

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

RE: Burlington Housing Authority
230 St. Paul Street
Burlington, Vermont 05401

Findings of Fact and
Conclusions of Law
Land Use Permit Amend-
ment #4C0463-1-EB

This is an appeal from Land Use Permit #4C0463 filed on July 2, 1981 by adjoining property owners, Allen and Linda Valliere, Peter Wales and tenant, Anne True. District #4 Environmental Commission granted a permit to Burlington Housing Authority (the "Applicant") on June 5, 1983, authorizing the Applicant to construct 26 units of low income family housing in 13 duplex units with related site improvements, located off Riverside Avenue in Burlington, Vermont.

A pre-hearing conference was held on July 27, 1981 at the Municipal Offices, City Hall, South Burlington, with Chairman Leonard U. Wilson presiding. The Environmental Board (the "Board") convened public hearings on August 11, September 29 and September 30, 1981. Parties to this appeal are the following:

Appellants, Allen and Linda Valliere and Peter Wales, .
by David A. Nicholson, Esq.;
Applicant by James M. Farrell, Esq.; and
Chittenden County Regional Planning Commission by
Arthur R. Hogan, Jr., Executive Director.

A. ISSUES IN THE APPEAL

1. At the pre-hearing conference the attorney for the Appellants stated that he would be filing a motion requesting a remand of the permit to the District #4 Environmental Commission, based on the alleged inconsistency between the granting of the permit and the Board's declaratory ruling in Burlington Housing Authority (D.R. #124, May 20, 1981). Such a motion was never filed and therefore, this issue was not before the Board.

2. During the hearings the Applicant presented a revised site plan. Appellants raised a procedural issue as to whether the Board is required to remand the "amendment" application to the District #4 Environmental Commission on the grounds that the Board lacks jurisdiction to review amendments to a permit under appeal. The Board concluded at the September 29 hearing that it has jurisdiction to consider this project as revised because the revisions do not raise criteria other than those under appeal (Criteria 5 and 8). See Windsor Improvement Corporation (2S0455-EB, March 27, 1980) and Ammex Warehouse Company, Inc. (6F0248-EB, August 3, 1981).

Nor is a remand required where a revised site plan does not affect the interests of persons who were not parties at the District Commission proceedings. In re Juster Associates, 136 Vt. 577, 396 A.2d 1382 (1978). In addition, all parties in the present case were notified of the proposed changes and were invited to make known any objection to the Board's review of them. As the revisions to the site plan involve no new potential parties, a remand for further review by the District Commission would serve no useful purpose.

3. At the pre-hearing conference, Appellants raised substantive issues under the following criteria of 10 V.S.A. §6086 (a):

- Criterion 1(B), surface water pollution;
- Criterion 4, reduction in the capacity of the land to hold water;
- Criterion 5, unreasonable congestion and unsafe highway conditions; and
- Criterion 8, undue adverse effect on scenic beauty.

4. At the September 30 hearing, Appellants presented a motion to dismiss the appeal as to all criteria before the Board pursuant to a stipulation between the parties, which stipulation was entered into the record. Under the provisions of the Administrative Procedure Act, 3 V.S.A. §809(d), parties to a contested case may make informal disposition of the case by stipulation, unless otherwise precluded by law. The Board reviewed the parties' stipulation and also considered the revisions to the Applicant's site plan according to the applicable criteria under appeal (Criteria 5 and 8). The Board then made the following Findings of Fact and Conclusions of Law.

B. FINDINGS OF FACT

1. The Board finds that the stipulation between the parties is not contrary to the purposes or requirements of 10 V.S.A., Chapter 151. That part of the stipulation requiring that the Applicant plant five to six foot shrubs and construct a four-foot fence along the property boundary owned by Allen and Linda Valliere is relevant to Criterion 8 (scenic beauty) and is incorporated as a condition of Land Use Permit #4C0463. The Board further finds that the remaining portions of the stipulation are not relevant to the criteria of 10 V.S.A., Chapter 151 and as such will not be incorporated as a condition of Land Use Permit #4C0463. However, to the extent that the Applicant transfers its interest in a portion of the project site to adjoining property owners as a result of this stipulation, the Board approves such a transfer and finds it not contrary to the purposes or requirements of 10 V.S.A., Chapter 151.
2. By letter dated September 14, 1981 (Exhibit #9), the Applicant revised the layout of the new entrance road at the west end of the development. The revised plans include

an increase in the width of the entrance road, a reduction of the percentage of slope, and the relocation of the sidewalk to the east side of the entrance road (Exhibits #10 and #11).

3. The Board finds that the Applicant's revised site plan satisfies the requirements of Criteria 5 and 8 and that the project, if built and maintained as proposed, will not cause unreasonable congestion or unsafe conditions and will not have an undue adverse effect on the scenic or natural beauty of the area. 10 V.S.A. 56086(a)(5) and (8).

C. CONCLUSIONS OF LAW

1. The Board grants Appellants' motion to dismiss the appeal finding it not contrary to the purposes or requirements of 10 V.S.A., Chapter 151.
2. The Board concludes that the project described in Land Use Permit #4C0463 and amendment #4C0463-1-EB, if completed and maintained in accordance with the terms and conditions contained therein and in conformance with the associated Findings of Fact and Conclusions of Law, will not cause or result in a detriment to the public health, safety and general welfare pursuant to 10 V.S.A. §6086(a).

D. ORDER

Accordingly, it is hereby ordered that this appeal is dismissed and the above Findings of Fact and Conclusions of Law shall be added to those issued by the District #4 Environmental Commission and the conditions of Land Use Permit Amendment #4C0463-1-EB, as issued by the Environmental Board, shall be added to the conditions of Land Use Permit #4C0463. Jurisdiction over this permit shall be returned to the District #4 Environmental Commission.

Dated at Montpelier, Vermont this 15th day of October, 1981.

ENVIRONMENTAL BOARD

By Jan S. Eastman
Jan S. Eastman
Executive Officer

Members participating in this decision:

Leonard U. Wilson
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Dwight E. Burnham
Melvin H. Carter
Donald B. Sargent
Priscilla Smith