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

**RE:** -Steven B. Tanger and  
Stanley K. Tanger  
885 Third Avenue  
New York, NY 10022

Memorandum of Decision  
Land Use Permit  
**#3W0125-3-EB**

Hollis S. Paige  
Box 362  
White River Junction, VT 05001

William T. Griffiths  
**Lakeview** Drive  
Hanover, NH 03775

Kenneth A. **LeClair**  
Grand Road  
Hanover, NH 03775

This decision pertains to issues raised regarding whether the Vermont Agency of Transportation and the Town of Hartford are required to be co-applicants pursuant to Board Rule 10, and whether to grant a request for subpoenas filed in this matter. As is explained below, the Agency and the Town are not required to be **co-applicants**, and the Board gives the Chairman the authority to rule on the subpoena request once a final request is filed.

BACKGROUND

The District #3 Environmental Commission issued Land Use Permit **#3W0125-3-EB** to the Permittees on April 18, 1989. That permit authorizes the Permittees to construct a 35,000 square foot commercial store with related parking, **signage**, lighting and landscaping. The proposed project is to be located near the intersection of **Gilson** Avenue and U.S. Route 4 in Hartford, Vermont.

On May 18, 1989, the Quechee Lakes Landowners Association filed an appeal of the permit with respect to various criteria. In its appeal, the Association asserts that the State of Vermont and the Town of Hartford are required to be co-applicants on the permit application because of state and town highway improvements which are allegedly necessary for the proposed project.

On May 31, a cross-appeal was filed with the Board by Jane and William A. Miller and Anne and Silvio **GiConte** (the Cross-appellants). On June 27, Chairman Leonard U. Wilson convened a prehearing conference in Woodstock, Vermont. At the prehearing conference, the Cross-appellants indicated that they

442.

wished to subpoena various witnesses. The Board issued a prehearing conference report on July 10 which contained a deadline of July 21 for filing a written request for subpoenas. On July 10, the Permittees filed various memoranda of law, including one on the co-applicancy issue. On July 18, the Association filed a memorandum of law on several issues, including co-applicancy. On July 21, the Cross-appellants filed an objection to the subpoena request deadline. On July 26, the Permittees filed a response to the Association's July 18 submission.

On August 2, the Board determined a number of preliminary issues in this matter, the results of which the parties were informed by memorandum dated August 7. In that memorandum, the Board indicated that it was requesting the comments of the Agency of Transportation concerning the co-applicancy issue. The memorandum also granted the Cross-appellants an extension to August 18 to file a final written request for subpoena.

The Agency filed comments on this issue on August 11, 1989. No final subpoena request was received. The Board deliberated on August 23 in Montpelier.

#### DECISION

1. The Vermont Agency of Transportation and the Town of Hartford are not required to be co-applicants. One of the purposes of Board Rule 10, which governs co-applicancy, is to ensure the enforceability of permit provisions by requiring the record owners of involved land to sign the application. In this case, this purpose is outweighed by the potential burdens posed on the Agency and the Town. Specifically, if the Board were to require these entities to be co-applicants whenever improvements are to be made on their land to remedy traffic impacts associated with development, in many **cases** the Board would be requiring these entities to assume liability for compliance with all permit conditions and the administrative burden of analyzing large numbers of permit applications and determining whether to sign them. Further, as the Board stated in Re: Liberty Oak Corporation, #3W0496-EB-1, Findings of Fact, Conclusions of Law and Order at 6 (January 14, 1988):

The Board believes it is not necessary for VAOT to be a co-applicant in order for the Board to impose conditions relating to landscaping by the Applicant in the VAOT right-of-way. As permit holder, the Applicant, or its successors in interest, **are** responsible for complying with the conditions of the permit as a condition of retaining the permit. The method by which the permit holder achieves compliance is not of concern to the Board.

Memorandum of Decision  
L.U.P. #3W0125-3-EB  
August 29, 1989

2. The Board declines to make a determination on the subpoena request of the Cross-appellants because they did not submit a final request in compliance with the deadline set in the August 7 memorandum. Board Rule 4 requires that the **requestor** of a subpoena demonstrate the taking of reasonable efforts to achieve voluntary testimony by the proposed witness. The original objection filed on July 21 does not indicate that all reasonable efforts have been made to achieve voluntary testimony: instead, it states that some witnesses were unavailable to be asked whether they would testify. To expedite **this** matter, the Board gives the Chairman the authority to determine whether to grant any final request for subpoena if

Memorandum of Decision

**L.U.P. #3W0125-3-EB**

August 29, 1989

Page 4

ORDER

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5. On or before Tuesday, September 19, 1989, parties shall submit prefiled testimony for all witnesses they intend to present.

6. On or before Thursday, September 28, 1989, parties shall submit prefiled testimony in rebuttal to the testimony to be submitted no later than September 19.

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

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

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

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

The hearing will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing

Memorandum of Decision  
L.U.P. #3W0125-3-EB  
August 29, 1989  
Page 5

to have a stenographic reporter present or a transcript of the proceedings must submit a request by September 12, 1989. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

Dated at Montpelier, Vermont this 29th day of August, 1989.

ENVIRONMENTAL BOARD



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

Attachment

d:tanger.mem(wdiscl)