

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

RE: W. Thompson **Cullen** and Findings of Fact,
Barry **Reardon** by Conclusions of **Law**
W. Marshall **Witten**, Esq. and Order
Witten, Saltonstall & Woolmington Applications
P.O. Box 620 #2W0720-1-EB,
Bennington, VT 05201-0620 #2W0720-2-EB

I. SUMMARY OF PROCEEDINGS

This decision pertains to two applications for amendments to Land Use Permit #2W0720 filed by the Permittees W. Thompson **Cullen** and Barry **Reardon**. The amendment applications are for the construction of a 10,250 square foot office building and a 4,864 square foot cinema and related utilities on Lots 3 and 4 respectively of a commercial park located on Route 100 in Dover, Vermont. The commercial park was previously approved by the District #2 Environmental Commission in Land Use Permit #2W0720, which was issued as an umbrella permit for the park.

On January 26, 1989, the District Commission issued findings of fact, conclusions of law and an order which denied the amendment applications on the basis that they did not meet the following criteria of 10 V.S.A. sec. 6086(a): 5 (traffic safety and congestion); 8 (aesthetics and scenic and natural beauty); and 10 (conformance with local or regional plans). The Permittees filed an appeal of the denials with the Environmental Board on February 15, 1989.

Chairman Leonard U. Wilson convened a prehearing conference on March 1, 1989 in **West** Dover, Vermont. At the prehearing, the parties attending requested and agreed to an extended schedule for a hearing and submission of prefiled testimony in order to allow time for settlement of the issues in the appeal. On March 22, 1989, the Board issued a prehearing conference report and order setting out a hearing date and deadlines for submission of prefiled testimony.

On April 19, 1989, the day set in the prehearing order for submission of initial prefiled testimony, the Permittees submitted prefiled testimony for witnesses regarding Criteria 8 and 10 and a "**Stipulation** of Settlement" concerning Criterion 5 signed by the Permittees and the Town of Dover. On April 20, the **Windham** Regional Commission filed prefiled testimony on Criteria 5 and 10. The Permittees submitted a motion to strike the Regional Commission's prefiled testimony on various grounds. On April 26, the Dover Town Planning Commission filed prefiled testimony with respect to Criteria 8 and 10. On April 27, the Permittees filed a motion to strike the Dover Planning Commission's prefiled testimony on various grounds. On April 28, the Board's Assistant Executive Officer

wrote to the Permittees confirming his earlier oral request to submit evidence on Criterion 5 in addition to the stipulation already filed.

On May 2, the Board deliberated on and denied the Permittees' motions to strike the prefiled testimony of the Regional Commission and Dover Planning Commission. The parties were orally informed of this decision on May 3 and 4. On May 4, the Permittees filed prefiled testimony on Criterion 5. On May 8, the Assistant Executive Officer notified the parties that the administrative hearing panel assigned to hear evidence in this case was calling William O. Fiske of the Vermont Agency of Transportation as a witness regarding Criterion 5.

The administrative hearing panel of the Board convened a hearing in this matter on May 11 in Dover, Vermont, Chairman Wilson presiding. Parties appearing at the hearing were:

The Permittees by R. Marshall **Witten**, Esq.
The Town of Dover Board of Selectmen by Linda
Rersten, Chair
The Town of Dover Planning Commission by Howard R.
Morse, Jr., Chair
The **Windham** Regional Commission by Joan Price, Senior
Planner

After taking testimony, the panel recessed the hearing pending submission of proposed findings of fact and conclusions of law, review of the record and preparation of a proposed decision. On May 19, the Permittees submitted a number of items, including proposed findings of fact and conclusions of law.

A proposed decision was sent to the parties on July 21, 1989, and the parties were provided an opportunity to file written **objections**, and to present oral argument before the full Board. The proposed decision included permit conditions requiring the Permittees to submit plans regarding retaining control over landscaping and architecture and maintaining a tree and foliage backdrop behind the office building. Concurrently with the proposed decision, the Board issued a memorandum of decision on the **Permittees'** motions to strike.

On July 26, 1989, the Permittees submitted a response to the proposed decision. This response included plans submitted in accordance with the conditions in the proposed decision mentioned above, and letters from the **Dover** Planning Commission, Town of Dover and **Windham** Regional Commission stating that these parties had no objection to the Board's considering the plans or to the proposed decision. The Permittees **requested** that the Board incorporate the plans into the final decision.

The Board deliberated concerning this matter on August 2, 1989. On that date, following a review of the proposed decision and the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent that the parties' proposed findings of fact and conclusions of law are included below, they are granted; otherwise, said findings of fact and conclusions of law are hereby denied.

II. ISSUES IN THE APPEAL

The following issues are before the Board:

1. Whether, pursuant to Criterion 5, the proposed projects will create unsafe traffic conditions or unreasonable traffic congestion.
2. Whether, pursuant to Criterion 8, the proposed projects will have an undue adverse effect on aesthetics or scenic beauty.
3. Whether, pursuant to Criterion 10, the proposed projects will conform to specifications in the local and regional plans regarding aesthetics and scenic beauty.

III. FINDINGS OF FACT

1. The District #2 Environmental Commission issued Land Use Permit #2W0720 on January 25, 1988. The permit was issued as an umbrella permit for five commercial retail/office condominiums. The permit addressed initial site work, utility installation, landscaping, and the subdivision of the site of the proposed projects into five lots. It did not authorize construction of buildings. In Condition 11 of the permit, the District Commission required that a permit be obtained prior to any further subdivision or development at the site of the proposed project. The site is currently known as Mountain Park.
2. The Permittees applied to the District Commission on March 3, 1988 for amendments to the permit with respect to Lots 3 and 4 of Mountain Park. The Permittees propose to place a 10,250 square foot office building on Lot 3 and a 4,864 square foot cinema on Lot 4, and to install related utilities. On January 26, 1989, the District Commission denied the **Permittees'** applications on grounds that they contravened Criteria 5 (traffic

safety and congestion), 8 (aesthetics and scenic beauty) and 10 (conformance with local and regional plans). Concerning Criterion 10, the District Commission found that the local and regional plans were contravened only with regard to aesthetics. The District Commission reached positive findings on all other criteria which it considered and these findings are incorporated by reference.

3. Mountain Park is to be located off Route 100 in West Dover, Vermont. The specific **site is** a poorly graded and drained open meadow on the west side of Route 100. The area in which the project site is located appears to be one in transition from residential to commercial uses. At this time, it appears largely to be a commercial strip, although a few residences remain. A number of the remaining residences are old New England houses of nineteenth century architecture.
4. In view of the growing commercial nature of the area, the open space meadow on which the Park is to be located provides motorists and persons living and working in the area with a beneficial pastoral break in an otherwise largely commercial pattern of land use.
5. If a motorist drives either south or north along Route 100 from Mountain Park, the motorist will encounter mostly commercial projects for the first approximately one mile. These projects reflect a variety of architectural styles, including rustic New England, New England colonial, chalet design, efficiency motel architecture and contemporary design. The vast majority of the buildings have peaked roofs, and only a few of them contain small portions of exterior-painted cinder block.
6. A motorist -traveling south on Route 100 from Mountain Park will pass after about one mile into an area known as the West Dover Historic District. This district is an area in which buildings are architecturally similar and reflective of colonial New England design. Many of the buildings are very old and have been carefully maintained. Many of them are listed in the National Register of Historic Places maintained by the United States National Park Service.
7. Mountain Park is designed to hide parking from view of Route 100. One curb cut is planned for a driveway to run west from Route 100 into the Park, passing Lot 1 on

the south and Lot 5 on the north. The proposed building lots form a circle around the proposed parking lot. Lot 2 is immediately south of Lot 1, and its southern end is the southern border of the Mountain Park property. Lot 3 has Lot 2 on its eastern end, the southern border of the property on its southern end, and the western border of the property on its western end. Lot 4 borders Lot 3 to the south, the western and northern ends of the property, and Lot 5 to the east. Lot 5 borders on Lot 4 to the west, Route 100 to the east, and the driveway to the south. Fronts for each building on the lots will face the parking lot.

8. No buildings have yet been constructed on Lots 1, 2, and 5. The Permittees plan to construct one building on each of these lots, each one story in height with a peaked roof. The minimum roof pitch for each of these roofs will be 6/12. Such a pitch will partially block any buildings which are behind the buildings on Lots 1, 2 and 5.
9. The Permittees plan extensive landscaping for the entire Mountain Park project. This plan in part calls for planting ninety or more six-foot trees in double rows along Route 100, with additional trees along both sides of the property and near each of the buildings on the Park's five lots. This plan is to be implemented when the buildings on Lots 3 and 4 are constructed. Within five to ten years after planting, the landscaping should provide screening of the Park from Route 100, and thus will screen the buildings on Lots 3 and 4 from that route. The landscaping plan was approved by Land Use Permit #2W0720.
10. Through restrictive covenants, the Permittees intend to retain and will retain legal authority to control architecture and landscaping for Mountain Park. In doing so, the Permittees intend to assure architectural uniformity and minimization of potential adverse aesthetic effects. The Permittees submitted a copy of their proposed covenants under cover of sworn affidavit dated July 24, 1989. This copy was entitled "**Declarations** of Covenants and Restrictions for the Mountain Park Development." It has not been executed or recorded. The Permittees plan to execute and record it on sale of the first Mountain Park lot.
11. A central green is proposed to be placed in front of the proposed office building on Lot 3. The green will **include** a grass lawn and trees, as well as sidewalks for pedestrian use.

12. The western edge of the property is bounded by a bank on which are rows of mature evergreen trees. These trees will form a backdrop for the proposed buildings on Lots 3 and 4. The Permittees intend to maintain the bank and foliage backdrop. The Permittees submitted a plan regarding maintaining this backdrop under cover of sworn affidavit dated July 24, 1989. The plan is entitled "**Mountian** [sic] Park - Layout, Erosion Control and Limits of **Construction**," and was last revised July 24, 1989.
13. The office building proposed for Lot 3 will be a two-story building **with** a small gable roof made of metal. There will be no rear access to the building. A road initially planned to run from behind the building to join to a road on existing property west of the bank will not be constructed and the bank behind the office building will be left undisturbed except as noted in Finding 14 below. The office building will be 10,250 square feet and of steel construction with non-bearing exterior walls. It will be approximately 24 feet in height. Exterior sheathing **will** be of clapboard painted in earthtone colors. Trim on the building will be painted dark brown. The building will be set back approximately 295 feet from the closest edge of Route 100.
14. The proposed office building will be located directly in front of the bank discussed in Finding 10. To construct the office building as planned, it will be necessary to cut into the bank in accordance with the plan described in Finding 12. The rear portion of the office building will fit into this space. The second story of the office building will be above the level of the bank as it currently exists. Because part of the bank will be removed, some loss of trees on the bank will occur.
15. The front of the office building will consist of a porch-like structure, the top of which is several feet lower than the top of the main part of the office building. Faced from the front, the porch-like structure will include a peaked roof component in the center and flat-roofed structures on either side. The peaked roof will be several feet higher than the flat roofs and will have the same midpoint as the small gable roof on the main part of the office behind, which is the midpoint of the width of the office building when faced from the front. The peaked roof on the porch-like structure will be several feet lower than the gable roof on the main portion of the building. The roof and some other portions of the porch-like structure

will be constructed of exolite, a clear translucent plastic with a non-reflective surface, allowing more sunlight in than does a normal, opaque type of roof.

16. The design of the proposed cinema has been a source of controversy between the Permittees and the Town of Dover Planning Commission. At the hearing on May 11, these two parties presented the hearing panel with a revised proposal which the Permittees and the Dover Planning Commission each stated was acceptable. As currently proposed, the cinema will be 29 feet high in front and 32 feet high in the rear. Only nineteen feet of this height is needed for the actual cinema. The additional feet are provided for a roof structure which includes a peaked roof stretching down the center from front to rear. The roof will be of metal. This roof proposal represents a change which the Permittees have made to address the concerns of the Dover Planning Commission. Initially the cinema proposal included a flat roof.
17. The cinema will be 4,864 square feet and of steel construction with concrete block bearing walls. To further address concerns of the Dover Planning Commission, the Permittees have agreed to place clapboards on the exterior of the concrete walls. The cinema will be approximately 200 feet from the closest edge of Route 100.
18. The front of the cinema will consist of a porch-like structure leading into the main part of the cinema. The structure will be approximately nineteen feet high at its tallest elevation and eight feet long. Facing the structure from the front, it will appear to consist of three parts. On each of the right and left sides will be one rectangular box-like component, with windows, doorways, and flat roofs. In the center will be a structure of approximately half the width of one of the box-like components. This will be several feet higher than the roofs of the box-like components. The upper part of this middle portion will consist of a peaked roof. The peak of this roof will be at the midpoint of the width of the cinema when **faced** from the front, as will be the peaked roof of the main part of the cinema. The wall immediately behind the peaked roof will consist of a row of windows above which will be a panel made of exolite. The roof of the porch-like structure and several other sections of this structure also will be made of exolite.

19. The cinema clapboard will be painted tan. Trim on the cinema will be dark brown. Fascia will be blue.
20. Mountain Park is located in **Windham** County. The **Windham** Regional Plan places a high priority on protection of scenic resources, advocating protection of high quality scenic resources and giving special consideration to highly vulnerable landscapes and scenic corridors. Windham Regional Plan 1987-1992 at 38-39 (1986). The Regional Plan also states that it seeks to encourage development which is sensitive to preservation of scenic resources. Id.
21. The Dover Town Plan seeks to discourage development that diminishes or destroys the cultural merits of sites of historic importance or architectural merit. Town Plan, Town of Dover, Vermont at 13 (as amended May 19, 1987). The Town Plan also seeks to promote the rural character and scenic beauty of the Town. Town Plan at 12. The Town Plan further states that sound commercial enterprise which does not diminish the cultural or aesthetic resources of the Town is essential, and that entertainment development such as theaters are an important asset to the Town. Town Plan at 17.
22. In the area of Mountain Park, traffic volumes are highest during the ski season, which runs approximately from late November through early March. Potential traffic generated by the proposed cinema and office building has been estimated, based on a 1988 design hourly volume, for Route 100 in the vicinity of the project. During the hour of 4:00 to 5:00 p.m., which **is** reflective of when the office building is expected to generate its highest traffic volume, approximately 1,000 vehicles travel southbound and 330 vehicles travel northbound in the area of Mountain Park. During the hour of 6:00 to 7:00 p.m., which is representative of the periods during which the cinema will be operating, these numbers are sixty percent lower, or 400 and 132 respectively. Both sets of traffic volume numbers are **for** a road such as Route 100, which is a two-lane rural highway.
23. On weekdays, the proposed office building is projected to generate approximately 25 trips during 4:00 to **5:00 p.m.** ~~when~~ in operation on weekdays, the cinema is **projected** to generate approximately 48 trips per hour. On Saturdays, the office building **is** projected to

generate four trips during 4:00 to 5:00 p.m. and the cinema is projected to generate 129 trips per hour during the period it is operating. On Sundays, the office building is projected to generate two trips during 4:00 to 5:00 p.m. and the cinema is projected to generate 91 trips per hour when it is operating.

24. Levels of traffic service have been developed for the proposed office building and cinema on an alphabetical basis, with A being the highest and best level of service. The projected levels of service for traffic associated with the office building during 4:00 to 5:00 p.m. are: (a) D for vehicles exiting left onto Route 100 from the project; (b) B for vehicles exiting right onto Route 100 from the project, and (c) B for vehicles turning left from Route 100 into the project. Level D is of particular concern because it indicates a lower level of service.
25. The projected levels of service for traffic associated with the cinema during 6:00 to 7:00 p.m. are: (a) C for traffic exiting left onto Route 100 from the project; (b) A for traffic exiting right onto Route 100 from the project; and (c) A for traffic turning left from Route 100 into the project. Level C is of particular concern because it indicates a lower level of service.
26. Traffic has grown to be a serious problem along the Route 100 area near Mountain Park. The reason for this problem appears to be an expansion in the area of (a) the ski industry in particular and (b) commercial and residential development in general. The high existing traffic volumes mentioned in Finding 22 above are a symptom of this problem. These volumes appear to be responsible for the levels of service estimates C and D discussed in Findings 24 and 25 above. Traffic generated by the proposed project will therefore contribute to already problematic traffic conditions. How much of a contribution this project will make is hard to discern. Traffic projections are difficult to make with certainty. They are dependent on complex relationships between driving patterns of consumers, vendors, workers and residents. Unforeseen circumstances can easily alter the validity of such projections. If, subsequent to construction of the proposed project, it is discovered that the project does seriously worsen the traffic problems in the area, installation of appropriate turning lanes or implementation of other measures may be necessary to ensure traffic safety.

27. Sight distances for cars turning both left and right from Mountain Park onto Route 100 are in excess of 500 feet. These distances could be diminished once the project's landscaping is installed or even later after the various plants mature.
28. The Permittees and the Town of Dover have signed a stipulation which has been submitted to the Board. This stipulation states that movies at the cinema shall begin no earlier than 7:00 p.m. during the evening hours and that during the period November 15 through March 1 no matinees shall be scheduled on Saturdays and Sundays. The stipulation also states that any Act 250 permits issued for the proposed project should include conditions limiting matinee showings in accordance with the above. The stipulation further states that the signatories recognize the existence of a traffic problem along Route 100 and recommend that any Act 250 permits **issued** for these proposed projects allow the District Commission to retain jurisdiction over traffic safety and congestion problems which may be generated by the proposed projects and to impose additional conditions as may be needed to mitigate the impact of traffic generated by the proposed projects.

IV. CONCLUSIONS OF LAW

The issues in this case relate to Criterion 5 (traffic safety and congestion): Criterion 8 (aesthetics and scenic beauty): and Criterion 10 (conformance with local and regional plans). The Board examines each of these issues in turn.

A. Criterion 5: Traffic Safety and Congestion

Act 250 requires that the Board approve developments only if they will not cause unreasonable congestion or unsafe conditions with respect to the use of the highways. 10 V.S.A. sec. 6086(a)(5). The Board cannot deny a permit for a development pursuant to Criterion 5; instead, the Board may attach reasonable requirements and conditions to alleviate burdens created. 10 V.S.A. sec. 6087(b). The burden of proof on Criterion 5 rests with the opponent of a development. 10 V.S.A. sec. 6088(b). However, applicants for development permits must still provide the Board with enough evidence on which to make a positive finding. **Re: Pratt's Propane**, Application #3R0486-EB, Memorandum of Decision at 4-5 (January 27, 1987).

The Board concludes on the basis of the record that the project does not appear likely to cause unsafe traffic conditions or unreasonable congestion. In view of the already existing traffic problems on Route 100 in the area of Mountain Park, the Board cannot conclude from the available projected traffic volumes that traffic conditions will necessarily be affected negatively by these particular projects. Further, sight distances for vehicles turning out of Mountain Park onto Route 100 appear to be adequate.

Nonetheless, the Board remains concerned about potential traffic safety or congestion problems which may result from the project. First, the traffic volumes projected in this case depend on the cinema's not holding weekend matinees during November 15 through March 3. and not beginning evening showings until 7:00 p.m. Second, the Board has concluded that traffic projections, no matter how well done, are of limited reliability. Third, the Board believes that it is possible that traffic volumes from the proposed projects may worsen the existing traffic problem on Route 100 in the area of Mountain Park. Finally, it is possible that the landscaping may decrease sight distances for vehicles turning onto Route 100 from Mountain Park.

Accordingly, the Board will adopt as permit conditions the recommendations in the stipulation submitted by the Permittees and the Town of Dover that cinema showings be limited as described above and that the District Commission retain jurisdiction to require mitigation of any traffic problems which develop. To ensure that the District Commission can impose proper traffic remedies if necessary, the Board will require that the Permittees retain control over a twelve-foot strip on their property immediately west of Route 100 which may be needed if a turning lane is required. The Board recognizes that this strip may be the same as the land on which the Permittees plan to plant double rows of trees, and that therefore landscaping and traffic safety concerns may someday conflict. The Board believes that this conflict, if it arises, can be resolved at the time it occurs in the context of a permit amendment proceeding, which would be required for a turning lane on the **Permittees'** property.

B. Criterion 8: Aesthetics and Scenic Beauty

Act 250 prohibits the Board from issuing a permit for a development project unless it finds that the project will not have an undue adverse effect on aesthetics and scenic **beauty**. 10 V.S.A. sec. 6086(a)(8). With respect to **Criterion 8**, the burden of proof is again on the opponents of a

project, although applicants still must provide the Board with enough evidence on which to make a positive finding. 10 V.S.A. sec. 6088(b); Pratt's Propane at 4-5.

The Board uses a two-part test to determine whether a project meets Criterion 8. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. **Re: Quechee Lakes Corp.**, Applications #3W0411-EB and #3W0419-EB, **Findings of Fact, Conclusions of Law and Order** at 18-19 (January 13, 1986).

1. Adverse Effect of Proposed Cinema and Office Building

With respect to the analysis of adverse effects on aesthetics and scenic beauty, the Board looks to whether a 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 looks to 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. Quechee at 18.

This project's immediate surroundings contain a variety of architectural styles. While generally these styles are not consistent, most of the buildings in the area have peaked roofs and few have exterior-painted cinder block. Thus, by placing peaked roofs on the office building and cinema and by covering the proposed cinema's concrete walls with clapboards, the Permittees have made the design of the proposed projects consistent with the projects' surrounding architecture. Further, the brown and beige colors and types of materials selected for the project are neutral enough to be harmonious with the surrounding buildings and lands. The projects also appear well hidden from view of Route 100 by the landscaping planned by the Permittee.

However, the project is to be located on what currently is an open meadow. This meadow presently provides a **viewshed** for motorists using Route 100 and others who work and live in the vicinity by allowing for a pastoral break in an otherwise commercial area. Accordingly, the Board finds that the project will have an adverse effect on aesthetics and scenic beauty by resulting in the loss of open space.

2. Analysis of Whether Effect Is Undue

In evaluating whether adverse effects on aesthetics and scenic beauty are undue, the Board analyzes three factors and concludes that a project is undue if it reaches a **positive** conclusion with respect to any one of these **factors**, which are:

- 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. Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings?

Quechee at 19-20.

In this case, the Board does not reach a positive conclusion with respect to any of the above three factors and therefore concludes that the proposed projects' adverse effect is not undue. Specifically, the Board is not aware of any written community standard regarding aesthetics or scenic beauty which the proposed projects will violate. The proposed projects also do not offend the sensibilities of the average person. Further, and most importantly, the Permittees have taken reasonable steps to mitigate the adverse effect of the proposed projects. They have proposed a landscaping plan which will hide the projects from view to a great extent. They have designed the projects to use browns and earthtone colors. They have also committed themselves to maintaining the trees and foliage along the bank behind the projects to provide a natural backdrop for the projects. Further, they plan to retain legal authority to control architecture and landscaping for the cinema and office building. The Board concludes that, in the context of this particular case, these steps are sufficient to mitigate the loss of open space. Since the Board is relying in part on the **Permittees'** retaining control over **landscaping** and architecture, the Board will condition the permit to require the Permittees to execute and record their proposed restrictive covenants for Mountain Park on the sale of the first lot at the Park.

With respect to the trees along the bank behind the project, the Board notes that the proposed office building will cut into the bank. The Board is concerned that this cutting may remove some of the tree and foliage backdrop from behind the office building and may otherwise affect aesthetics or scenic beauty. Since this backdrop is **important** to the Board's finding of no undue adverse effect, the Board will condition the permit to require the Permittees to maintain the tree and foliage backdrop and not to change this backdrop except in accordance with the plan described in Finding 12 above.

c. Criterion 10: Conformance with Local and Regional Plans

Act 250 prohibits the issuance of a land use permit unless the Board finds that a proposed project conforms with local and regional plans. 10 V.S.A. sec. **6086(a)(10)**. The burden of proof with regard to Criterion 10 is on the applicant. 10 V.S.A. sec. 6088(a). In this case, the local plan is that of the Town of Dover and the regional plan that of the **Windham** Regional Commission.

The only question raised in this appeal concerning local and regional plan conformance is whether the aesthetics of the proposed projects conform to the Dover and **Windham** plans. The District Commission found nonconformance **only** with respect to aesthetics and denied the permits on that **basis**. Accordingly, the Board examines only whether the projects' aesthetics will satisfy Criterion 10.

In this case, the Board concludes that the proposed projects will not violate any specifications in the **Windham** or Dover plans with respect to aesthetics or scenic beauty. The **Windham** plan states that it seeks to encourage development which is sensitive to preservation of scenic resources. In the view of the Board, scenic resources have already been significantly diminished in the area. The Board believes that the proposed projects are sensitive to such resources to the extent that they still exist because of their architecture, overall layout, landscaping and commitment to maintaining the tree and foliage backdrop along the bank behind the project. The Dover town plan seeks to discourage development which diminishes the value of architecture of merit, to promote rural and scenic beauty, and to foster enterprise which does not diminish the cultural or aesthetic resources of Dover. The Board believes that the proposed projects meet these specifications because they have been designed to minimize impacts on scenic beauty and because they are approximately one mile distant from the Dover historic district and

therefore do not diminish **the cultural** value of that district. Accordingly, the Board determines that the proposed projects conform to the local and regional plans with respect to aesthetics and scenic beauty.

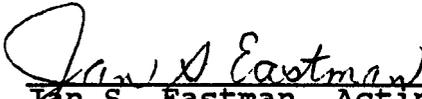
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V. ORDER

Land Use Permits #2W0720-1-EB and #2W0720-2-EB are hereby issued. Jurisdiction over this matter is returned to the District #2 Environmental Commission.

Dated this 10th day of August, 1989 at Montpelier, Vermont.

ENVIRONMENTAL BOARD


Jan S. Eastman, Acting Chair
Leonard U. Wilson, Chairman
Ferdinand Bongartz
Arthur Gibb
Samuel Lloyd
Roger N. Miller

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