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

RE: South Burlington Realty Co. by Memorandum of Decision  
Dale A. Rocheleau, Esq. Land Use Permit Amendment  
Downs Racklin & Martin #4C0154-5-EB  
P.O. Box 190  
Burlington, VT 05402-0190

This decision pertains to an appeal filed with the Environmental Board on October 24, 1988 by Meadowbrook Condominium Association, Inc. (Meadowbrook) from Land Use Permit Amendment #4C0154-5 issued to South Burlington Realty Co. (SBRC) by the District #4 Environmental Commission on September 19, 1988, and to a petition to revoke the permit filed by Meadowbrook on November 21, 1988 after the Executive Officer of the Board notified Meadowbrook that its appeal was untimely filed.

A prehearing conference was convened on February 1, 1989 and a Prehearing Conference Report Order was issued on February 23. At the prehearing conference the parties agreed that the material facts regarding the procedures were not in dispute and that they would file legal briefs on the issues identified and present oral argument to the Board. On February 1, SBRC filed a motion to dismiss the revocation petition and on February 15 it filed a supporting memorandum and a brief. On February 15 Meadowbrook also filed a brief. SBRC filed a reply brief on March 1. On March 3, Meadowbrook filed a request for an evidentiary hearing and on March 10, SBRC filed a response.

The Board convened a public hearing on March 8, 1989, and heard oral argument from the parties. SBRC was represented by Dale A. Rocheleau, Esq. and Meadowbrook was represented by Douglas K. Riley, Esq. On April 5 and May 2, 1989, the Board deliberated on the appeal, the revocation request, and the various motions of the parties. This matter is now ready for decision. The following facts are based upon representations of the parties and the documents on file.

I. FINDINGS OF FACT

1. In 1974 Land Use Permit #4C0154 was issued to SBRC authorizing the construction of a SO-unit condominium project. That permit had a construction completion date of September 4, 1977. In approximately May, 1977 SBRC filed an application to extend its construction completion date, and by permit amendment #4C0154-2, dated May 4, 1977, the District Commission granted the extension until September 4, 1979.

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2. In May, 1979, Meadowbrook filed a petition with the Board to revoke SBRC's permit. The parties entered into a stipulation in which SBRC agreed to take certain steps in settlement of the revocation action. The Board incorporated this settlement into its order of November 15, 1979.
3. On September 6, 1979, SBRC applied to the District Commission for a second extension of the construction completion date to September 4, 1982. At the hearing on September 28, 1979, the District Commission granted party status to Meadowbrook. No evidentiary hearing was ever held, and no extension was granted.
4. As of September 1979, SBRC had built and sold 39 condominium units. No more units have been built since then.
5. In April, 1988, SBRC filed an application to extend its construction completion date from September 4, 1979 to September 4, 1990. Neither SBRC nor the District Commission notified Meadowbrook of the application. Meadowbrook was not a co-applicant and SBRC did not include Meadowbrook on the list of adjoining property owners it filed with its application.
6. Having learned of the application on its own, Meadowbrook contacted the District #4 Coordinator by letter dated September 15, 1988, requesting a hearing and suggesting it should be a co-applicant. The District Commission issued the amendment on September 19 without responding to Meadowbrook's request for a hearing.
7. Meadowbrook filed an appeal with the Board that was received at the Board office on October 24, 1988.
8. The common areas and facilities of the Meadowbrook Condominium include the entire 11.31-acre tract shown on the original site plan for construction of all the condominium buildings, including the 11 proposed to be constructed for which the construction completion date was extended.
9. The Meadowbrook Condominium Association consists of all of the unit owners.

## II. CONCLUSIONS OF LAW

Although a number of issues have been raised with respect to these proceedings, the Board believes that its decision regarding the timeliness of the appeal and the question of co-applicancy obviates the need to address all of the issues raised.

First, the Board will dismiss the appeal because it was filed 35 days after the permit was issued. The Board has no discretion to extend the filing deadline beyond the 30 days authorized by statute, regardless of when the appeal was mailed. See-Re: Puppy Acres Boarding Kennel, Application #2W0568-2-EB, Memorandum of Decision (October 11, 1985), affirmed, In re Puppy Acres Boarding Kennel, No. 85-490, Slip. Op. (Vt. 1986).

Second, the Board will void the permit amendment and remand this matter to the District Commission for a hearing on whether Meadowbrook or the individual condominium owners should be made co-applicant(s) to the application for extension of the construction completion date by virtue of its interest in the land that is the subject of the application. Board Rule 10(A) requires an application to be signed by the record owners of the tract of involved land, "unless good cause is shown to support waiver of this requirement." Such a determination cannot be made without an opportunity for the District Commission to consider the ownership interests of the condominium association. Because the District Coordinator and the District Commission failed either to require all owners of the land to be co-applicants or to determine after a hearing that good cause exists to waive the requirement, the existing amendment is void and has no effect.

In this revocation petition, Meadowbrook has requested an evidentiary hearing to review alleged changes in the project from the approved plans. The District Commission should determine in this case whether any changes have occurred and, if so, whether SBRC must obtain a permit amendment to authorize any such changes.

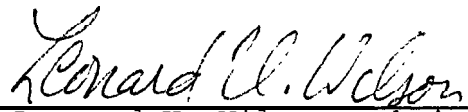
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III. ORDER

1. The appeal of Land Use Permit #4C0154-5 is hereby dismissed.
2. Permit Amendment #4C0154-5 is void. The District Commission shall convene a hearing to determine whether Meadowbrook or the individual condominium owners should be co-applicant(s) and to review any other issues consistent with this decision.
3. The revocation petition is hereby dismissed without prejudice.

Dated at Montpelier, Vermont this 4th day of May,  
1989.

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman  
Lawrence H. Bruce, Jr.  
Elizabeth Courtney  
Arthur Gibb  
Samuel Lloyd

MD 4C0154-5-EB