

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

RE: Ray Pecor, Jr. and Findings of Fact and
Stuart Ireland by Conclusions of Law
Peter M. Collins, Esq. and Order
Paul, Frank & Collins, Inc. Land Use Permit **Amend-**
P.O. Box 1307 ment **#4C0288-11-EB**
Burlington, VT 05402

On August 10, 1987, an appeal was filed with the Environmental Board (Board) by Ray Pecor, Jr. and Stuart Ireland through their attorney, Peter M. Collins, Esq., from the District #4 Environmental Commission's (Commission) Findings of Fact, Conclusions of Law and Order dated June 18, 1987. The Applicants believe the Commission's findings with regard to aesthetics and scenic beauty are not supported by the evidence and that the project will not have an undue adverse impact on the aesthetics or scenic beauty of the surrounding area.

On August 25, 1987 a prehearing conference was convened by Acting Chair Jan S. Eastman in Colchester, Vermont and a Prehearing Conference Report and Order was issued on September 1, 1987. The Board convened a public hearing in this matter on September 16, 1987. The following parties participated in the hearing:

Ray Pecor, Jr. and Stuart Ireland (Applicants) by Peter M. Collins, Esq.
Town of Colchester and Colchester Planning Commission (Town) by Richard Whittlesey, Esq.
State of Vermont, Agency of Natural Resources (Agency) by Frederic Emigh, Esq.

The City of Winooski entered an appearance by letter dated August 18 but was not represented at the hearing.

The hearing was recessed on September 16, 1987, pending the filing of proposed Findings of Fact and Conclusions of Law, a review of the record, and deliberation by the Board. On September 24, 1987 the Applicants filed a Request for Findings and Conclusions and Memorandum. On November 3, following a review of the record and of the Requests for Findings and Conclusions of Law and Memorandum, the Board declared the record to be complete and adjourned the hearing. This matter is now ready for decision. The following Findings of Fact and Conclusions of Law are based upon the record developed at the hearing. To the extent that the Board agreed with and found necessary findings proposed by the Applicants, those findings have been incorporated herein; otherwise, said requests to find are denied.

A. ISSUES IN THE APPEAL

The Commission denied the Applicants' application for an Act 250 permit amendment for the construction of a 17,600 square foot commercial building for a truck sales and service business on Lot #21 in the Meadows Industrial Park, in Colchester, Vermont. The Commission denied the application, finding that the project would have an undue adverse effect upon aesthetics and the scenic and natural beauty of the area, 10 V.S.A. § 6086(a)(8).

The Applicants believe the project has been designed to satisfy Criterion 8 of Act 250 (aesthetics and scenic and natural beauty). The Town agrees that the project is "appropriate development."

B. FINDINGS OF FACT

1. The proposed project consists of a 17,600 square foot building, 28 employee parking spaces, 14 customer parking spaces, 19 display spaces, 5 trailer storage spaces, and an exterior storage yard on a 5.2 acre tract of land (Lot #21) in the Meadows Industrial Park in Colchester, Vermont. Lot #21 is owned by Stuart Ireland, subject to a purchase and sales agreement with Edward J. Cleary of J&B International Trucks. The proposed use is truck sales and repair.
2. The project site is surrounded by commercial and industrial facilities, a number of which are constructed with materials and design similar to the Applicants' proposed building.
3. The western boundary of Lot #21 abuts approximately 650 feet of Interstate 89 south of Exit 16. A 49,000 square foot office/warehouse building is located on Lot #22 which adjoins Lot #21 to the north. An existing wooded area owned by the City of Winooski is to the south of Lot #21.
4. The base elevation of the building will be 313 feet. The building height will be 24 feet at the eave and 26 feet at the ridgeline. The northbound lane of Interstate 89 is 18 feet to 20 feet above the proposed base elevation of the building, or at an elevation of approximately 331 feet to 333 feet.
5. The interstate right-of-way extends 60 feet down a 1 on 3 or 4 slope to the property line. The parking lot will be 35 to 45 feet from the Interstate right-of-way and the building 100 feet from the right-of-way. An undisturbed buffer of trees will remain, and in some places will be enhanced, between the right-of-way and the limit of grading.

6. Article 2 of the covenants for the industrial park requires that no buildings be erected-within 75 feet of the interstate.
7. The building will be a metal framed structure. The sides are currently a desert gold color but after construction will be painted light gray with dark gray trim. The roof will be galvanized and allowed to weather.
8. There will be six garage bay doors on the western facade of the building, facing the Interstate. These doors will be unlit.
9. A 50 foot x 80 foot open storage yard is located on the southern end of the building, enclosed by a 10 foot high chain link fence and lit by a pole mounted security light. The fence will be surrounded by a 10 foot high evergreen hedge. Two dumpsters will be located on the eastern side of the storage area away from the Interstate.
10. The employee parking lot will be located on the western side of the building, approximately 120 feet x 60 feet with adequate space for 22 cars. An additional area of 60 feet x 180 feet will be paved for truck maneuvering. These areas will be lit by four pole-mounted lights with angle cutoffs. One low angle cutoff security light is proposed for over the personnel door.
11. A display area for 19 truck cabs will be located east of the building and lit by one low angle pole-mounted light and three wall-mounted lights. The pole-mounted light will be no higher than 18 feet. Space for storage of five truck trailers will be located on the southeast side of the lot.
12. Five additional pole-mounted low-angle cutoff lights of maximum 18-foot height, will be located to the north and east side of the building. A reostat timer will reduce the light level after closing.
13. A wall-mounted sign, 12.8 feet x 3 feet, will be mounted 9 feet above base elevation on the northwest corner of the building, below eave height and away from the Interstate. The sign is orange with white lettering and is internally lit.
14. All lighting fixtures and signs will conform to the height and illumination standards of the Colchester Zoning Ordinance.
15. The landscaping plan calls for a variety of plantings throughout the site. The bulk of the plantings will be along the western side of the lot, abutting the Interstate right-of-way.

16. The upper one-half to two-thirds of the building will be partially visible to travelers northbound on the Interstate in months when there is no foliage on the trees. Exposure time for northbound travelers is less than eight seconds at 65 mph. Normal driver angle of vision is 20 degrees from the center line at 65 mph and therefore exposure time is reduced for the driver. Maximum potential exposure time for a passenger is about eight seconds.
17. The project is less visible from the southbound lane because this lane is lower than the northbound lane and deciduous shrubs occupy the median.

c. CONCLUSIONS OF LAW

The criterion at issue in this appeal is Criterion 8, which states that the Board must find that the project will not have "an undue adverse effect on the scenic or natural beauty of the area (or on) aesthetics" 10 V.S.A. § 6086(a)(8). The Board explained its interpretation of this criterion at considerable length in its decision in the "Newton Inn" and "Murphy Farm" projects at Quechee Lakes (Permits #3W0411-EB and 3W0439-EB). In that decision the Board described a two step process by which to evaluate the aesthetic or visual impacts of a project. The first step is to determine whether the impact is "adverse"; if the impact is found to be adverse, the second step is to determine whether the adverse impact is "undue."

In judging whether a proposed project is adverse, the Board must determine whether the project "fits" the context in which it is located. The proposed project is located within an Act 250-approved, existing industrial park in the Town of Colchester. It is clear from the Board's review that the building style, materials and colors are similar to those of surrounding buildings. The visibility of this project from the Interstate is the most significant issue before us.

The Board notes that the Applicants have redesigned the project to achieve better screening of the project from the Interstate. The Board concludes that with the natural vegetation and proposed landscaping in place, only a small portion of the building will be visible from the Interstate and for only a brief period of time.

Consequently, the Board concludes that the project as currently proposed "fits" within its context and thus will not have an adverse effect upon the scenic or natural beauty or aesthetics of the area.

D. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit Amendment #4C0288-11-EB is hereby issued.

Dated at Montpelier, Vermont this 12th day of November, 1987.

ENVIRONMENTAL BOARD

Jan S. Eastman

Jan S. Eastman, Acting Chairman

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