

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

Re: David, Mark & William Pippin
Woodhaven Manor
c/o William Pippin
2 Maple Street
White River Junction, VT 05001

Findings of Fact,
Conclusions of Law,
and Order
Application #3W0333-EB

This is an appeal from Land Use Permit #3W0333, issued by the District #3 Environmental Commission on February 13, 1980, authorizing the construction of 19 condominium units and granting "conceptual" approval for 125 condominium units on a 25.8 acre parcel of land in Hartford, Vermont. The appeal was filed on March 12, 1980, by Thomas E. Keenan, Barbara Keenan, and George E. Osborne, adjoining property owners. A pre-hearing conference was held with the parties on April 16, 1980, with Board Chairman Margaret P. Garland, presiding. At that conference the parties narrowed the issues to be raised in the appeal to the following: Criterion 1 (water pollution), 1B (waste disposal and stormwater discharge), 1D (floodways); Criterion 4 (soil erosion and capacity of the land to hold water). The parties stipulated that Criteria 2, 3, 5 and 9J, which were raised in the notice of appeal, were no longer in issue and would not be brought to the Board for de novo review. The Environmental Board held public hearings on this appeal on April 22, May 26, and June 11, 1980, with Chairman Margaret P. Garland, presiding. Following the close of the testimony, the parties requested an opportunity to submit proposed Findings and Conclusions; the Board agreed to hold the record open until receipt of those submissions, and to issue its decision 20 days thereafter.

The parties participating in this appeal are:

Applicants, David, Mark and William Pippin, by
Jack Candon, Esq.

Appellants, Barbara and Thomas Keenan, and George Osborne,
by Thomas Salmon, Esq. and Laurence Slason, Esq.

State of Vermont Agency of Environmental Conservation by
Stephen Sease, Esq.

FINDINGS OF FACT

1. If this project is built as proposed, it will not result in undue water pollution.

The 19 units of housing proposed for this project will be connected to the Wilder municipal sewage treatment plant in the Town of Hartford. The Wilder plant treats effluent to a primary level of treatment, and discharges into the Connecticut River. The Connecticut River is in the area of this discharge an "effluent-limited" stream, not a "water quality-limited" stream. The River has the capability to accomodate additional municipal plant discharges without suffering undue deterioration in water quality. We are unable to find that the Wilder plant will be brought into compliance with existing federal requirements for secondary treatment by 1983; and we are therefore unable to find that the effluent from this project will be treated to that level by that date. However, we do find that the treatment of effluent from this project is within the design capacity of the Wilder plant for primary treatment and that this additional discharge will not cause undue pollution to the receiving waters.

2. This project meets applicable regulations of the State of Vermont regarding the disposal of wastes.

The Wilder municipal sewage treatment plant is governed by the regulations of the State of Vermont promulgated pursuant to the requirements of the state and federal water pollution control acts. The plant is currently authorized to treat 400,000 gallons/day to primary treatment levels and to discharge the resultant effluent into the Connecticut River. The plant is operating under an Assurance of Discontinuance issued by the state Agency of Environmental Conservation. State officials have testified in this proceeding that this Assurance is a valid tool under state and federal law for the authorization of discharges from publicly-owned treatment works that are ineligible for Discharge Permits or Temporary Pollution Permits because they will be unable to achieve compliance with secondary treatment requirements by the national deadline of 1983. The Assurance governing the Wilder plant authorizes the connection and additional effluent flows from this project. If we assume, as we must, that the Department of Water Resources has issued authorizations in compliance with the requirements of state and federal law, then we must find that this project's connection to the Wilder plant satisfies the applicable state regulations for the disposal of wastes.

3. The stormwater discharges created by this project comply with the applicable state regulations regarding stormwater discharges and will not involve the injection of waste materials into ground water or wells.

Stormwater from the Woodhaven Manor project will be collected and routed through a catch'basin with a sand filter. This filter will remove approximately 80-90% of the pollutants in the runoff stream. The Department of Water Resources issued a Temporary Pollution Permit for the stormwater discharges from this project on October 19, 1978. Although that permit expired on July 1, 1980.

a request for an extension has been filed by the applicant, and state officials have testified that they expect it to be extended as a matter of course.

Adjoining property owners, Thomas and Barbara Keenan draw their household drinking water from a tile well 8 to 9 feet in depth, located approximately 15 feet from Dothan Brook. Dothan Brook is the receiving stream for stormwater runoff from the Pippin project. The discharge point for the Pippin stormwater collection system is approximately 60 feet from the Keenan property, downstream from the Keenan well, and about 4 feet lower in elevation than the top of the Keenan well. We find that it is very unlikely that there will be any harmful effect upon the Keenan well from the stormwater discharges anticipated from the Pippin project. Nonetheless, the applicants assured the Keenans that if any contamination of their well does result from construction of the project, that they will be compensated or provided with a new drilled well. If a condition to this effect is added to the permit issued for this project, the requirements of the Act with respect to the protection of ground water and wells will be met,

4. We find that this project will not restrict or divert the flow of floodwaters, endanger the health, safety or welfare of riparian owners or the public during flooding, or significantly increase the peak discharges of nearby streams during flooding.

This project is not located within a floodway or floodway fringe and will not restrict or divert the flow of floodwaters during periods of high water. The discharge point from the stormwater collection system is, however, located on the bank of the Dothan Brook. Although this site is not designated on the floodways map prepared by the Department of Housing and Urban Development, it is subject to flooding. We find, nonetheless, that the increase in stormwater discharges from this site due to development of the project will have a negligible effect upon the water level of Dothan Brook during flooding.

5. We find that if this project is built as proposed, it will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water.

The project will be built on a site of varying slopes from 6% up to 25%; however the actual construction will occur on areas with slopes level to 10% in grade. The soil on this site is classified as "Buckland - Very Stony". This soil is characterized by the Soil Conservation Service as having "severe" limitations for development. We find, however, that if the construction and use of this site is properly controlled, no unreasonable soil erosion will result. The "severe" limitations on development on

this soil are not necessarily due to its erodability alone. This soil is characterized by a claylike "bottleneck" layer underlying the topsoil which impedes the passage of water and restricts the use of septic fields to serve the development. The soil is moderately erodable and requires the implementation of a sensitive erosion control plan during the construction and use of the project. The applicant has prepared and submitted an erosion control plan for use in this project. The Land Use Permit issued by the District Commission contains additional protections against unreasonable erosion. We find that if these protections are implemented as designed, no unreasonable erosion will result from the project, and the ability of the soil to hold water will not be reduced so as to create an unhealthful or unsafe condition.

CONCLUSIONS OF LAW

1. The Land Use Permit issued by the District Commission in this matter authorized construction of only 19 units out of a proposed project of 125 units. The Commission did, however, grant "conceptual" approval for the development as a whole. Because of the importance of the master planning process for complex and phased projects, we believe it is important to clarify the scope of review that is appropriate for such projects and the scope of the permit that is authorized by the Act. As this Board recently stated in In Re Blair Family Trust (Application #4C0388-EB, June 16, 1980), the Act does not authorize the District Commission or the Board to grant a permit for development that has not been found to be in compliance with the 10 criteria of 10 V.S.A. §6086(a). It follows that "conceptual" approval of a master plan does not authorize construction of sub-projects contained in that plan, nor does it bind the Commission to any of the findings made at the time of that general review. There can be no vested rights to conceptual approval of a plan under the Act.

Nevertheless, we believe that it serves the purposes of the Act, to review phases of a complex project in the context of an overall master plan for the entire development. Such a review facilitates the orderly development of the State, serves the environmental values sought to be protected in the Act, and guides developers and investors in their decision making. In some instances, review of a master plan may even be necessary in order for the Commission to make meaningful findings on a particular sub-project for which an actual permit is sought. The Board wishes to encourage meaningful master planning for complex or phased projects. We merely observe that nothing in the Act, or at this point, in the Board's Rules authorizes a formal process for "conceptual" approval of projects not fully tested against the criteria of the Act.

2. Based upon the above Findings of Fact, it is the conclusion of the Environmental Board that this project, if completed and maintained in accordance with the terms and conditions of the application, Land Use Permit #3W0333, will not cause or result in a detriment to the public health, safety, or general welfare under the criteria of 10 V.S.A. 616086(a), brought before this Board. A permit is therefore issued, as amended in this decision, The appeal of Thomas Keenan, Barbara Keenan, and George Osborne is hereby denied. Jurisdiction over this matter is returned to the District Environmental Commission.

Dated at Montpelier, Vermont, this 7th day of July, 1980.

ENVIRONMENTAL BOARD

By 
Margaret P. Garland
Chairman

Members voting to issue
this decision:

Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter
Michael A. Kimack
Roger N. Miller

Members opposed:

Margaret P. Garland
Leonard U. Wilson