

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

RE: Quechee Lakes Corporation Findings of Fact,  
P.O. Cox 85 Conclusions of Law and  
Quechee, Vermont 05059 Order - Land Use Permits  
#3W0364-EB and #3W0365-EB

This is an appeal from Land Use Permits #3W0364 and #3W0365 issued on February 4 and February 9, 1981 by the District #3 Environmental Commission, the first of which authorized the creation of a seven-lot subdivision consisting of one condominium lot and six residential lots, and the construction of 28 condominium units known as "The Ridge"; and the second of which authorized the creation of a 13-lot subdivision for single family homesites in the Town of Hartford, Vermont. The appeal was filed by the Vermont Agency of Environmental Conservation on March 6, 1981. On March 24, 1981 the Environmental Board appointed Leonard U. Wilson, Chairman of the Board, to conduct the hearing on this appeal as an administrative hearing officer, with the consent of the parties, pursuant to Board Rule 17. Hearings were held on April 9 and April 15, 1981 with Chairman Wilson presiding. The following parties participated in the hearing:

Applicant, Quechee Lakes Corporation, by Catherine W. Scott, Esq.  
Appellant, State of Vermont Agency of Environmental Conservation by John H. Chase, Esq.

The hearing was recessed pending submission of requests for findings and conclusions by the parties. On May 14, 1981 the Environmental Board heard a report from the hearing officer, determined that the record was complete, and adjourned the hearing.

Findings of Fact

Criterion 8A:

We find that this project, if built as proposed, will not destroy or significantly imperil necessary wildlife habitat. This finding is based upon the following facts:

1. The proposed project will occupy approximately 55 acres of an area of approximately 150 acres currently used by deer for winter range. Deer wintering areas ("deeryards") are critical habitat for the survival and well-being of white-tailed deer in Vermont. Deer tend to concentrate in deeryards that provide adequate browse, favorable exposure, and protection from deep snows and predators. Adequate deeryards are necessary to sustain the population, nutrition, and

reproductive performance of deer in Vermont.

The State of Vermont has established a mapping program to identify these critical areas which appear to occupy approximately 4% of the land area of the State. The director of mapping program, Lawrence Garland, testified that this project will be located in the center of an existing deeryard of approximately 150 acres, which has been mapped as a critical deer wintering area since 1975. More recent investigation by Mr. Garland and Dr. Ronald Morgan, applicant's expert, revealed recent winter deer use, although the extent of the use was in dispute.

Because recent winters in this area have been mild, evidence of light winter browsing in recent years is to be expected, and we do not find this evidence dispositive of the dispute. We do find that this area is a winter deeryard. This decision is based upon a consideration of its aspect, location, vegetative cover, and past and continuing evidence of its use by deer in winter.

2. The project here under consideration will not destroy or significantly imperil the winter deeryard habitat at issue in this appeal.

If this project were to be viewed in isolation from the surrounding area, we would conclude that development of the project would destroy the winter deeryard existing on the site. However, based upon the evidence presented, we find that the utility of this habitat will in reality be destroyed or significantly impaired by surrounding development that has long been planned and approved for construction. In this context, we find that the appellants have failed to carry their burden of proving that this project will in reality have any significant impact on necessary wildlife habitat.

- a. The project under appeal is part of a master plan for the Quechee Lakes Development, a large-scale resort planned to consist of at least 603 condominium units and 1335 single family homes, located on approximately 5,000 acres. The development also contains a significant amount of land owned by the Quechee Lakes Landowners Association (QLLA), which is dedicated for open space or developed for active recreational uses.
- b. The project site under consideration is close to the heart of the entire Quechee Lakes project, and is in an area that has been carefully reviewed and

approved for relatively high-density development. The project site is close to central water and sewer facilities, and to the village center and major recreational facilities of the QLLA. The site is almost completely surrounded by existing or approved development at relatively high densities. It is bounded on the west by the Quechee-West Hartford road, the development's main street; on the north and east by approved and privately owned lots and by the 24-unit Quechee Hollow condominiums; and on the south by approved homesites and the 28-unit Sugar Hill condominium project. Within one-quarter mile of this site there are at least 37 small homesites and at least three other major condominium projects, comprising 108 condominium units. Most of these approved developments have not yet been built.

- c. The project site is part of an identified **deeryard** of approximately 150 acres. Apart from the 50-acre site in question, most of that **deeryard** is already approved for development and likely to be developed in the near future. We find that the continuing construction and occupation of homes and condominiums both within and around this **deeryard** will in a very real sense destroy the viability of the winter range area now under consideration.
- d. The appellant has failed to show how this 50-acre island of **deeryard**, surrounded by high density residential development, and a heavily-used highway, could continue to serve as critical natural habitat once already-approved developments are completed. Appellants' own study, introduced to demonstrate the presumed effects of human activities on existing **deeryards** (Exhibit #4), reveals that a **deeryard** is rarely observed within 1/4 mile of high-density development. Because of the surrounding development, the project site will lose its utility as critical **deeryard** even if the presently proposed project is not developed.

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#### Conclusions of Law

Criterion 8A of Act 250 states that "(a) permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat ...". For the reasons stated herein, we have found that the appellants have failed to carry their burden of showing that this development would in reality have such an effect on the

deeryard sought to be protected. We believe that the Act requires this Board to review development proposals in their complete context, not in a vacuum. While we are sensitive to our responsibility under Criterion 8A (See e.g., In Re Peter Guille, March 18, 1980), we do not believe any environmental interest would be served in this case by precluding construction on a relatively small site in the heart of a major project that has been thoroughly planned, and in large measure, already publicly-approved, sold, and developed. For the reasons stated, we have found it unnecessary to proceed to findings of fact on the subcriteria of Criterion 8A.

ORDER

The appeal of the Agency of Environmental Conservation is denied. Jurisdiction over this project shall return to the District Environmental Commission.

Dated at Montpelier, Vermont this 28th day of May, 1981.

ENVIRONMENTAL BOARD

By Richard H. Cowart  
Richard H. Cowart  
Executive Officer

Members participating  
in this decision:  
Ferdinand Bongartz  
Lawrence H. Bruce, Jr.  
Dwight E. Burnham, Sr.  
Melvin H. Carter  
Priscilla Smith  
Leonard U. Wilson