

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

RE: Sunderland Hollow Land Company  
c/o Thomas Booska  
16 Austin Drive  
Burlington, VT 05401

Findings of Fact and  
Conclusions of Law  
and Order  
Land Use Permit  
**#4C0582-EB**

On February 2, 1987, Cornelius and Lorraine **LaRoe** filed a petition with the Environmental Board (Board) requesting the revocation of Land Use Permit Amendment **#4C0582-10** issued to TBC Realty Co. and Sunderland Hollow Land Company. A second request for revocation was filed on February 22 by Andrea Bulman, Acting President of the Sunderland Woods Homeowners Association (Association). Land Use Permit **#4C0582-10** extended the construction completion date for the previously approved 1400 feet of road and utilities and the subdivision of 20 industrial-commercial lots located off Oak Circle Drive in Colchester, Vermont. This amendment also reiterated a condition from the original permit that had not yet been implemented that required the planting of trees along the northern property line of the industrial subdivision to provide screening from the houses in the adjoining Sunderland Woods residential subdivision.

A prehearing conference was held on March 17 in Essex Junction, Executive Officer Stephanie Kaplan, presiding. The following parties participated in the conference:

Sunderland Hollow Land Company (**SHLCo**) by Thomas Booska  
Cornelius and Lorraine **LaRoe**  
Sunderland Woods Homeowners Association (Association) by  
Jonathan Stevens, Esq. and Andrea Bulman  
Chittenden County Regional Planning and Development  
Commission by Arthur Hogan, Jr.  
Richard O'Brien  
Ted Hanbridge

At the prehearing conference, it was revealed that **SHLCo** had sold its interest in the industrial park to TBC Realty, and that several of the lots on the northern property boundary that were the subject of this proceeding had been sold to various parties. After the prehearing conference, the Board contacted TBC Realty (**TBC**) (owner of Lots **#7, 8, 9, and 10**), and Queen City Fire Equipment, Inc. (Queen City) (owner of Lot **#6**). Subsequent to the prehearing conference, Ted Hanbridge became president of the Association and substituted his appearance for that of Andrea Bulman on behalf of the Association.

The Board, through an administrative hearing panel, convened a public hearing in this matter on June 5, 1987, Acting Chairman Lawrence H. Bruce, Jr., presiding. The following parties participated in the hearing:

Cornelius and Lorraine **LaRoe**, by John Stevens, Esq.  
TBC Realty, by Jim Wood  
Queen City Fire Equipment, Inc., by Robert Gauthier  
Sunderland Woods Homeowners Association, by Ted Hanbridge

After recessing the hearing, the hearing panel took a site visit. The parties were present at the site visit.

On August 19, 1987, the Hearing Panel issued a proposed decision which was sent to all the parties. Not having received any written comments or requests for oral argument, on September 16 the full Board deliberated on the proposed decision.

I. ISSUES PRESENTED

The issue presented to the Board in this proceeding is whether condition #9 of the original Land Use Permit #4C0582 has been complied with. That condition, which was reiterated in condition #2 of Permit Amendment #4C0582-10, required the Permittee to maintain the vegetation that acts as a buffer between the industrial park and the adjoining residential subdivision undisturbed and, prior to commencement of construction of the road in the industrial park, to plant red or white pines, 5' to 6' high and 30' on center, in two staggered rows along the northern property line of lots #7, 8, 9, 10, and 16.

II. FINDINGS OF FACT

1. On June 8, 1984, District #4 Environmental Commission (Commission) issued Land Use Permit #4C0582 (Permit) to Sunderland Hollow Land Company (**SHLCo**) for the construction of 1400 feet of roadway and utilities and the subdivision of 12 lots of a 20-lot industrial subdivision in Colchester, Vermont. Since that time, the Commission has issued a number of amendments authorizing the subdivision of other lots in the industrial park.
2. Condition #9 of the Permit stated:

Prior to commencement of construction of the roadway the permittee shall plant white or red pines 5' to 6' high and 30' on center in two staggered rows along the north property line of Lots #7, 8, 9, 10 and 16. The existing vegetation along this property must be maintained undisturbed.

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3. In the spring of 1985, TBC Realty bought Lots #7, 8, 9, and 10, as identified on the original site plan (Board Exhibit #2). Since then, TBC sold Lot #10 to Sweet Energy.
4. In October, 1986, Queen City bought Lot #16 from a Mr. Jarvis who had purchased the lot from SHLCo.
5. In October, 1985, several representatives of the Association met with Tom Booska of SHLCo to discuss the lack of compliance with Condition #9 of the Permit. Mr. Booska conceded that trees should be planted in accordance with the condition and agreed to do so.
6. On March 31, 1986, a request to extend the completion date for complying with Condition #9 was sent to the Commission by Fitzpatrick-Llewellyn, Inc. on behalf of SHLCo and TBC Realty. This letter included an acknowledgement that trees must be planted along the northern property line in accordance with the specifications in Condition #9, except that 245 feet of the development now belonged to Sweet Energy and had been planted, reducing the estimated number of trees remaining to be planted from 82 to 66.
7. On May 1, 1986, the Commission issued Land Use Permit Amendment #4C0582-10 (Amendment) to TBC Realty and Sunderland Hollow Land Company. In addition to extending the construction completion date for the project, the Amendment reiterated Condition #9 of the Permit with a final implementation deadline of June 30, 1986. Condition #4 of the Amendment stated that "[f]ailure to comply with any of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A., Section 6090(b)."
8. In 1985, Sweet Energy planted some 5' to 6' high white pines on Lot #10. In the summer of 1986, TBC planted some white pines on Lots #7, 8, and 9. The trees that were planted were not nursery stock.
9. When Robert Gauthier bought Lot #16 in October, 1986, the lot was undeveloped. Mr. Gauthier obtained a permit amendment which included approval of revised site plans. Since then, he has planted 24-25 pines approximately 10' high in two staggered rows. These trees are nursery stock and appeared full and healthy.
10. An insufficient number of trees were planted on Lots #7, 8, 9, and 10 and the trees are closer to 60' on center than 30'. As of the date of the hearing, many of the trees were less than 6' tall. A number of them were unhealthy and scrawny, and a few were completely dead.

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11. The trees were not planted until after the roadway in the industrial park was constructed.

III. CONCLUSIONS OF LAW

It is clear to the Board that the Sunderland Hollow Land Company and TBC Realty have never complied with the requirement of their permits that they provide a screen between the industrial park and the residences that adjoin the park on the northern boundary. The original condition in Land Use Permit **#4C0582**, issued in June, 1984, required such screening before construction of the roadway. No trees were planted until 1985 when Sweet Energy planted some; TBC did not plant any trees until the summer of 1986. An insufficient number of trees were planted by TBC and Sweet Energy. Little, if any, care has been taken of the trees that were planted, and the dead ones have not been replaced. The wide-spaced, short, scrawny pines do not provide the screening that the Commission required.

In contrast, Queen City has planted a sufficient number of healthy, nursery stock pines, 10' tall, that do provide screening along its northern boundary. If these trees are properly maintained, the building on Lot **#16** should be well screened from sight of the residences in Sunderland Woods.

The Board concludes that condition **#9** of Land Use Permit **#4C0582** has not been complied with. 10 V.S.A. § 6090 provides that "[a] permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board." Board Rule 38 provides:

- (2) Grounds for revocation. The board may after hearing revoke a permit if it finds that:
  - (a) The applicant or his representative willfully or with gross negligence submitted inaccurate, erroneous, or materially incomplete information in connection with the permit application, and that accurate and complete information may have caused the district commission or board to deny the application or to require additional or different conditions on the permit; or
  - (b) the applicant or his successor in interest has violated the terms of the permit or any permit condition, the approved terms of the application, or the Rules of the board; or
  - (c) the applicant or his successor in interest has failed to file an affidavit of compliance with respect to specific conditions of a permit, contrary to a request by the board or district commission.

(3) Opportunity to correct a violation. Unless there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation, the board shall give the permit holder reasonable opportunity to correct any violation prior to any order of revocation becoming final. For this purpose, the board shall clearly state in writing the nature of the violation and the steps necessary for its correction or elimination. These terms may include conditions, including the posting of a bond or payments to an escrow account, to assure compliance with the board's order. In the case where a permit holder is responsible for repeated violations, the board may revoke a permit without offering an opportunity to correct a violation.

It is clear that the permittees have had considerable opportunity to comply with the condition but have not done so. The Board considers the lack of compliance over more than a three-year period to be repeated violations. Therefore, under Rule 38(A)(3), the Board could revoke the permit without giving the permittees reasonable opportunity to correct the violations. Since some attempt at compliance was made in the summer of 1986, and because compliance could be accomplished simply by planting a proper screen of trees, the Board concludes that it will not revoke the permit at this time but will provide an opportunity for compliance. If the Board's order is not complied with, however, the permit will be deemed revoked.

The conditions that the permittees must meet are as follows:

If the condition had been properly and timely complied with and the required trees planted before construction of the roadway, the trees would be 8'-10' tall by now. Therefore, the Board will require that the trees must be a minimum of 8'-10' tall. They must be planted 30' on center in two staggered rows. The Board will further require that they be of nursery stock or the equivalent, in order to ensure good health and a successful screen.

The Board will require the establishment of a screen of pine trees along the northern boundary of Lots #7, 8, 9, and 10.

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IV. ORDER

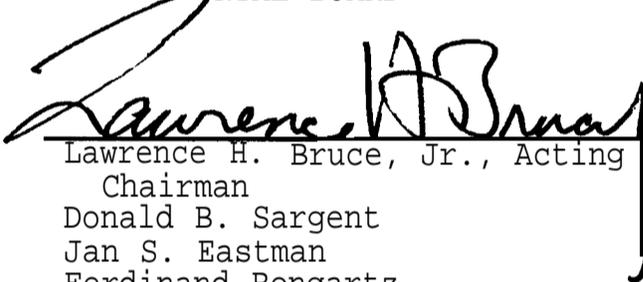
1. On or before October 15, 1987, the TBC Realty shall have planted white or red pines, 8'-10' high, 30' on center in two staggered rows along the northern boundaries of Lots #7, 8, 9, and 10. The trees shall be nursery stock or the equivalent.

2. TBC Realty may not sell any further lots in the industrial park until the trees are planted in accordance with this order and compliance with this order is certified to the Commission by a representative of TBC Realty.

3. TBC Realty shall continually maintain the trees after planting and replace any dead trees as soon as seasonably possible, so that a screen is maintained between the northern boundary of the industrial park and the Sunderland Woods residences.

Dated at St. Albans, Vermont this 23<sup>rd</sup> day of September, 1987.

ENVIRONMENTAL BOARD



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