the Fire Department's ability to provide fire services, once those systems are put back into active service. No greater burdens than currently exist will be placed on the Fire Department as a result of the construction and operation of the Project.

65. Deerfield Valley Rescue, Inc. can attend to the Project's needs for emergency treatment and transport. The Project will not require additional personnel or the acquisition of any new equipment for Deerfield Valley Rescue and will not result in any increase in its budget.
66. The Town of Wilmington has the capacity to provide services to the Project; no additional road maintenance services will be required as a result of the Project; the Town's solid waste transfer station and recycling facility are more than adequate to handle the Project's waste. Because there is on-site water and sewage disposal, there is no burden on the Town to provide those services. The Project will not require the acquisition of any new equipment for the Town. The Selectboard of the Town of Wilmington supports the Project.
67. The Town of Wilmington is legally obligated to construct and maintain Adams Lane pursuant to 19 V.S.A. ' 302(a)(3)(B). Estimates to repair Adams Lane have ranged from \$5,000 to \$80,000.

Criterion 8

68. The Project is proposed at the site of an old Vermont dairy farm, at an elevation which provides sweeping views of the surrounding hills to the north. The Project is in a rural residential area, and the Project as proposed seeks to retain the architectural appearance of a typical larger Vermont farm - - namely, a farmhouse, large barn and accessory outbuildings. This appearance will not change. The buildings are white, clapboarded structures, and will remain so.

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69. Permittees propose a community center utilizing the existing buildings on site. No additional buildings will be constructed and no change in the exterior of the buildings is proposed, other than minor repairs and fresh paint.
70. Exterior lighting is required but its effects are mitigated by use of down-shielded fixtures. The Permittees shall follow the "Site/parking plan," revised 8/13/2000 (Exhibit GM-Q). The parking area lights will use timers and be turned off when the facility is not in use. The wattage of pole-mounted fixtures will be 100 watts, the wattage of building-mounted fixtures will be 50 watts, the signage light will be cast downward, and the height of the parking lot lights will be 12 feet above the ground.
71. The Project will be screened by spruce and hemlock plantings, as indicated on the "Overall Site Plan," revised 8/13/2000 and further revised on 12/11/00 (Exhibit GM-S), with some of the modifications included on the site plan accompanying Exhibit N-24.
72. There will be an increase in traffic noise on Stowe Hill Road, and there may be the sounds of children playing or of gardening equipment being run.
73. There is an abundance of wildlife at the project site. Species include deer, moose, bear, fox, ruffed grouse, turkey and many other species of birds.
74. The surrounding neighborhood of the project site is bucolic and quiet, with lovely views.
75. The night sky is visible from the surrounding neighborhood and is not interrupted by commercial lighting.
76. The project site and parking lot are visible from Stowe Hill Road.
77. Signage will be limited to one sign at the entrance.

Criterion 9(A)

- 78. The Town of Wilmington's population in 1998 was 1,968.
- 79. 187 people will visit the site on any given day.

- 80. The Project will bring in people from at least four surrounding towns on a daily basis.

- 81. There will be approximately six additional permanent residents in the Town of Wilmington as a result of the Project.

- 82. The Town of Wilmington has no capital improvement program or plan.

- 83. The Project will provide senior housing for up to six residents.

- 84. The Town has the capacity to accommodate the modest potential population growth represented by the Project. .

Criterion 9(B)

- 85. The property was used as Fox Dairy Farm from 1941 until the 1960's.

- 86. The property still has hay growing on it.

- 87. There are working farms such as Adams Farm and Wheeler Farm within one mile of the project.

- 88. The overall parcel size is 28 acres. Approximately 1.5 acres of statewide primary agricultural soils are contained on the site; there is thus limited agricultural potential on the site.

- 89. One of the proposed leach fields will impact about 0.15 acres of primary agricultural soils.

Criterion 9(H)

- 90. The Project is not contiguous to an existing settlement.

91. The Project will not affect the Town of Wilmington's ability to maintain Stowe Hill Road, or to provide municipal and fire and police protection services.
92. The Town receives tax revenue from the property and will continue to do so.
93. Project benefits include housing and employment opportunities, as well as tax revenues.
94. The Project by its very nature involves public benefits.

Criterion 9(K)

95. Stowe Hill Road, Adams Lane, and their intersections with Route 100 constitute public investments.

Criterion 10

Wilmington Town Plan

96. The Wilmington Town Plan, adopted on August 26, 1998, seeks, *inter alia*, to "protect residential, agricultural and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking, and the invasion of traffic, and the loss of peace, quiet, and privacy...." Wilmington Town Plan, Framework for Planning, at 3.
97. The Project site is located on a Scenic Road in a Rural District as designated in the Town Plan. *Id.* at 37 and 39, Maps 2, 3 and 5.
98. The purpose of the Rural District is to "provide areas for dwellings and other small-scale rural uses with consideration being given to the historic settlement patterns, aesthetics, natural resource production, and economic vitality." *Id.* at 37.

99. Scenic Roads are roads which were identified by the Wilmington Planning Commission "as having the most scenic value to residents and visitors. Consideration should be given to these scenic values." *Id.* at 39.

100. The site consists of meadows, woods and farm buildings. It has historically been used as a dairy farm, and a school for a small number of autistic children. It has been mowed for hay over the last several years. *Id.* at 40.

101. The Wilmington Town Plan includes the following relevant goals, objectives and policies:

! **GOAL I: Existing and Future Settlement: To Plan Development as to Maintain the Town-s characteristic Settlement Pattern of Compact Village and Rural Countryside.**

Objective 3: Maintain the rural character of the Town outside the Village by encouraging the continued existence of cropland, meadows, pasture-lands and forested hillsides and mountains.

Policies: b.) Encourage screening for commercial developments by requiring landscaping and buffer zones, when necessary to hide unsightly storage of equipment or material.

! **GOAL II: Economy: To Provide a Strong Diverse Economy that Provides Satisfactory and Rewarding Job Opportunities, Maintains High Environmental Standards, and Expanded Economic Opportunities for People in all Income Brackets.**

Policies: a.) Pursue economic, cultural, and recreational development opportunities that will provide long range economic benefits and stable employment opportunities.

d.) Aggressively seek environmentally benign, light industries and professions that do not negatively impact the aesthetic quality of the area. Work with existing economic development groups to achieve this purpose.

! **GOAL III: Education: To Broaden Access to Educational and Vocational Opportunities that Advance Full Realization of the abilities of the People of Wilmington.**

Objective 2: Encourage educational and vocational experience and opportunities for all residents of Wilmington.

Policies: b.) Encourage educational forums taught by local Professionals and business persons in the pursuit of Educational enrichment.

! **GOAL IV: Transportation: To provide for safe, convenient, economical and energy efficient transportation systems that respect the integrity of the environment.**

Objective 1: Maintain roads in a condition of adequacy, and safety and with due regard for their scenic qualities.

Objective 4: Coordinate transportation goals within the Valley.

Policies: a.) Support services that provide transportation for residents and visitors, especially the elderly and handicapped.

! **GOAL V: Natural and Historic Features: To Identify, Protect and Preserve Important Natural and Historic Features of the Wilmington Landscape.**

Objective 2: Protect historic sites and structures of significance.

Policies: d.) Reuse or rehabilitate historic buildings in the Community as a method of preservation.

! **GOAL VII: Energy Resources: To Encourage the Efficient Use of Energy and the Development of Renewable Energy Resources.**

Objective 1: Encourage energy conservation and the use of alternate, Environmentally responsible energy sources.

Policies: c.) Encourage the use of a bus service in the Deerfield Valley.

e.) Encourage the use of outdoor lighting which should be energy efficient, that does not cause "light pollution," interfere with a neighbor's privacy, or adversely affect the night landscape.

! **GOAL IX: Agriculture and Forest Industries: To Encourage and Strengthen Agriculture and Forest Industries.**

Objective 1. Encourage, identify, preserve, protect and conserve our forest and agricultural lands.

Objective 2. Encourage the use of agricultural and forest land for the economic benefits derived.

Objective 3. Encourage the development of conservation measures for protecting the long-term viability of our agricultural and forest lands for future generations.

Policies: c.) Encourage a plan to conserve productive forest and agricultural soils.

! **GOAL XI: Housing: To Ensure the Availability of Housing for all Residents of Wilmington.**

Objective 3: Encourage the development of a program for addressing the Housing needs of those with low and moderate income.

Policies: a) Encourage the evaluation and inventory of possible locations for development of affordable and elderly housing close to community and commercial services.

b.) Support efforts to provide affordable housing for low and moderate income and elderly residents.

! GOAL XIV: To Encourage Excellent Non-Emergency Medical Care and Social Welfare For Wilmington Residents.

Objective 1: Promote excellent health care.

Policies: a.) Encourage the support of health and social welfare agencies that supply services to the residents.

Id. at 22-31.

102. There are six units planned in the farmhouse for senior housing. Overnight accommodations for six are planned for the large dormitory.

Windham Regional Plan:

103. The Windham Regional Plan ("WRP") states in relevant part:

! Villages Policies

1) Direct residential, commercial and industrial development, recreational facilities and cultural activities, and community buildings and uses to villages in order to keep these centers culturally, socially and economically viable.

- 3) Encourage revitalization efforts which strengthen and improve the viability of villages. Use existing historic structures in the villages whenever possible.
- 6) Establish and maintain village boundaries in order to prevent rural sprawl and preserve historic settlement patterns.

WRP at 27.

! Scenic Resources Policies:

- 8) Illuminate structures and exterior areas only at levels necessary to ensure safety and security of persons and property.
- 9) Arrange all exterior lighting so that the light source (lamp) is not directly visible from public roads, adjacent residences or distant vantage points. Shield exterior lighting so that the source light does not project above the lamp.

Id. at 54 and 55.

! Privately Owned On-site Waste Water Policies:

- 4) Support programs to assist with the replacement of failed on-site sewage disposal systems.

Id. at 75 and 76.

! Communications Program/Actions:

- 1) Work with the region-s schools, libraries, colleges, town governments, health care facilities and other appropriate locations to support additional sites and expanded hours for free or low-cost public access to the Internet and other electronic information sources.

Id. at 98 - 103.

! Human Service Policies:

- 2) Promote the child care and elder care needs of employees by encouraging the location of appropriate facilities at or nearby to employment.
- 3) Avoid duplication of human service efforts by assisting coordinating the provision of community service organizations, as feasible and appropriate.

Id. at 103 and 104.

! Outdoor Recreation Programs/Actions:

- 10) Plan and provide recreational opportunities for the disabled and elderly.

Id. at 104 - 106.

! Cultural and Historic Resources Policies:

- 2) Encourage community-based facilities and organizations which will support cultural needs, along with improvements in marketing and distribution of the arts.
- 6) Encourage rehabilitation of significant historic sites and structures. Emphasize adaptive use of historic resources whenever it is economically viable.
- 7) Encourage development which preserves the historic and architectural character of town and village centers and the rural landscape.

Id. at 106 - 108.

! Energy Policies:

- 11) Promote the reduction of vehicle miles traveled in Vermont.

Id. at 117.

! Transportation Policies:

- 5) Critically review and evaluate proposed development which generates unsafe traffic conditions, especially along sections of highway with low sufficiency ratings.
- 7) Encourage and support the use of energy efficient modes of transportation such as public transit, ride sharing, van pools, bicycling and walking, whenever possible.

Id. at 138.

! Affordable Housing Policies:

- 1) Assist the coordination between public and private agencies involved with planning and financing for affordable housing, including alternative financing mechanisms such as, but not limited to, land trusts, cooperative housing, limited equity cooperatives, and other types of ownership.
- 2) Support the preservation of affordable housing and the development of strategies that would guarantee long-term affordability.
- 3) Support the maintenance of existing housing stock for continued residential purposes rather than conversion to other uses.

Id. at 147.

! Special Needs Policies:

- 4) Encourage non-profit organizations to play a role in providing housing for the region's very low-income, elderly, and handicapped residents.

- 7) Direct the development of special needs housing to locations which enhance the quality of life of the residents and make use of existing infrastructure.

Id. at 151.

V. Conclusions of Law

A. Burden of Proof

The term "burden of proof" refers to two separate burdens: the burden of going forward and producing evidence, and the burden of persuasion. See *Re: Pratt's Propane*, #3R0486-EB, Findings of Fact, Conclusions of Law, and Order at 4-5 (Jan. 27, 1987). 10 V.S.A. ' 6088 operates in conjunction with the requirement that before a permit can be issued, the Board (or Commission) must make the affirmative findings required under the 10 criteria. See 10 V.S.A. ' 6086(a).

The Permittees have the burden of production with respect to all criteria on appeal. *Pratt's Propane*, *supra* at 5. The Permittees also bear the burden of persuasion with respect to Criteria 1(B), 2, 3, 4, 9(A), 9(B), 9(H), 9(K), and 10.

B. Criterion 1(B) (waste disposal)

The Board will grant a permit whenever the Applicant demonstrates "that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells." 10 V.S.A. ' 6086(a)(1)(B). *Sherman Hollow, Inc.* #4C0429-5R-1-EB (June 19, 1992).

A Water Supply and Wastewater Disposal Permit (AWW permit) or a site and foundation approval can serve as a rebuttable presumption that the project will not inject waste materials or any harmful or toxic substances into the ground water or wells. Environmental Board Rule ("EBR") 19 (E)(1)(b) and (H).

The Permittees have not entered a WW permit into the record in this case because the Regional Engineer, having reviewed the plans and the compliance history of the site, has granted permission to install the new sewage disposal system and public non-transient non-community water system and to defer the issuance of the final WW permit until such time as the Applicant's engineer's inspection report confirms that the systems were installed in accordance with the approved plans. While a final WW permit has not been issued, the Board nevertheless concludes that the Regional Engineer's approval of the design and permission to construct constitutes a "site and foundation approval" under Environmental Board Rule 19(H). Accordingly, the Board finds that the Permittees have demonstrated conformance with ANR's Environmental Protection Rules based upon the presumption of compliance created by the Regional Engineer's review and approval.

The Permittees have also provided the Board with wastewater disposal plans (including replacement areas) and water supply system plans proposed for construction. The isolation distances between the Project's wastewater disposal systems and the groundwater will ensure that waste materials will not enter the groundwater at harmful levels. Additionally, there are no streams or springs in the Project area that could be adversely affected by the Project's waste disposal systems.

The Permit will be conditioned to prohibit use and occupancy of the buildings prior to issuance of the final WW permit - which shall be automatically incorporated by reference herein upon issuance. With this condition, the Board concludes that the Project will meet applicable health and environmental conservation department regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Therefore, the Project complies with Criterion 1(B).

C. Criteria 2 and 3 (water supply/burden on existing water supply)

Before issuing a permit, the Board must find under Criterion 2 that the proposed project has "sufficient water available for the reasonably foreseeable needs of the subdivision or development" and under Criterion 3 that the proposed project "[w]ill not cause an unreasonable burden on an existing water supply, if one is to be utilized." 10 V.S.A. ' ' 6086(a)(2) and(a)(3). Criterion 3

addresses the "impacts on the ability to meet the demand of neighboring wells or water sources if those other wells or water sources share the same basic source of water such as an aquifer or common spring." *Re: MBL Associates, #4C0948-EB, Findings of Fact, Conclusions of Law, and Order at 28 (May 2, 1995).*

Criterion 2

The proposed water systems for the barn complex and the farmhouse meet the requirements of the Vermont Water Supply Rules utilizing two existing wells and one new well. The actual and projected well yields have been shown to meet projected demand. The water systems will be constructed in accordance with plans approved by the Regional Engineer, and the Board will condition the permit issued with this decision to prohibit use and occupancy prior to confirmation that the systems have been installed as approved. Based on the above restrictions, the Board concludes that there is sufficient water available for the reasonably foreseeable needs of the Project. Therefore, the Project complies with Criterion 2.

Criterion 3

The use of two proven wells for the majority of the facility needs and only one relatively low demand new well for the farmhouse provides assurance that water withdrawals will not have a substantial impact on the aquifer supplying the area. Adjoining residences to the Project are generally at higher elevations than the Project wells and the nearest existing residential water supply is over 500 feet from the closest Project well. Accordingly, interference testing is not required under the Water Supply Rules. The water systems will be constructed in accordance with plans approved by the Regional Engineer, and the Board will condition its permit to prohibit use and occupancy prior to confirmation that the systems have been installed as approved. The Board therefore concludes that the Project will not cause an unreasonable burden on existing water supplies and complies with Criterion 3.

D. Criterion 4 (soil erosion)

Before issuing a permit, the Board must find that the proposed project "[w]ill not cause unreasonable soil erosion or reduction in the capacity of the

land to hold water so that a dangerous or unhealthy condition may result." 10 V.S.A. ' 6086(a)(4).

Erosion control plans used to satisfy Criterion 4 must be site-specific. *Re: Sherman Hollow, Inc., #4C0422-5-EB (Revised), Findings of Fact, Conclusions of Law, and Order at 37 (Feb. 17, 1989).* The Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites (1982) ("Handbook") is often used to demonstrate compliance with Criterion 4.

Earth disturbance in this case will be very limited given the diversity of project activities. Eight existing buildings will be used *in situ*. Earth disturbance will be limited to an expanded parking lot, driveway, and the construction of in ground septic disposal and water supply systems. The Permittees will maintain erosion control measures in conformance with the Handbook during the construction phase. The permit for the Project will be conditioned to ensure that such erosion control measures are employed and maintained.

The Board concludes that with these conditions, the Project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. Therefore, the Project complies with Criterion 4.

E. Criterion 5 (Traffic)

Before issuing a permit, the Board must find that the proposed project, "[w]ill not cause unreasonable congestion or unsafe conditions with respect to the use of highways" 10 V.S.A. ' 6086(a)(5)(traffic). A permit may not be denied solely on the basis of Criterion 5, but the Board may attach reasonable conditions and requirements to the permit to alleviate the burden created. 10 V.S.A. ' 6087(b). While the Neighbors bear the burden of proof on Criterion 5, 10 V.S.A. ' 6088(b), the Permittees must provide sufficient information for the Board to make affirmative findings.

Unreasonable congestion

It is projected, and will be conditioned, that the Project will add no more than 41 vehicles per hour to Stowe Hill Road during morning or afternoon peak

hours. Stowe Hill Road, has a present capacity to handle 1,951 vehicles per hour.

The Project will be limited to a maximum of 187 daily users. The Board is aware that the Neighbors estimate, using ITE methodology, that the Project will generate 605 vehicles per day, and at peak hours, 76 vehicles per hour in the morning and 81 vehicles per hour in the afternoon. In reaching these projections, the Neighbors relied on ITE trip generation estimates for uses described as Elderly Housing, Hotel, and Recreational Community Center. These estimates apply to the extent that Permittees=uses are the same as or equivalent to those forming the basis of the ITE studies. However, the Project is not a pure elderly housing, nor hotel, nor recreational community center project, but is instead an amalgam of these and other proposed uses. Accordingly, it is difficult to predict with certainty the actual traffic impacts resulting from a project of this type. On balance, the Board concludes that the imposed limitation of 187 users per day accurately reflects probable traffic numbers to be generated by the Project. The Board adopts this limitation and will condition the permit which it issues to allow a maximum of 187 users per day.

The Board finds that Stowe Hill Road has the capacity to serve additional traffic even at the higher levels projected by the Neighbors. The projection that, with the Project in operation Stowe Hill Road will operate at LOS "B," indicates that the additional traffic generated by the Project will not result in unreasonable congestion on Stowe Hill Road.

Safety

The Board does, however, conclude that the project will likely result in unsafe conditions at the entrance drive if the sight lines are not cleared of vegetation and that the intersection of Stowe Hill Road and Route 100 presents an unsafe condition, where northbound turning trucks and buses create a hazard due to the overly acute turning radius of the present configuration of the intersection. Pursuant to 19 V.S.A. ' 302(a)(3)(B), "the minimum standards for class 3 highways are a highway negotiable under normal conditions *all seasons of the year* by a standard manufactured pleasure car. This would include but not be limited to sufficient surface and base, adequate drainage and sufficient width capable to provide winter maintenance." (Emphasis added). Accordingly,

the Board will condition the permit which it will issue to require that northbound traffic be directed to use Adams Lane.

The Board concludes that, as conditioned in this permit, the project will not result in unsafe conditions nor unreasonable congestion provided that Adams Lane is used for northbound traffic, driveway improvements are constructed and maintained as approved herein. The District Commission retains jurisdiction and the ability to impose additional conditions as provided by Condition 12 of the Commission permit, in the event that unforeseen safety or congestion issues arise in the future.

Conditioned and operated in this manner, the Board concludes that the project conforms with Criterion 5.

F. Criterion 7 (municipal or government services)

Before issuing a permit, the Board must find that the proposed project, "[w]ill not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services." 10 V.S.A. ' 6086(a)(7). The burden of proof is on the opponent under Criterion 7. 10 V.S.A. ' 6088(b). Criterion 7 covers a range of municipal services, including fire protection, police, solid waste disposal (landfill or other), sewage treatment, water systems, rescue, and road maintenance.

In making its determination, the Board considers the likelihood that the proposed project will (1) place an undue, uneconomic or excessive burden on the ability of local and regional governments or public utilities to provide the services needed for the project or other projects, or accommodate growth and (2) endanger public investments in, or jeopardize or interfere with, adjacent public facilities under Criteria 7, 9(A), 9(H), 9(J), and 9(K). *Finard-Zamias Associates*, #1R0661-EB, Findings of Fact, Conclusions of Law, and Order (Nov. 19, 1990).

Town officials responsible for police and fire safety, rescue services, and general municipal operations confirm that the municipality will not be unduly burdened - and may in fact be benefited by - this Project. The Board concludes that the Project will not create an unreasonable burden on municipal services and therefore complies with Criterion 7.

G. Criterion 8 (aesthetics)

Before issuing a permit, the Board must find that the proposed project will not have an undue adverse effect on the scenic or natural beauty and aesthetics of the area. 10 V.S.A. ' 6086(a)(8)(aesthetics). The burden of proof is on the opponents under Criterion 8, 10 V.S.A. ' 6088(b), but the Permittees must provide sufficient information to the Board to make affirmative findings. See, e.g., *Re: Black River Valley Rod & Gun Club, Inc.*, #2S1019-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 19 (June 12, 1997), and cases cited therein. Thus, even when there is no opposing party or evidence in opposition with respect to Criterion 8, an applicant will not automatically prevail in the aesthetics issue. See, e.g., *Re: Herndon and Deborah Foster*, #5R0891-8B-EB, Findings of Fact, Conclusions of Law, and Order at 12 (June 2, 1997).

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from her property will remain the same forever." *Re: Okemo Mountain, Inc.*, #2S0351-8-EB, Findings of Fact, Conclusions of Law, and Order at 9 (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Horizon Development Corp.*, #4C0841-EB, Findings of Fact, Conclusions of Law, and Order (Aug. 21, 1992). Nevertheless, projects that result in the loss of open space and the alteration of vistas can have an adverse effect on aesthetics and scenic beauty. See e.g. *Re: Thomas W. Bryant and John P. Skinner*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 21 (June 26, 1991). See also *Re: Maple Tree Place Associates*, #4C0775-EB, Findings of Fact, Conclusions of Law, and Order at 48-49 (June 25, 1998); *Re: George, Mary, and Rene Boissoneault*, #6F0499-EB, Findings of Fact, Conclusions of Law, and Order at 19 (Jan. 29, 1998).

The Board uses a two-part test to determine whether a project satisfies Criterion 8 (aesthetics). First, it must determine whether the project will have an adverse effect under Criterion 8. *Re: James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership*, #8B0444-6-EB (Revised), Findings of Fact, Conclusions of Law, and Order at 24-25 (Aug. 19, 1996); *Re: Quechee Lakes Corp.*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of

Law, and Order (Nov. 4, 1985). Second, it determines whether the adverse effect, if any, is undue. *Hand, supra*, at 24; *Quechee Lakes, supra*, at 17-20.

Adverse Effect

[T]he Board looks to whether the proposed project will be in harmony with its surroundings or, in other words, whether it will "fit" the context within which it will be located. In making this evaluation, the Board examines a number of specific factors including the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability for the project's context of the colors and materials selected for the project, the locations from which the project can be viewed, and the potential impact of the project on open space.

Hand, supra at 25. In other words, if a project "fits" its context, it will not have an adverse effect. *Re: Talon Hill Gun Club and John Swington, #9A0192-2-EB, Findings of Fact, Conclusions of Law, and Order* at 9 (June 7, 1995).

The Project, a multi-use facility for community non-profit organizational activities, is proposed to supplant a former large dairy farm operation - rehabilitating and using eight existing buildings on the site *in situ*. New construction will largely be confined to a new parking lot and the reconstruction of previously failed septic disposal systems. As a former dairy farm, the Board assumes that the prior uses resulted in noises and odors ordinarily associated with dairy farming with attendant impacts or potential impacts on adjoining landowners.

Nevertheless, and as noted in our findings above, the Board concludes that the uses and traffic levels associated with the Project are likely to exceed historical levels and are therefore not harmonious with the current context of the area. The introduction of regular traffic, noise, lighting, and overall increased activities at the facility (from ambient levels) to a rural residential neighborhood does not fit within the immediate surroundings, which are presently commercially undeveloped. Because the Board finds that the Project and its impacts will be out of harmony with its surroundings, we conclude that the project has the potential for adverse aesthetic impacts.

Undue

Given that we find the potential for adverse effects under Criterion 8, the Board must evaluate whether those adverse effects are "undue." *Hand, supra* at 25. The Board will conclude that the adverse effect is undue if it reaches a positive finding with respect to any one of the following factors:

- a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
- b. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
- c. Have the Permittees failed to take generally available mitigation steps which a reasonable person would take to improve the harmony of the project with its surroundings?

See, e.g., Black River, supra, at 19-20, Hand, supra, at 25-29; Quechee Lakes, supra, at 19 - 20.

Community standard

With respect to the first factor, the Board concludes that while the Wilmington Town Plan contains goals, objectives, and policies which relate to the preservation of scenic resources and which evince a general desire to preserve the rural character of the countryside and its scenic vistas, there are no clear, written community standards intended to preserve the aesthetics or scenic beauty of the area which would be clearly violated by the Project.

Offensive or shocking

With respect to the second factor the Board concludes that the Project will not offend the sensibilities of the average person; we do not think that this adaptive reuse of eight existing farm buildings for community services is shocking or offensive.

Mitigation

As to the third factor, the Board concludes that, with some modifications, the Permittees have taken generally available mitigation measures which a reasonable person would take to improve the harmony of the Project with its surroundings. The Project's activities will be staggered throughout the day, reducing peak traffic loading. Daily attendance will be capped at a maximum of 187 with a peak hour traffic cap of 41 trips. Further mitigation has occurred by virtue of the revised site plan with respect to landscaping, lighting, and location of the play area which incorporates some, although not all, of other mitigation measures requested by the Neighbors.

Specifically as to landscaping, in response to the Board's November 22 Memorandum, the Permittees submitted a revised Overall Site Plan (Exhibit GM-S), which depicts the minimum plantings which the Permittees and the Neighbors the parties had agreed to. The Neighbors filed a response to Exhibit GM-S (Exhibit N-24) in which they criticized the limitations on tree plantings shown on Exhibit GM-S and sought additional trees along the western boundary of the Project site.

The Board has considered both Exhibit GM-S and Exhibit N-24 and concludes that, while Exhibit GM-S goes a long way toward mitigating the adverse impacts of the Project, slightly more is required of the Permittees to achieve compliance with Criterion 8. The Board believes that the critical impacts of the Project, insofar as the Neighbors are concerned, appear in the southeastern part of the site, in particular along the southern portion of the Project's eastern boundary line. The Board agrees that the additional plantings proposed by the Neighbors in Exhibit N-24 along this limited section of the eastern boundary (that part delineated as "302' +/-") constitute appropriate mitigation and will condition the Permit to incorporate such additional plantings in that area.

Based on the above, with the Permit conditioned as noted herein, the Board concludes that the Project will not have an undue adverse effect on the scenic or natural beauty or aesthetics of the area. Accordingly, the Project complies with Criterion 8 (Aesthetics).

H. Criterion 9(A) (impact of growth)

In considering an Act 250 application under Criterion 9(A), the Board shall impose conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision.

Pursuant to the specific terms of 10 V.S.A. ' 6086(a)(9)(A), the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is on the Neighbors; however, where the town has a duly adopted capital improvement program the burden is on the Permittees. In this case, Wilmington does not have a duly adopted capital improvement program. The burden under Criterion 9(A) is on the Neighbors, although the Permittees must still provide the Board with sufficient evidence to make a positive finding under the Criterion. *Herndon and Deborah Foster, supra*, at 10.

The Neighbors must provide and prove the following:

1. The growth in population experienced by the town and region in question.
2. The *total* growth and *rate* of growth which is otherwise *expected* for the town and region.
3. The *total* growth and *rate* of growth for the town and region which will result from the proposed project if approved.
4. The anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare.
5. Based on (1) through (4), that the proposed project will cause an undue burden on the existing and potential financial capacity of the town and region in accommodating growth caused by the proposed project.

Based upon the evidence in this case, the Board concludes that the Project will not impose an undue burden upon the town and region in accommodating growth caused by the proposed development. With respect to growth in population (factors 1. through 3. above), there is no undue burden, due to the Project's small contribution of new residents relative to background growth in the Town and region. While a larger project might raise concerns, this Project does not, as it will add, at most, less than 10 new residents to the Town's population.

With respect to the Project's impact on costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the Project imposes no undue burden. There will be minor additional municipal service-related impacts resulting from the Project, but the majority of those costs are associated with the proper construction and maintenance of Adams Lane - a town road which requires expenditures for construction and maintenance costs in the absence of the Project. Local police, fire and rescue, road and school officials foresee no adverse impact upon their ability to provide services and have verified their ability to serve the Project.

The Board concludes that the proposed Project will not cause an undue burden on the existing and potential financial capacity of the town and region in accommodating growth resulting from the Project. Accordingly, the Project conforms with Criterion 9(A).

I. Criterion 9(B) (primary agricultural soils)

Before issuing an Act 250 permit, the Board must conclude that the proposed project will not significantly reduce the agricultural potential of the primary agricultural soils on the project tract or that the project is the only way the Permittees can satisfy all of the subcriteria of Criterion 9(B). 10 V.S.A. ' 6086(a)(9)(B)(i)-(iv).

The 28-acre Project parcel contains approximately 1.5 acres of primary agricultural soils. The proposed septic disposal site for the Project will impact approximately 0.15 acre of the primary agricultural soils.

Given the overall size of the parcel in relation to that portion which contains the statewide agricultural soils, the Board concludes that there is limited agricultural potential on the site. The Board further concludes that a leach field on approximately 0.15 acres of a 1.5 acre portion of statewide agricultural soils is a *de minimis* impact which will not significantly reduce the agricultural potential of the soils. Because the Board concludes that the project will not significantly reduce the agricultural potential of the soils on the site, it the Board does not reach the issue of conformance with the subcriteria. The Project conforms with Criterion 9(B).

J. Criterion 9(H) (costs of scattered development)

The first issue under Criterion 9(H) is whether or not the proposed project is physically contiguous to an existing settlement. *Wal*Mart, supra* at 36. This requires a determination of whether the area surrounding the site of the proposed project is such a settlement. *Id.* The Board concluded in *Wal*Mart* that the phrase "existing settlement" means:

an extant community center similar to the traditional Vermont center in that it is compact in size and contains a mix of uses, including commercial and industrial uses, and, importantly, a significant residential component.... The term specifically excludes areas of commercial, highway-oriented uses commonly referred to as 'strip development.' Compatibility in terms of size and use is relevant to determining if an existing group of buildings constitutes an existing settlement in relation to a proposed project.

Id. at 40 - 41; see also *Re: Waterbury Shopping Village, #5W1068-EB, Findings of Fact, Conclusions of Law, and Order* at 18 (July 19, 1991). The Board further concluded that, to be contiguous to an existing settlement, a proposed project must be within or immediately next to such a settlement. *Wal*Mart, supra*, at 41.

If the proposed project is not contiguous to an existing development, it constitutes scattered development. If the Board determines that the proposed project constitutes scattered development, then the Board turns to the second inquiry under Criterion 9(H). This inquiry is whether the additional costs of public services occasioned by the proposed project will outweigh the revenues it will generate. "[T]he basic intent of Criterion 9(H) is to discourage scattered

development beyond the boundaries of community centers if such development will damage the ability of the communities to maintain themselves." *Wal-Mart, supra* at 43. Although the legislature has expressed a preference that growth occur in existing community centers, it has not sought to freeze or prohibit development outside of those centers. *Id.* at 44. It has sought merely to ensure that scattered development does not impose public costs which outweigh the public benefits. *Id.* The Board may issue a permit under Criterion 9(H) if it concludes that the public benefits are not outweighed by the public costs. *Id.*

The Project constitutes scattered development. It is not located within or immediately next to an existing settlement. Therefore, in order to reach a positive conclusion under this Criterion, the Board must determine that the additional costs of public services and facilities caused directly or indirectly by the Project will not outweigh the tax revenue and other public benefits of the Project.

The facts found relative to Criteria 7 and 9(A) apply to the present Criterion 9(H) inquiry. The Town has indicated that the Project will not affect its ability to maintain Stowe Hill Road or to provide other municipal services. Project benefits to the municipality include a community center for community services - under circumstances where the real estate will remain on the tax rolls. On the facts of this case, the Board concludes that, to the extent that there are any, the additional costs of public services and facilities caused directly or indirectly by the Project are outweighed by the revenue and other public benefits of the Project. Accordingly, the project conforms with Criterion 9(H).

K. Criterion 9(K) (public investments)

Criterion 9(K) requires that "[a] permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or

the public's use or enjoyment of or access to the facility, service, or lands." 10 V.S.A. ' 6086(a)(9)(K).

The Board conducts two separate inquiries under Criterion 9(K) with respect to impacts on public facilities. First, the Board examines whether the proposed project will unnecessarily or unreasonably endanger the public investment in such facilities. Second, the Board examines whether a proposed project will materially jeopardize or interfere with (a) the function, efficiency, or safety of such facilities, or (b) the public's use or enjoyment of or access to such facilities. *Re: Munson Earth Moving Corp., #4C0986-EB, Findings of Fact, Conclusions of Law, and Order at 11 (Apr. 4, 1997), rev-d on other grounds, In re Munson Earth Moving Corp., No. 97-327 (Vt. Aug. 13, 1999); Re: Swain Development Co., #3W0445-2-EB, Findings of Fact, Conclusions of Law, and Order at 33 (Aug. 10, 1990).*

The Project is located adjacent to Stowe Hill Road, and a substantial portion of traffic to and from the project will likely traverse the intersection of Stowe Hill Road and Route 100. Stowe Hill Road, Adams Lane, and Route 100 are public facilities. As determined above, the Project will likely jeopardize the public's safe use of Stowe Hill Road and Route 100 unless provisions are made to keep sight distances clear at the entrance driveway, and to require the use of Adams Lane for northbound traffic entering Route 100. The Board will impose permit conditions requiring the implementation of these safety measures while expressly acknowledging the District Commission's retention of jurisdiction under Criterion 5. Adams Lane will be constructed and maintained in accordance with state law. Conditioned, operated, and maintained in this manner, the Board concludes that the Project will not unnecessarily or unreasonably endanger the public investment in Stowe Hill Road, Adams Lane or Route 100, nor will the Project materially jeopardize or interfere with (a) the function, efficiency or safety or (b) the public's use or enjoyment of or access to these public facilities. As conditioned herein, the Project complies with Criterion 9(K).

L. Criterion 10 (conformance with local and regional plan)

Before issuing a permit, the Board must determine that the proposed project "[i]s in conformance with any duly adopted local or regional plan." 10

V.S.A. ' 6086(a)(10). The burden of proof is on the Permittees under Criterion 10. 10 V.S.A. ' 6088(a).

In reviewing conformance with town plans the Board reviews the plan's goals, objectives, and policies with a focus on the issue of whether or not the town plan contains specific policies which would be contravened by the construction of the project. *In re Frank A. Molgano, Jr.*, 163 Vt. 25 (1994); *Re: The Mirkwood Group and Barry Randall*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order at 29 (Aug. 19, 1996); *Fair Haven Housing Limited Partnership and McDonald's Corporation*, #1R0639-2-EB, Findings of Fact, Conclusions of Law, and Order (April 16, 1996), *aff-d*, *In re Fair Haven Housing Limited Partnership and McDonald's Corporation*, No. 96-228 (Vt. April 23, 1997) (unpublished Entry Order).

If the town plan provisions are specific, they are applied to the proposed project without any reference to zoning by-laws. A provision of a town plan demonstrates a specific policy if the provision: (a) pertains to the area or district in which the project is located; (b) is intended to guide or proscribe conduct or land use within the area or district in which the project is located; and (c) is sufficiently clear to guide the conduct of an average person, using common sense and understanding. *Re: The Mirkwood Group, supra*, at 29.

With respect to the role of regional plans in Act 250 proceedings, Title 24 of the Vermont Statutes provides:

In proceedings under 10 V.S.A. chapter 151 . . . in which the provisions of a regional plan or municipal plan are relevant to the determination of any issue in those proceedings:

(1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;

(2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact.

24 V.S.A. ' 4348(h).

Absent guidance as to the relevant provisions of the regional plan, the Board first reviews the entire regional plan to determine whether it contains any specific provisions applicable to the proposed project. *Re: Mark and Pauline Kisiel, #5W1270-EB, Findings of Fact, Conclusions of Law, & Order (Altered) at 47 (Aug. 7, 1998), appeal docketed, No. 98-371 (Vt. Aug. 19, 1998).* In the instant case, the Board concludes that the Wilmington Town Plan and the Windham Regional Plan have not been shown to contain conflicting provisions with respect to this Project. Accordingly, the Board does not reach the issue of whether or not the project involves substantial regional impacts.

Having reviewed the relevant provisions of both the Wilmington Town Plan and the Windham Regional Plan, the Board concludes that neither plan contains a provision or provisions which would be violated by the Project as conditioned herein.

Wilmington Town Plan

The Board enumerated relevant goals, objectives and policies contained in the Wilmington Town Plan in our Findings of Fact above. As noted therein, the Plan contains the following relevant policies:

Encourage screening for commercial developments by requiring landscaping and buffer zones, when necessary to hide unsightly storage of equipment or material.

Pursue economic, cultural, and recreational development opportunities that will provide long range economic benefits and stable employment opportunities.

Aggressively seek environmentally benign, light industries and professions that do not negatively impact the aesthetic quality of the area. Work with existing economic development groups to achieve this purpose.

Encourage educational forums taught by local Professionals and business persons in the pursuit of Educational enrichment.

Support services that provide transportation for residents and visitors, especially the elderly and handicapped.

Reuse or rehabilitate historic buildings in the Community as a method of preservation.

Encourage the use of a bus service in the Deerfield Valley.

Encourage the use of outdoor lighting which should be energy efficient, that does not cause light pollution, interfere with a neighbor's privacy, or adversely affect the night landscape.

Encourage a plan to conserve productive forest and agricultural soils.

Encourage the evaluation and inventory of possible locations for development of affordable and elderly housing close to community and commercial services.

Support efforts to provide affordable housing for low and moderate income and elderly residents.

Encourage the support of health and social welfare agencies that supply services to the residents.

The Board concludes that the Project, as proposed and conditioned herein, is consistent with the goals, objectives, and policies of the Wilmington Town Plan insofar as the project involves an adaptive re-use of eight existing farm buildings - which will not be architecturally modified. There will be fewer animals and more people on the tract than has historically been the case, but the Board concludes that the community benefits of the community services proposed to be conducted on the largely undisturbed old farm tract are largely consistent with the goals, objectives and policies of the Town Plan.

Windham Regional Plan

The Neighbors contend that the Project does not conform with the following policy sections of the Windham Regional Plan: *Villages Policies 1, 3 and 6; Human Service Policy 2; Cultural and Historic Resources Policy 7; Energy Policy 11; Transportation Policies 5 and 7.*

The Board notes that words such as "direct," "encourage", "promote," and "review" appear in the specific policies of the Regional Plan noted immediately above. While such words may provide guidance in the interpretation of a Town or Regional Plan, and while they may be used to bolster more specific policies in such Plans, they do not, by themselves, constitute a mandate. See, e.g., *Kisiel, supra*, at 47 (plan contained general policies regarding forest land, resources protection, etc., but not specific provisions which prohibited project).

Aside from the fact that Windham Regional Planning Commission is on record as finding that this Project conforms with its Plan, and aside from the fact that the Plan contains no stated goals or policies which would categorically prohibit the Project, the Board independently concludes that this Project, using existing buildings, located 1.6 miles from the Town Center, and as designed for the community purposes stated in the application, is in keeping with the community preservation policies enumerated in the Regional Plan. The Board therefore concludes that the Project as proposed and as conditioned herein conforms with the Windham Regional Plan.

The Project conforms with Criterion 10.

VI. Order

**Re: Green Meadows Center, LLC, The Community Alliance and
Southeastern Vermont Community Action
Land Use Permit #2W0694-1-EB
Findings of Fact, Conclusions of Law, and Order
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1. Exhibits GM-P, GM-Q, GM-R, GM-S, N-22, N-23, and N-24 are admitted into the record of this case.
2. Land Use Permit #2W0694-1-EB is hereby issued.
3. Jurisdiction over this matter is returned to the District #2 Environmental Commission.

Dated at Montpelier, Vermont this 21st day of December 2000.

ENVIRONMENTAL BOARD

**Marcy Harding, Chair
John Drake
George Holland
Samuel Lloyd*
W. William Martinez
Jill Broderick
A. Gregory Rainville**

*** Member Lloyd was not present for the November 15, 2000 deliberation.**