

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

RE: LTH Associates by Findings of Fact and
Richard A. Spokes, Esq. Conclusions of Law
Spokes, Foley & Stitzel and Order
P.O. Box 986 Land Use Permit #4C0526-5-EB
Burlington, VT 05402-0986

On August 31, 1987, an appeal was filed with the Environmental Board by LTH Associates through its attorney, Richard A. Spokes, Esq., from the District #4 Environmental Commission's (District Commission) decision dated August 6, 1987. The decision denied the Applicant's proposal to construct a 20,000 square foot office building on Lot #9 of a previously approved commercial subdivision off Shelburne Road in South Burlington, Vermont. The Appellant **objects** to the Commission's Findings on Criteria 1(E) and 4.

Acting Chairman Jan S. Eastman conducted a prehearing conference on October 1, 1987 with the following parties present:

LTH Associates (LTH) by Richard A. Spokes, Esq.
City of South Burlington by Dick Ward
State of Vermont, Agency of Natural Resources (Agency) by
Frederic Emigh, Esq.

Prior to the public hearing on the merits in this matter, participating parties informed the Board that a settlement had been reached.

On November 10, 1987, LTH and the Agency filed a Stipulation with the Board. On January 22, 1988, the City of South Burlington indicated its agreement with and acceptance of the Stipulation.

On January 12, 1988, the Board conducted a deliberative session on this matter and adjourned. This matter is now ready for decision.

I. FINDINGS OF FACT

1. The Findings of Fact set forth in the August 6, 1987 decision of the District Commission relating to all criteria except 1(E) and 4 remain in full force and effect.
2. In response to the District Commission's negative findings regarding Criteria 1(E) (Streams) and 4 (Erosion), the Applicant has modified its plans by moving the "construction disturbance line" further back from the top of the bank, incorporating a pruning and fertilization plan for trees at the top of the bank, providing for

downspouts in the parking lot and eliminating the use of matting on the bank. The Applicant's plans also include the installation of sheet piling and the planting of additional shrub and ground cover adjacent to the north side of the parking lot and building. (Plans and construction drawings by Krebs & Lansing, Consulting Engineers, Inc., entitled "Site Plan Proposed Office Building" dated July, 1986 last revised September 29, 1987, "Grading Plan Proposed Office Building" dated February, 1987 revised September 17, 1987, and "Details Bartlett Property" dated December, 1981 revised September 6, 1982 consisting of two sheets; "Erosion Control and Construction Sequence" narrative dated October 16, 1987 by Krebs & Lansing, Consulting Engineers, Inc.; Illustrations of Land-Works dated October 14, 1987 entitled "Section Through Downspout at Parking Lot" and "Options for Site Development"; and "Bank Planting Plan" by Land-Works dated October 15, 1987.)

3. In addition to the erosion control measures outlined in the exhibits referred to in No. 2, the Applicant, at the request of the Agency, will undertake the following:
 - a. A snow fence barrier will be erected before construction - 8 feet from the building perimeter and 3 feet from the parking lot perimeter on the stream side of the project. The snow fence, silt fence and hay bales will be installed under the supervision of the Applicant's engineer, with an appropriate photographic record of installation to be filed with the Land Use Attorney of the Agency of Natural Resources.
 - b. The Applicant will submit to the Agency's Land Use Attorney a more detailed description of the sequence of erosion control measures, including but not limited to a description of the nature of initial clearing (no stumping or grubbing), the location of soil stockpiled from the initial clearing at the street side of the lot, the ultimate disposition of stockpiles, mulching of the stockpiles, and sequence of sheet piling installation, foundation construction, backfilling (at grade) and the removal of sheet piling.
 - c. The trees to be thinned and branches to be removed, will be flagged and reviewed by an Agency representative, if available. Notification of the flagging shall also be given to the Agency's Land Use Attorney.
 - d. The Applicant's landscape consultant will supervise removal of the branches, making sure that no slash is deposited down slope, and that no personnel or machinery encroach beyond the construction limits set by the snow fence and hay bale barriers.

e. The hay bales will not be earth trenched, and silt fence trenching will be done by hand and not by machine.

f. Scaffolding will not extend beyond the limits of construction.

g. Construction progress will be inspected frequently by the Applicant's engineer, who will file weekly reports with the Agency's Land Use Attorney. The reports will outline construction progress, controls in place, note any new or proposed controls and changes to the erosion control plan, note any problems, outline measures taken to repair erosion damage, and note measures taken to restrict encroachment beyond the above-defined physical limits to on-site activity.

h. No construction activity may take place within 50 feet of the top of the bank prior to June 1, 1988, and no construction on the site will extend past October 31.

i. The Applicant's engineer will arrange a joint site review in early September, 1988, to discuss fall erosion control measures for winter protection.

j. If snow stockpiling restricts vehicular access for fire protection, the plowed snow will be removed from the site. In no case will snow be dumped anywhere along the stream.

k. Any damage to the top or sides of the stream slope will be repaired by the Applicant, regardless of expense. The Applicant will file a bond or other form of security acceptable to the Agency's Land Use Attorney in the amount of \$20,000 for a period ending two years after the commencement of construction, or one year after completion of construction, whichever is greater, for use in repairing any erosion control damage.

4. The development adjacent to the banks of the stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety or welfare of the public or any adjoining landowners.
5. The development will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

II. CONCLUSIONS OF LAW

The Board concludes that the Stipulation submitted by the parties participating in this appeal does not generally contravene the values which Act 250 is designed to protect. However, certain issues were not addressed in the Stipulation. Consequently, the Board will require additional protection as outlined below:

The plans do not depict the location of the sheet piling and do not provide for erosion controls during the installation of the sheet piling: therefore, the Board will require that revised plans which incorporate this information be submitted. The Stipulation requires the filing of additional erosion control information with the Agency. The Board concludes that it is also necessary to have this information filed with the District Commission and that the Agency must determine that the filed information complies with the stipulation and that the additional erosion controls are sufficient. Because there are reasonable circumstances which postpone the construction of projects, the Board concludes that it is necessary to have the term of the bond expire one year after the completion of construction. The Board will incorporate the Stipulation and these conclusions into a permit condition.

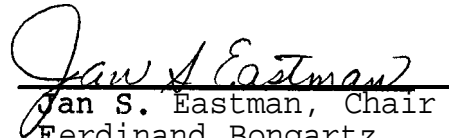
Based upon the Stipulation, the foregoing Findings of Fact and additional requirements outlined above, it is the conclusion of the Board that the proposed development described in Land Use Permit Application #4C0526-5 (as amended on appeal), if completed and maintained in accordance with all of the terms and conditions of that application, the exhibits referred to herein and those exhibits presented to District Commission, and the conditions hereinabove set forth, will not cause or result in a detriment to the public health, safety or general welfare under the criteria set forth in 10 V.S.A. § 6086(a).

III. ORDER

Land Use Permit #4C0526-5-EB is hereby issued in accordance with the Findings of Fact and Conclusions of Law herein. Jurisdiction over this matter is returned to the District #4 Environmental Commission.

Dated at Montpelier, Vermont this 27th day of January, 1988.

ENVIRONMENTAL BOARD



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