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

**RE:** Swain Development Corp. by  
Jonathan Brownell, Esq.  
Box 206  
Corinth, VT 05039

Memorandum  
of Decision  
Land Use Permit  
**#3W0445-2-EB**

This decision pertains to an issue regarding co-applicancy and a request for party status. As is explained below, the Vermont Agency of Transportation is not required to be a co-applicant and the Board invites oral argument on whether to grant the Town of Woodstock party status on Criterion 5 (traffic).

The Board issued a memorandum of decision in this matter on July 31, 1989. The background of the case as discussed in that memorandum is incorporated by reference. In the memorandum, the Board stated that it would invite the comments of the Agency of Transportation on the issue of whether it should be co-applicant, which the Board did by letter of the same date. The Board also offered other parties an opportunity to respond to **Woodstock's** petition for party status.

On August 9, 1989, the Applicant filed a memorandum endorsing whatever position the Agency decided to take with **respect** to the **co-applicancy** issue. On **August 11, 1989**, the Agency filed **comments** on **that** issue. No other filings were received by the Board on the issue or on **Woodstock's** petition. The Board deliberated on August 23 in Montpelier.

DECISION

1. The Vermont Agency of Transportation is not required to be a co-applicant. 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. Specifically, if the Board were to require the Agency to be a co-applicant whenever improvements are to be made on its land to remedy traffic impacts associated with development, in many cases the Board would be requiring it 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

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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.

2. The Board is unable to reach a decision on the **petition** of Woodstock for party status without oral argument. Accordingly, the Board invites Woodstock to appear before **the** Board to argue its petition.

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ORDER

1. The Vermont Agency of Transportation is not required to be a co-applicant.

2. The Board will convene oral argument on the Town of Woodstock's petition for party status on Wednesday, October 4, 1989, from 11:00 to 11:30 a.m. Ten minutes will be allotted for the Town's presentation, ten minutes for argument by any and all opponents to the Town's petition, and ten **minutes** for questions by the Board. Argument will occur at the Red Pines Restaurant, Hughs Room, located on Route 4 in Quechee, Vermont.

3. The Board will convene a hearing in this matter on Wednesday, November 8, 1989, the time and location to be announced. At this hearing the Board will take evidence from the parties on Criteria 1(B) (waste disposal), 1(C) (water conservation), 1(E) (stream alteration), 5 (traffic), 8 (aesthetics), 9(K) (public investment in highways), and 10 (conformance with local or regional plans). If offered, the Board will also take evidence on whether, if a permit is granted, the permit should require the obtaining of permit amendments prior to the actual use or occupancy of the proposed project. For reference of the parties, these are issues 3 through 11 in the prehearing conference report dated March 27, 1989.

4. On or before Friday, October 13, 1989, parties shall submit a final list of witnesses and exhibits.

5. On or before Friday, October 20, 1989, parties shall submit prefiled testimony for all witnesses they intend to present.

6. On or before Thursday, November 2, 1989, parties shall submit prefiled testimony in rebuttal to the testimony to be submitted no later than October 20.

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.

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Please note that parties are required to file only lists identifying those exhibits they intend to present, rather than the exhibits themselves. Exhibits must 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 to have a **stenographic** reporter present or a transcript of the proceedings must submit a request by September 13, 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 31st day of August, 1989.

ENVIRONMENTAL BOARD



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

Attachment

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