

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

RE: Richmond Estates
c/o Richard Saltzman
Warren, Vermont 05674

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER
Land Use Permit Amendment
#4C0234-1-EB

On March 10, 1980, Richmond Estates brought an appeal from Land Use Permit Amendment #4C0234-1 issued on February 5, 1980 by the District #4 Environmental Commission. This Amendment specifically authorizes the permittee to subdivide three 6.1± acre lots identified as Lots 5A, 5B, 5C, and four 10+ acre parcels identified as #3, #4, #6, and #7, and to construct a 2,000' road for access to said lots off Town Highway #2 in Richmond, Vermont. Only Condition #9 of the Land Use Permit Amendment is at issue in this appeal. Condition #9 states: "No further subdivision of any parcels of land approved herein shall be permitted without the written approval of the District Environmental Commission."

On March 11, 1980 the Environmental Board appointed Margaret P. Garland, Chairman of the Board, to sit as a hearing officer in this appeal, pursuant to Board Rule 17; and on March 27, 1980 the hearing officer heard oral argument on the appeal with the agreement of the parties as provided for in that Rule. The Board adjourned the proceedings upon receipt of a Memorandum of Law from the appellant on April 8, 1980, and reviewed the matter at its regular meeting on April 22, 1980.

The following parties participated in this appeal: the permittee by Richard W. Darby, Esq., and the Agency of Environmental Conservation by Stephen B. Sease, Esq.

The appellant contends in this appeal that by the imposition of Condition #9 the District Environmental Commission has exceeded its jurisdiction by requiring that future owners of the parcels of land obtain Commission approval before any future subdivision is permitted. The appellant argues that the Board should either clarify Condition #9 so that it applies only to Richmond Estates and not to future landowners or delete the condition completely from the permit amendment.

FINDINGS OF FACT

1. The permit amendment application was for the creation of three lots of 6.1± acres each and four 10+ acre parcels, both served by a 2,000' road. The District Commission relied upon the above description during its assessment of the impacts of the project under the 10 criteria of

10 V.S.A. §6086 (a).

2. The deed covenants presented by the applicant with the amendment application allow for the further subdivision of each of the four 10+ acre parcels into two five plus acre lots if the future owner so desires. The subdivision of these parcels and the creation of four additional lots is not a specific component of the amendment application. It is only something that by covenant Richmond Estates will allow to happen at some unknown point in the future.

CONCLUSIONS OF LAW

1. In reviewing an application for a land use permit or amendment, a District Environmental Commission must have before it an exact and complete description of the proposal under consideration. The Commission uses this description to assess the impacts of a project under the 10 criteria of Sec. 6086(a) and to make its determinations whether the project will result in a detriment to the public health, safety, or general welfare. Because the Commission relies on this description, it can only review a project as it is clearly described in the application and relevant exhibits. As a subdivision application, Richmond Estates' proposal is clearly only for three 6+ acre lots and four 10+ acre parcels together with a 2,000' access road. Had the applicant desired approval for the creation of four additional lots at some time in the future without further review by the District Commission, the application should have so stated.
2. Therefore, the Board concludes that the addition of Condition #9 to this Land Use Permit Amendment by the District Commission was necessary and proper, and was well within the Commission's authority to attach appropriate conditions with respect to the 10 criteria as authorized by 10 V.S.A. §6086(c). Failure to include such a condition would result in an incomplete review of all of the potential impacts of this project.


ORDER

The appeal of Richmond Estates, filed March 10, 1980, is denied. Jurisdiction over this permit is returned to the District Environmental Commission.

Dated at Montpelier, Vermont this 24th day of April, 1980.

ENVIRONMENTAL BOARD

By


Margaret P. Garland
Chairman

Members voting to
issue this decision:
Margaret P. Garland
Melvin H. Carter
Dwight Burnham, Sr.
Michael A. Kimack
Roger N. Miller
Leonard U. Wilson