

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

RE: Sherman Hollow, Inc., Memorandum of Decision
Richard A. Gadbois, Trustee Land Use Permit Amendment
Estate of Ned H. Pettingill, #4C0422-5-EB
and Roger Lussier and
Arthur Elliot by
Jonathan H. Brownell, Esq.
Brownell & Moeser
P.O. 200
Norwich, VT 05055

On November 9, 1988, the Environmental Board issued a decision in this matter. The decision denied approval for an 18-hole golf course located primarily in the Town of Huntington, Vermont. On November 23, the Applicants filed a Motion for Reconsideration, Correction, and Re-opening of the Proceeding, and on December 1 they filed a Memorandum in Support of their Motion. The Applicants submit that the Board's findings of fact are not supported by the record and that the Applicants should be allowed to clarify and explain the testimony from the hearing, as well as present supplemental information to the Board. The Applicants also request the Board to take judicial notice of the August 12, 1988 Superior Court decision to grant a zoning permit to Sherman Hollow, Inc.

On November 28, the Town of Huntington also filed a Motion for Reconsideration.

On December 7, the Board received a letter from Marlene McDonald requesting the Board to uphold its denial. On December 8, the Board received a Memorandum in Opposition to the Request for Reconsideration from Paula Kelley et al., and a Response to the Applicants' Motion for Reconsideration and a Response to the Town of Huntington's Motion for Reconsideration from Lisa Barrett.

After reviewing all of these documents, the Board has reached the following decisions:

1. The Board will reconsider its decision in this matter and will schedule oral argument for the purpose of allowing the representatives of the parties to demonstrate that the decision is not supported by evidence in the record. No additional evidence will be considered at this time.
2. After hearing oral argument and reviewing any written submissions, the Board will consider whether to alter the decision. At that time, the Board will also decide whether to reopen the hearing to allow additional evidence to be submitted into the record.

11/9/88
366M
FF

3. The Board will not take official notice of the Superior Court's August 12, 1988 decision to grant a zoning permit to Sherman Hollow, Inc. The Administrative Procedure Act allows agencies to take notice of "judicially cognizable facts." 3 V.S.A. § 810(4). The Vermont Rules of Evidence (V.R.E.) apply to administrative contested cases. 3 V.S.A. § 810(1). According to V.R.E. 201(b), "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The substance of the court's decision is not a "fact," and the accuracy of the findings therein is subject to "reasonable dispute." The Court decision is therefore not a proper matter for official notice.

Furthermore, the Superior Court decision was reached in the context of an appeal of a conditional use permit granted to Sherman Hollow by the Town of Huntington. Since the criteria by which such a zoning permit is reviewed are different from those reviewed by the Board in 10 V.S.A. § 6086(a), any conclusions reached by the court are not relevant to the Board's consideration under Act 250. Moreover, any facts found by the Court are hearsay with regard to the Board's proceeding, since there has been no opportunity for the parties to cross-examine the witnesses on those facts before the Board.

ORDER

1. The Board will convene a hearing for the purpose of allowing the parties in this matter to demonstrate that the decision is not supported by evidence in the record. No additional evidence may be submitted. The hearing will be held on Wednesday, January 11, 1989. Parties will be notified of the place and time of the hearing at a later date.
2. On or before January 5, 1989, any additional written documents must be filed with the Board.
3. The Board does not take official notice of the Superior Court's August 12, 1988 decision.

Dated at Montpelier, Vermont this 20th day of December, 1988.

ENVIRONMENTAL BOARD



Jan S. Eastman, Acting Chair
Lawrence H. Bruce, Jr.
Ferdinand Bongartz
Samuel Lloyd
Arthur Gibb

SH19