

STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 V.S.A., CHAPTER 1 S 1

RE: Spear Street Associates Findings of Fact,  
c/o Ray Pecor Conclusions of Law and Order  
King Street Dock Land Use Permit #4C0489-1-EB  
Burlington, Vermont OS401

On May 25, 1982, Robert Vinson et al. filed an appeal with the Environmental Board (the "Board") from Land Use Permit #4C0489 granted by the District #4 Environmental Commission (the "District Commission") to Spear Street Associates on April 24, 1982. The land-use permit specifically authorizes Spear Street Associates to construct 79 condominium housing units, to create a 55 single-family lot subdivision and to make related improvements on 51 acres of land located to the west of Spear Street in South Burlington, Vermont. At the times of application and appeal, the 51 acres of land were owned by Mrs. Nowland and her daughters, Mrs. Underwood and Mrs. Gagnon. They also own other land in the area of the project site. Spear Street Associates has an option to purchase the 51 acres.

Lawrence H. Bruce, Jr., a member and duly authorized delegate of the Board, held a pre-hearing conference on this appeal on June 8, 1982 in South Burlington, Vermont.

At the request and with the consent of the parties, the Board convened and immediately recessed a public hearing on this appeal on June 16, 1982. The Board reconvened public hearings on this appeal on July 7 and August 5, 1982 in South Burlington, Vermont. The following parties were present at the hearings:

Appellants by Jonathan Brownell, Esq.;  
Permittee, Spear Street Associates by Carl H. Lisman, Esq.  
and Gerald blilot;  
City of South Burlington Planning Commission by David  
Spitz; and  
State of Vermont, Department of Agriculture by Dana  
Cole-Levesque, Esq. and Robert Wagner.

Appellants are adjoining property owners and others accepted as parties by the District Commission pursuant to Board Rule 14(B) (formerly Rule 12(C)) as specified in the District Commission's November 5, 1981 Order on Party Status. Appellants requested that the Board incorporate the November 5, 1981 Order on Party' Status in this proceeding. No parties objected to the incorporation, and the issue of party status was not raised before the Board at any other time during the proceedings.

The hearings were recessed on August 5, 1982 pending receipt of proposed Findings of Fact and Conclusions of Law, memoranda of law and a review of the record. The Board received

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requests for findings and conclusions and memoranda of law from various parties on August 23, 24 and 26, 1982. At the August 5, 1982 hearing, Appellants requested the opportunity to include a series of questions to be answered by the Board as part of their requests for Findings of Fact and Conclusions of Law. Such questions were not presented for the Board's consideration. On October 13, 1982 the Board determined the record complete and adjourned the hearing. This matter is now ready for decision.

Board member Roger Miller was not present at the August 5, 1982 hearing. However, Mr. Miller bases his participation in this matter on his review of the tapes of the August 5, 1982 hearing and his presence at the July 7, 1982 hearing.

A. ISSUES RAISED BY THE APPEAL

Appellants claim that the District Commission erred in granting Spear Street Associates a land-use permit under Criteria 8 (scenic or natural beauty of the area) and 9(B) (primary agricultural soils) of 10 V.S.A. §6086(a). Appellants dispute the District Commission's decision that this site contains no primary agricultural soils as defined by 10 V.S.A. §6001(15). Because of this decision, the District Commission did not review the project under Criterion 9(B).

Appellants argue that at least a portion of the site contains primary agricultural soils and that alternative land-use planning would satisfy the requirements of both Criteria 8 and 9(B). The Board points out that historic sites or rare and irreplaceable areas as well as necessary wildlife habitat and endangered species, all part of Criterion 8, are not at issue in this appeal.

During the July 7, 1982 hearing, Spear Street Associates requested that the Board decide whether or not the Board could consider other lands owned by Mrs. Nowland and her daughters in any discussion relative to Criterion 9(B). See 10 V.S.A. §6086(a)(9)(B). Board Rule 10, effective March 11, 1982, requires that the "record owners of the tract(s) of involved land" be co-applicants to any permit application. However, former Board Rule 6(A), effective when Spear Street Associates' application was accepted for filing, did not require that record owners be co-applicants. Instead Board Rule 6(A) required that:

Applications shall list the name or names of all persons who have a substantial interest in the tract of involved land by reason of ownership or control and shall describe the extent of their interest; however, unless the applicant's instrument of ownership or control

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is recorded in the land records of the municipality or will be recorded before commencement of the development or subdivision, the owners of the tract of involved land shall be the applicants or co-applicants. This shall not preclude the board or a district commission from consideration of all the lands of the landowner(s) if the evidence in a specific case so warrants.

In the present case, Mrs. Nowland and her daughters are the landowners. Thus, the issue of whether or not they should be considered co-applicants, or whether other lands owned by them and located on the other side of Spear Street could be considered by the Board, was properly raised.

After hearing oral argument and deliberating, the Board decided:

1. Former Board Rule 6(A), a substantive rule, is in effect for purposes of this appeal;
2. The Board is not precluded from considering the remaining Nowland lands under former Board Rule 6(A);
3. The evidence before the Board so warrants such consideration;
4. While the Board cannot directly place restrictive conditions on the remaining Nowland lands, it can impose conditions on the Applicant/Permittee that may reach beyond the lands controlled by the Applicant/Permittee; and
5. The Board reached no conclusion on the justification for such conditions in this case at that point in the hearing process.

After informing the parties present of this decision, the hearing was recessed at Spear Street Associates' request and with the consent of all parties present. A written memorandum of decision was issued on July 9, 1982.

The Board bases its Findings of Fact and Conclusions of Law on the record developed at the hearings. To the extent that the Board agreed with and found necessary any requests for findings or conclusions by the parties, they have been incorporated herein; otherwise such requests are denied.

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B. FINDINGS OF FACT

1. Spear Street Associates is a three-person partnership. The partners include Ray Pecor, Gerald Milot and Dudley Davis. Spear Street Associates has an option to purchase from Aurora Nowland and her daughters, Helen Gagnon and Marie Underwood, approximately 51 acres of land located on the west side of Spear Street in South Burlington, Vermont. The purchase price specified in the option is \$9,500 per acre. Spear Street Associates does not own, nor does it have any interest in or an option for any other land. However, at least **one partner**, Gerald Milot, has been involved in other housing projects in the Chittenden County area.
2. The **51-acre** site is bounded by Spear Street and four residential lots on the east, Pheasant Way on the south, five lots in a subdivision known as Meadowood at Spear and the University of Vermont horticultural farm on the west, and the University's farm and other private owners on the north. Pheasant Way is a private right-of-way that is part of the Meadowood at Spear subdivision. Exhibits #1 and 11.
3. A public water main runs along Spear Street slightly beyond Meadowood at Spear. Sewer lines will be extended to serve the proposed project as necessary.
4. The proposed project includes 79 multi-family units on approximately 10 acres of land, roads of approximately six acres, and a 55 single-family lot subdivision. Access to the multi-family units is via roads running through the single-family lot subdivision. The single-family lots are between one-third (**1/3**) to one acre and decrease in **size** from Spear Street in a westerly direction. A 1.7 acre parcel adjacent to Spear Street in the northeast corner of the site will be deeded to the City of South Burlington for a public park.
5. A **5,000-foot** network of streets, including cul de sacs, will serve the single-family lots. These streets will be publicly owned and maintained. The roads and parking areas serving the multi-family areas' will be privately owned and maintained.
6. The site is bisected by a zoning district boundary, approximately 600 feet west of and parallel to Spear Street. To the east of this line the site is zoned for one residential unit per acre; to the west the

site is zoned for four residential units per acre. Spear Street Associates is required to conform to the density requirements of each zone. In designing the development Spear Street Associates also had to consider a municipal proposal for an east/west highway to run through the site at its northerly end and various view easements held by owners of the four residential lots located between this project and Spear Street,

7. Twenty of the 134 proposed units are located within the 600 foot zone described in Finding #6. Placement of houses on seven lots within this area would require conditional-use approval from the City of South Burlington.
8. The site has an average grade of 7% that slopes from Spear Street west towards Lake Champlain. The land also slopes from north to south along Spear Street. The highest portion of the site is the 1.7 acres in the northeast corner which is to be deeded to the City of South Burlington as a public park. Approximately one-third of the site is wooded; the rest is open field. The wooded area is located on the western third of the site away from Spear Street. Exhibit #11.
9. The most scenic views from and of the site are located along Spear Street which is used as an access road by many people.
10. Spear Street Associates will limit the height of trees and plantings to the east of the major north/south project roadway to a maximum height of 15 feet. Spear Street Associates will also limit the height of trees and plantings along Spear Street. Removal of trees is at the discretion of individual lot owners.
11. Each single-family lot has a designated building envelope as approved by the City of South Burlington Planning Commission. Exhibit #11. The building envelope includes the house, garage, and outbuildings. All utilities will be placed underground.
12. The City of South Burlington zoning requirements include a 75-foot setback from lot lines. The depth of the lots along Spear Street is approximately 200 feet.

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13. Meadowood at Spear is a development of single-family lots. Multi- and single-family developments are located to the north of this project. Along Spear Street development occurs generally on single-family lots.
14. The abutting University of Vermont horticultural farm consists of 50 to 70 acres. University agricultural lands in the City of South Burlington comprise between 200 to 300 acres.
15. The City of South Burlington 1980 Comprehensive Plan suggests that "recreational driving should be minimized in favor of ... scenic turnouts." Exhibit #14, pages 44 and 45.
16. Of the 51 acres of land proposed for development, approximately 80% or 40 acres are classified by the Soil Conservation Service as containing soils that may qualify as primary agricultural soils under the definition in 10 V.S.A. §6001(15). These soils, including Duane and Deerfield, Enosburg and Whately, Groton, Georgia, Belgrade and Eldridge, and Vergennes are distributed throughout the site. Exhibits #6, 7 and 9.
17. The area **of** Enosburg soils and an area marked "Stop 2" on Exhibit #7 have excess wetness problems that result in a lower agricultural potential. Exhibits #6 and 7.
18. The soils identified in Finding #16 are all sufficiently well-drained, reasonably suited, and would be best for the production of alfalfa grass, hay, and corn-silage. Hay and corn silage are the two integral crops in a dairy operation. Exhibit #9.
19. Hay on this site, except for the wooded area and slopes, has been cut in recent years by the same farmer who cuts the hay across Spear Street on other **Nowland** property. Exhibit #21.
20. The agricultural potential of this site substantially exceeds current production estimates. Exhibit #9.
21. The current rental price per acre as hay land for this site is approximately \$15 per acre. Generally, the open land in this area is rented for agricultural

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purposes on a year-to-year basis. The sale price as agricultural land would be significantly less than \$9,500 per acre, somewhere in the range of \$1,500 to \$2,000 per acre.

22. Agricultural operations, including apple orchards and dairy farms, are located near this site.
23. The 79 multi-family units proposed by Spear Street Associates are located generally on the 10 acres of land identified as non-primary agricultural soils. See Finding #17.
24. Mrs. Nowland and her daughters also own between 100 and 150 acres of land on the east side of Spear Street directly across from the project site.
25. The land owned by Mrs. Nowland and her daughters and located on the east side of Spear Street includes soils known as Vergennes clay, a soil type which could satisfy the definition of primary agricultural soils. The site also includes Covington soils that have been farmed successfully in the Lake Champlain Valley region. This land has been and is used for agricultural purposes. Exhibits #8 and 16.
26. Individual lot owners may use a portion of their lots for vegetable gardens.
27. There are approximately 4,000 acres of open land in the so-called Southeast Quadrant of the City of South Burlington. The City Council of the City of South Burlington has given conceptual approval to an Agricultural Land Use Policy. This proposal includes placing 1,997 acres of the southeast quadrant within an Agricultural and Residential District. The district will allow generally two residential units of housing per acre if public water and sewer are available. Through encouragement of cluster planning and other options, the City of South Burlington intends to make an effort to keep approximately one-third of the 1,997 acres, or 666 acres of land, open and available for agricultural uses. Exhibits #19 and 20.
28. As presently proposed, this project would not have an undue adverse effect upon the aesthetics and scenic and natural beauty of the area with the possible exception of the height and location of plantings and the location of the building envelopes on those lots that abut Spear Street. 10 V.S.A. §6086(a) (8). The

Board would not deny this project because of a failure to comply with Criterion 8 but would condition the project to provide that the building envelopes on those lots that abut Spear Street be set as far back from Spear Street as local-setback requirements allow. In addition, the Board would accept Spear Street Associates' offer that trees and plantings be restricted along Spear Street so as not to interfere with the view from the road toward Lake Champlain.

29. The average slope of this tract of land is well under 158, and the land is of a size capable of, at a minimum, contributing to an economic agricultural operation. Therefore, the approximately 40 acres of land identified in Finding #16 are "primary agricultural soils" as defined by 10 V.S.A. §6001(3).
30. This project will significantly reduce the agricultural potential of the primary agricultural soils by dividing the primary agricultural soils into **single-family** residential lots of between one-third and one acre each. This proposal to subdivide the land into separately owned lots with individual residences effectively destroys the potential use of the agricultural soils. 10 V.S.A. §6086(a) (9) (B).
31. At an option price of \$9,500 per acre, it is likely that Spear Street Associates can realize a reasonable return on the fair market value only by devoting at least a portion of the primary agricultural soils to uses that will significantly reduce their agricultural potential. 10 V.S.A. §6086(a) (9) (B) (i).
32. Spear Street Associates presently owns or controls no other lands that are reasonably suited to this project. 10 V.S.A. §6086(a) (9) (B) (ii).
33. The project has not been planned to minimize the reduction of agricultural potential by the use of cluster planning and new community planning designed to economize land usage because virtually all of the primary agricultural soils will be subdivided into 55 single-family lots. 10 V.S.A. §6086(a) (9) (B) (iii).
34. To the extent that this project results in the extension of community services, such as water and sewer along Spear Street, this project might significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands, or reduce their agricultural or forestry potential. 10 V.S.A. §6086(a) (9) (B) (iv).

C. CONCLUSIONS OF LAW

1. Criterion 8: Appellants raised the issue of the impact of the single-family lots abutting Spear Street upon the aesthetics, and scenic and natural beauty of the area. The Board concludes that these lots, as proposed and approved by the District Commission, would have an undue adverse effect upon the aesthetics or the scenic or natural beauty of the area under 10 V.S.A. §6086(a)(8). However, the Board would have approved the lots abutting Spear Street if the deeds to the lots had covenants requiring the building envelopes to be set back away from Spear Street to the greatest extent possible consistent with the City of South Burlington's setback requirements. In addition, the Board would have required covenants limiting the height and location of plantings along Spear Street so as not to interfere with the view from Spear Street of Lake Champlain.

In reaching its conclusion, the Board notes that the burden of persuading the Board that this project will have an undue adverse effect on the scenic or natural beauty of the area is upon the Appellants. 10 V.S.A. §6088(b). Based upon the evidence of the residential character of the area, the Board cannot conclude that multi-family housing and single-family lots per se are unacceptable in this area. However, the Board does agree with Appellants that the views from Spear Street looking west toward Lake Champlain are part of the scenic and natural beauty of the area and should be preserved wherever possible. The Board also agrees that the building envelopes and vegetation placed along Spear Street could unduly impair the views. Therefore, the Board would condition its approval of this project by moving the building envelopes and limiting the height and location of plantings on those lots which abut Spear Street.

2. "Primary Agricultural Soils" and Criterion 9(B): The Board first addressed the issue of primary agricultural soils and Criterion 9(B) in 1978. During that year the Board denied a proposal to subdivide approximately 58 acres of land into 27 two-acre lots because the project did not comply with the requirements of Criterion 9(B). Re: Marlene P. Davison, Application No. 5L0444, July 21, 1978. In that decision the Board discussed the sequence for reviewing a project with respect to Criterion 9(B) and explained that:

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Criterion 9(B) of Act 250 requires that the Environmental Board or a District Commission address the primary agricultural concerns in the following sequence:

1. Evidence must substantiate that the land in question does not consist of primary agricultural soils as defined in §6001(15). If the evidence shows that the soils are not primary agricultural, then no further evidence on the primary agricultural issue is required;
  2. If the soils are primary agricultural, then the Board or a District Commission must find that the project will not significantly reduce the agricultural potential of the primary agricultural soils. If the evidence supports that finding, then no further evidence on the primary agricultural issue is required;
  3. If the evidence shows that the soils in question are primary agricultural and the subdivision or development will significantly reduce their agricultural potential, then the applicant must persuade the Board or a Commission to find in his favor on each of the four items contained in Criterion 9(B)(i)-(iv). The failure to find in the applicant's favor on any of these four sub-criteria means that the permit applicant must be denied.
3. "Primary Agricultural Soils:" As discussed above, the first question to be answered by the Board is whether or not this site consists of primary agricultural soils. Primary Agricultural Soils are defined by 10 V.S.A. §6001(15) as:

Soils which have a potential for growing food and forage crops, are sufficiently well drained to allow sowing and harvesting with mechanized equipment, are well supplied with plant nutrients or highly responsive to the use of fertilizer, and have few limitations for cultivation or limitations which may be easily overcome. In order to qualify as primary agricultural soils, the average slope of the land

containing such soils does not exceed 15 percent, and such land is of a size capable of supporting or contributing to an economic agricultural operation. If a tract of land includes other than primary agricultural soils, only the primary agricultural soils shall be affected by criteria relating specifically to such soils.

Unlike Criterion 8, the burden of persuasion with respect to Criterion 9(B) and of necessity, the burden of persuading the Board that the site does not contain primary agricultural soils is upon Spear Street Associates. 10 V.S.A. §6088(a).

During the August 5, 1982 hearing, the Board decided that approximately 40 acres of the site contained primary agricultural soils as defined in 10 V.S.A. §6001(13). The definition of primary agricultural soils is a two-part test. The soils must have certain physical characteristics, including specific soil type and good drainage. In addition, the average slope of land must not exceed 15 per cent. It is clear from the evidence that approximately 40 acres of the site meets the physical characteristics as described.

The second part of the test is a determination that the soils are capable of supporting or contributing to an economic agricultural operation. Although the approximately 40 acres, identified as meeting the physical characteristics of the definition of primary agricultural soils, might not support an economic agricultural operation on their own, the 40 acres are of a size capable of contributing to an economic agricultural operation. The 51-acre site can and has contributed to an economic farming operation, viz. haying by a farmer in the South Burlington area. In fact, the site in question is currently producing at substantially less than its "best" potential. Given some guarantees of long-term availability, a farmer might make the investment necessary to improve the agricultural production of this site.

The Board notes that it was not convinced by Spear Street Associates' argument that the "agricultural operation" referred to in 10 V.S.A. §6001(15) must be on site. The language of the definition states that soils must support or contribute. Webster's Seventh

New Collegiate Dictionary defines "contribute" to mean "to give or supply in common with others." The word itself, therefore, assumes consideration of other agricultural operations. Furthermore, few, if any, agricultural operations in this state rely solely upon contiguous parcels for their land base. Therefore, the Board believes it is not necessary for the soils to support an economic agriculture operation on a given site in order to meet the definition specified by 10 V.S.A. §6001(15).

As a result of this conclusion, that part of the project affecting the 40 acres described above must meet the standards set forth in Criterion 9(B). Most of the 79 multi-family units are located on non-primary agricultural soils; therefore, this portion of the project can proceed as approved by the District Commission.

4. Criterion 9(B) : Reduction of Agricultural Potential:  
The Board next concludes that the subdivision of the 40 acres of primary agricultural soils into single-family residential lots of between one-third and one acre in size significantly reduces the agricultural potential of the primary agricultural soils. The Board reached similar decisions in the Davison case described above and in Re: Richard and Napoleon LaBrecque, Land Use Permit #6G0217-EB, November 17, 1980. These decisions also addressed single-family lot subdivision projects.

In reaching this conclusion, the Board was not convinced by Spear Street Associates' argument that the operation of individual vegetable gardens (that might or might not materialize) would mean that the agricultural potential of the soils will not be significantly reduced. Instead, the Board is convinced that the fragmented ownership and proposed residential uses will significantly reduce the agricultural potential of the soils. This conclusion requires the Board to review that part of the project affecting the 40 acres of primary agricultural soils under the four sub-criteria of Criterion 9(B).

5. Criterion 9(B)(i): Pursuant to Criterion 9(B)(i) **the** applicant must show that a reasonable return on the fair market value of his land can only be realized **by** devoting the soils to uses which will significantly

reduce their agricultural potential. 10 V.S.A. §6086(a)(9)(B)(i). Spear Street Associates does not own but does have an option to purchase 51 acres of land at approximately \$9,500 per acre. The Board assumes that this figure represents "fair market value" and acknowledges that Spear Street is likely to receive a reasonable return on its expected investment only by devoting at least a portion of the primary agricultural soils to nonagricultural uses. In reaching this conclusion, however, the Board notes that Spear Street Associates has only an option to purchase the 51 acre project site; therefore, the argument that Spear Street Associates deserves a "reasonable return" is premature.

In any case, Spear Street Associates did not produce any evidence detailing the expected return on this project, and therefore the partnership has not satisfied its burden of proof. This failure alone under Criterion 9(B)(i) is sufficient to deny the project.

6. Criterion 9(B)(ii): Pursuant to Criterion 9(B)(ii) the applicant must show that he owns or controls no nonagricultural or secondary agricultural soils reasonably suited to the development proposed. 10 V.S.A. §6086(a)(9)(B)(ii). Based upon the evidence, the Board must conclude that Spear Street Associates does not own or control nonagricultural or secondary soils reasonably suited for this project. However, Spear Street Associates points out that its project is designed to address the housing needs of Chittenden County, and that at least one of its partners has been involved in housing projects in this geographical area. The Board again notes that Spear Street Associates does not own this site. There may be other lands in the general project area or within Chittenden County for which Spear Street Associates could obtain an option with similar or better terms that would not involve primary agricultural soils.
7. Criterion 9(B)(iii): The Board also concludes that Spear Street Associates has failed to demonstrate that the project is planned to minimize the reduction of agricultural potential by the use of cluster planning and new community planning designed to economize land usage as required by 10 V.S.A. §6086(a)(9)(B)(iii). The evidence before the Board, in fact, shows that instead of minimizing the reduction of agricultural potential on this site, Spear Street Associates will utilize and/or fragment the ownership of every acre.

The Board acknowledges that a reasonable return on the fair market value of this site may only be realized through a development of some kind. However, the Board cannot conclude that the subdivision of 40 acres of primary agricultural soils into 55 single-family lots of between one-third and one acre each meets the test of minimizing the reduction of agricultural potential under Criterion 9(B) (iii).

Spear Street Associates has not convinced the Board that it cannot realize a reasonable return on its proposed investment by further cluster planning on this 51-acre site. Further clustering or other developing of this 51-acre site in conjunction with the remaining Nowland lands or other lands in the area could leave a significant portion of the primary agricultural soils available for agricultural uses.

In its LaBrecque decision referred to above, the Board found that the proposed subdivision of a portion of a farm could only be approved under Criterion 9(B) (iii) if the remaining portion of the farm were committed to agricultural uses. The present case is similar in that one alternative to minimize the impact of the development is to guarantee in some way that other primary agricultural soils, either across the street or in the area, are firmly committed to agricultural uses.

The Board commends the City of South Burlington, Spear Street Associates, and the Vermont Department of Agriculture for working together to formulate an Agricultural Land Use Policy for the southeast quadrant of the City. The policy as proposed and conceptually approved by the City Council, however, does not guarantee the potential of any primary agricultural soils. In any case, the Board can only review the project as proposed, and the City's policy does nothing to minimize the impact that would result from this project. The Board agrees generally that development on one site can reduce developmental pressures on other sites in a given area, but the Board believes that Criterion 9(B) requires a showing of more concrete planning options than the one suggested by the City of South Burlington.

8. Criterion 9(B) (iv): Finally, the Board cannot conclude that the proposed 55-lot subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry

potential as required by 10 V.S.A. §6086(a) (9) (B) (iv). This subdivision will be served by public water and sewer. Although a public waterline currently runs along Spear Street and past this site, sewer lines will be extended to serve the project. The availability of both public water and sewer means that the remaining Nowland land could be developed on a ratio of two units per acre. Such services will definitely increase development pressure upon the remaining primary agricultural soils in this area.

9. Criterion 9(B): In conclusion, Spear Street Associates has failed to show: (a) that a reasonable return on the fair market value of this land can only be realized by this project as currently designed; (b) that the project has been designed to minimize the reduction of agricultural potential; and (c) that the project will not significantly interfere with the continuation of agriculture on adjoining lands or reduce their agricultural potential. Therefore, the portion of the project that subdivides the 40 acres of primary agricultural soils into 55 single-family lots of between one-third and one acre is denied. This portion of the proposed project will be detrimental to the public health, safety and general welfare pursuant to 10 V.S.A. §6087(a). In reaching these conclusions, the Board relies upon its understanding that the language and purpose of Criterion 9(B) is to encourage uses of land containing primary agricultural soils that will not make it impractical to reclaim the soils for agricultural or forestry purposes at any time. Criterion 9(B) does not require that land containing primary agricultural soils be committed to only agricultural purposes. Indeed, nonagricultural uses can be approved so long as such uses do not destroy or significantly reduce the agricultural potential that could be realized at a later date.
10. Land Use Permit Amendment: In accordance with these Findings of Fact and Conclusions of Law, the Board will issue an amendment to Land Use Permit #4C0489. The amendment will allow the construction of 79 multi-family units as previously approved by the District Commission in accordance with the criteria of 10 V.S.A. §6086(a). However, the Permittee will have to submit plans showing a revised access route for the multi-family units to the District Commission for review and approval prior to the commencement of construction.

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Spear Street may apply for reconsideration to the  
District Commission within six months pursuant to  
10 V.S.A. §6087(c).

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ORDER

Land Use Permit Amendment #4C0489-1-EB shall be issued in accordance with the Findings of Fact and Conclusions of Law herein.

Dated at South Burlington, Vermont this 26th day of October, 1982.

For the Environmental Board:

Leonard U. Wilson  
Leonard U. Wilson, Chairman

Dissenting:

Melvin H. Carter  
Dwight E. Burnham  
Roger N. Miller

Lawrence H. Bruce  
Donald B. Sargent  
Warren M. Cone  
Ferdinand Bongartz

Board members participating  
in this decision:

Leonard U. Wilson  
Lawrence H. Bruce, Jr.  
Donald B. Sargent  
Warren M. Cone  
Ferdinand Bongartz  
Melvin H. Carter  
Dwight E. Burnham, Sr.  
Roger N. Miller