

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

RE: Shelburne Farms Resources, MEMORANDUM OF DECISION
Inc. AND ORDER
Shelburne, Vt 05482 Application #4C0660-EB

On July 9, 1986, an appeal was filed with the Environmental Board by the Agency of Development and Community Affairs, Division of Historic Preservation ("Appellant") from the June 9, 1986 decision of the District #4 Environmental Commission ("Commission"). Specifically, the Appellant objected to Finding of Fact #37 which allowed demolition of the Servants' Quarters despite the Commission's recognition that such demolition would constitute the irrevocable loss of an historically significant structure.


A Prehearing Conference was convened on July 30, 1986, by Acting Environmental Board Chairman, Donald B. Sargent in Shelburne, Vermont. The following parties participated at the prehearing conference:

Applicant Shelburne Farms Resources, Inc. by Marilyn Webb.
Vermont Agency of Development and Community Affairs, Division of Historic Preservation, by Eric Gilbertson.

At that time the Applicant and the Appellant stated that they had reached a settlement and were working on the details of a stipulation that will generally include the following conditions:

- (1) The Servants' Quarters will be more thoroughly documented.
- (2) A number of the building's features will be preserved in a space on the site.
- (3) If a major addition is ever put on the Shelburne House, it will be the reconstruction of the Servants' Quarters.
- (4) A footprint of the Servants' Quarters will remain in the parking area.
- (5) The language in Finding of Fact #37 of Land Use Permit #4C0660 will be changed to modify the reasons for allowing demolition of the building.

At the Prehearing Conference the question was raised whether the Board has jurisdiction over this appeal. The entire project, which includes the construction of a Visitors' Center and the renovation of the Shelburne House into a seasonal inn, was reviewed under Rule 21 which provides for the partial review of complex projects. The Commission made findings under the ten criteria for each aspect of the project, but only approved the renovation of the Gate House and the construction of a building addition to serve as the Visitors' Center, with related improvements. The Commission specifically withheld approval of the renovation of the Shelburne House until the Applicant submits additional information.

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DISCUSSION

According to Rule 21, findings of fact issued pursuant to Criteria 9 and 10 are final for purposes of appeal. Findings of fact made under Criteria 1 through 8, however, are not final until the permit is issued. In this case, the Commission made findings under all the ten criteria for the entire project but issued a Land Use Permit approving only construction of the Visitors' Center. **Any** findings made for that part of the project are therefore appealable at this time. All of the findings it made under Criteria 9 and 10 with regard to the Shelburne House Inn and the Leasehold Lots are also final and appealable at this time. However, findings made under Criteria 1 through 8 for the Shelburne House Inn and the Leasehold Lots are not final or appealable until approval is issued for those projects.

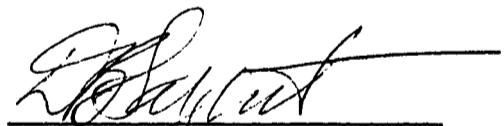
Although the Commission's decision stated that certain findings of fact were final, it was not clear whether the other findings were final for purposes of appeal at this time. Since the Rule 21 procedure is potentially confusing, the Board recommends that permits issued under this rule be explicit concerning what actions a permittee is authorized to take and what actions he may not take until further approval is issued. Furthermore, those conditions that are not final should be clearly identified as such.

ORDER

The Board concludes that it does not have jurisdiction over this appeal and it is therefore dismissed. The parties are advised to send a letter to the Commission advising it that they are working out a compromise and requesting the Commission not to issue final findings until they have had an opportunity to file their stipulation and to reconvene the hearing for the purpose of explaining the terms of the stipulation and the reasons for the requested changes in Finding of Fact #37.

Dated at Montpelier, Vermont this 4th day of August, 1986.

ENVIRONMENTAL BOARD



Donald B. Sargent
Acting Chairman