

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

RE: Steven B. Tanger and  
Stanley A. Tanger by  
C. Daniel Hershenson, Esq.  
Hershenson, Scott & McGee  
P.O. Box 909  
Norwich, VT 05055

Memorandum of Decision  
Application #3W1025-3-EB

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White River Jct., VT 05001

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Kenneth A. LeClair  
Grand Road  
Hanover, NH 03775

This decision pertains to a motion for reconsideration filed by the Applicants concerning a final decision of the Environmental Board to deny their application. As is explained below, the Board voted to reconsider. On reconsideration, less than five Board members voted for each of two motions to make changes to the decision. Accordingly, since five votes are needed for the Board to take action, the decision remains unchanged.

BACKGROUND

On May 22, 1990, the Board issued a final decision, denying this application for a 35,000 square foot shopping center pursuant to 10 V.S.A. § 6086(a)(8) (aesthetics, scenic and natural beauty). The project would be located in the Town of Hartford. The Board found that the project's adverse effect on aesthetics and scenic and natural beauty would be undue on two independent grounds: (a) the project would constitute and contribute to strip development, which is discouraged by a written community standard, the Hartford Town Plan; and (b) the Applicants have failed to take all mitigating steps which a reasonable person would take with respect to the project's adverse aesthetic effect.

On June 6, 1990, the Applicants filed a motion to reconsider pursuant to Rule 31(A), attaching exhibits not previously admitted into the record. On July 3, the Quechee Lakes Landowners Association filed a memorandum in opposition to the Applicants' motion which included an objection to the admission of the above exhibits. On July 19, the Town of

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Hartford Board of Selectmen filed a memorandum in support of the Applicants' motion, referring to and attaching evidence not previously admitted.

The Board deliberated on July 26 and determined to hold oral argument on the motion. The newly filed evidence was not admitted into the record. On October 11, the Board convened oral argument in Norwich, with the following parties participating:

The Applicants by C. Daniel Hershenson, Esq.  
The Association by John Hansen, Esq.  
The Town of Hartford Board of Selectmen by James Mullen  
The Town of Hartford Planning Commission by Randall Spidell  
Silvio **GiConte**  
William Miller

Following argument, the Board recessed the matter pending deliberation and potential reconsideration. The Board deliberated on October 11 and voted to reconsider. On November 29, the Board reconsidered the matter in deliberative session.

#### DISCUSSION

The following motions and votes were made by the Board during its reconsideration:

Motion One. Acting Chairman Wilson and Members Bongartz, Courtney, and Storrow support this motion. Under it, the Board would still conclude the proposed project will have an undue adverse effect on aesthetics. The language of the decision would be changed to further demonstrate the Board's belief that the Hartford Town Plan is a clear, written community standard which is violated by the proposed project. Additional findings would be added concerning portions of the Plan not specifically referenced in the decision. The language of the decision also would be changed to strongly emphasize that the Applicants have failed to take all reasonable mitigating steps by stressing that the project covers most of the project site and is placed to emphasize rather than diminish its impact on viewers.

The members supporting the motion believe that the term "**strip** development" as used in the plan means linear development along highways, and that the Town Plan contains

many sections beyond those cited in the Board's decision which show the Plan's intent to discourage strip development and the meaning that the Plan ascribes to that term. The members supporting the motion also believe that the project's nearly total coverage of the site has not been mitigated.

Members Gibb, Lloyd, and Wagner oppose this motion. Members Gibb and Lloyd believe that the Hartford Town Plan contains policies designed to promote development which is contiguous with existing village centers. On reconsideration, they have concluded that the area along Route 4 in which the proposed project will be located qualifies as an existing village center. Member Wagner opposes the motion on the ground that, on reconsideration, he is now convinced that the proposed project will not have an undue adverse effect on aesthetics. Member Gibb agrees with Member Wagner.

The motion having failed, a second motion was made.

Motion Two. Acting Chairman Wilson and Members Lloyd and Storrow support this motion. Under it, the Board would change the language of the decision to show that the members disagree with respect to whether the proposed project violates a written community standard, stating which members support what views and why. The Board also would continue to find that the Applicants have failed to take all reasonable mitigating steps, and would change the language of the decision in this regard as described above under Motion One. Thus, the Board's decision would still be to deny the application pursuant to Criterion 8 (aesthetics, scenic or natural beauty).

Members Bongartz, Courtney, Gibb, and Wagner oppose this motion. Members Bongartz and Courtney strongly believe that the proposed project violates the written community standard embodied in the Town Plan, and that the Board should continue to base its finding of undue adverse effect on the violation of that standard. Members Gibb and Wagner oppose the motion for the same reasons that they oppose the other motion.

The Board consists of nine members. 10 V.S.A. § 6021(a). For the Board to take action, a majority (five) of those members must vote in favor of the action. 1 V.S.A.

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§ 172. Less than five members voted for each of the above motions, and therefore the motions to revise the Board's decision fail and the decision stands as written.

The Board notes that its division on reconsideration involves not the result of this case but the basis for that result. Following reconsideration, all but two of the members sitting on the case still support the result stated in the Board's decision, which is to deny the application. Five members support one or the other of two motions which would maintain that result, and which would conclude in part that the Applicants have failed to take reasonable mitigating steps with regard to the project's adverse aesthetic effect.

The Board has therefore decided to issue this memorandum of decision setting forth its deliberations on reconsideration and to return jurisdiction over this matter to the District #3 Environmental Commission so that it may entertain an application for reconsideration pursuant to 10 V.S.A. § 6087(c) and Rule 31(B), if such an application is filed.

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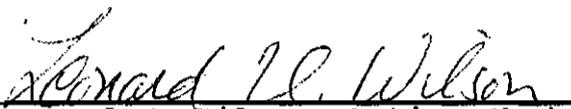
ORDER

1. The Board's decision dated May 22, 1990 stands, and Application #3W0125-3-EB remains denied.

2. Jurisdiction over this matter is returned to the District #3 Environmental Commission.

Dated at Montpelier, Vermont this 26th day of December, 1990.

ENVIRONMENTAL BOARD

  
Leonard U. Wilson, Acting Chair  
Ferdinand Bongartz  
Elizabeth Courtney  
Samuel Lloyd  
Charles Storrow

Members dissenting:

Arthur Gibb  
W. Philip Wagner

Members Gibb and Wagner would not issue this memorandum of decision but would issue a revised decision and an amended permit.

tanger.mem(awp3)