

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

RE: Landmark Development Corp. and Findings of Fact,
Robert Slimmon by Conclusions of Law
Liam L. Murphy, Esq. and Order
Langrock, Sperry, Parker & Wool Land Use Permit
P.O. Box 721 #4C0667-EB - Revised
Burlington, VT 05402

This decision pertains to an appeal filed with the Environmental Board (Board) on October 16, 1986 by co-applicants Landmark Development Corporation and Robert Slimmon from the Land Use Permit, Findings of Fact, Conclusions of Law and Order #4C0667 issued by District #4 Environmental Commission (Commission) on September 18, 1986. The Town of Williston Planning Commission filed a cross-appeal on November 7. Land Use Permit #4C0667 authorized the Applicants to subdivide 11 lots and construct a community wastewater system and necessary roadways off Yantz Hill Road and South Road in Williston, Vermont.

On November 7, 1986, a prehearing conference was convened in Essex Junction with Chairman Darby Bradley presiding. At the conference, the parties agreed to waive their right to have the first hearing on this appeal held within 40 days, as prescribed by 10 V.S.A. § 6085(b).

On November 14 a Preliminary Prehearing Conference Report and Order was issued. On November 24 the Applicants filed objections to the Prehearing Conference Report and Order and to the party status request of adjoining property owners, Marcel and Elizabeth Montagne. On December 15 the Board issued a Memorandum of Decision on the Montagnes' party status request. On December 22, 1986 the Board issued a second Prehearing Conference Report and Order.

The Board convened public hearings on February 3, February 10, and April 22, 1987 and took a site visit on February 10. The following parties participated in the hearings:

Applicants Landmark Development Corporation (Landmark) and Robert Slimmon (Slimmon) by Liam Murphy, Esq. and C. Daniel Hershenson, Esq.
Town of Williston Planning Commission (Williston) by Joyce Ohlson and George E. Gerecke
Chittenden County Regional Planning Commission (CCRPC) by Michael Munson
Adjoining Property Owners Marcel and Elizabeth Montagne

During the first hearing on February 3, the Board realized that although part of the Applicants' land is located in the Town of Richmond, the Board had not notified the Town of the appeal proceedings since there had been no previous indication that a portion of the land was in Richmond. The Applicants, however,

had notified the Town at the time they filed their appeal. Following the hearing, the Board's Executive Officer contacted the representatives of the Town. **Toby** Buxton, on behalf of the Town of Richmond and Richmond Planning Commission, attended the hearings on February 10 and April 22 but did not request to participate as a party.

In lieu of presenting evidence at the hearings, the State of Vermont, represented by Gordon Gebauer, Esq., entered into a Stipulation with the Applicants with regard to those issues in which the State had an interest.

On April 23 the Applicants submitted a sketch of the revised proposed entrance sign which will be substituted for the original proposal admitted into the record as Exhibit #25.

Following Board deliberations on April 22, May 14, June 10, and June 24, the Board determined the record complete and adjourned the hearing. On July 9, 1987, the Board issued a decision in this matter. On July 23, 1987, Landmark Development Corporation filed a Motion for Reconsideration. On August 5, 1987, the Board heard oral argument on the Motion to Reconsider. At the hearing the Board requested additional information. On September 18, 1987, the Applicant submitted additional information regarding Criteria 9(B) and 9(C). This information was not objected to by any party. The Board deliberated on the submissions on October 6, 1987, and on the revised decision on January 12, 1988. On January 12, the Board determined the record complete and adjourned the hearing.

This matter is now ready for decision. The following findings of fact and conclusions of law are based upon the record developed at the hearing, oral argument and submissions relative to the Motion to Reconsider and the observations of the Board during the site visit.

I. ISSUES IN THE APPEAL

A. Preliminary Issues - Party Status of Marcel and Elizabeth Montagne

At the November 7 prehearing conference, Marcel and Elizabeth Montagne, whose property adjoins the Applicants' land, requested party status on Criteria 1(B) (waste disposal), 4 (soil erosion), and 8 (visual impact). The Applicants initially did not object to the admission of the Montagnes under Criteria **1(B)** and 4 but did object to their admission under Criterion 8. In a memorandum filed on November 24, however, the Applicants expressed their objections to the granting of party status to the Montagnes under Criteria 1(B) and 4 as well as 8. They argued that although the Montagnes

had been granted party status on those criteria by the Commission, party status should be denied in this proceeding because these criteria had not been appealed by any party and therefore were not at issue in the appeal. They also argued that the Montagnes should not be granted party status under Criterion 8 since their property does not adjoin the Slimmon lot.

On December 15 the Board issued a decision on the Montagnes' request for party status. The Board granted their request under Criterion 8 for both the Slimmon property and the 11-lot subdivision. It found that the Montagnes adequately demonstrated that their interests would be affected by the subdivision and the construction on the Slimmon lot because the hillside is visible from their property. The Board denied the Montagnes' request for party status under Criteria 1(B) and 4 because the only stormwater runoff issue in the appeal was a request by the Applicants to correct an error in the permit regarding a stormwater easement that does not affect the Montagnes.

On January 23, the Montagnes filed a request with the Board to cross-appeal on stormwater and erosion issues as they affect their property. The Montagnes claimed that spring flooding occurs from sudden thaws in the hills above their property, and that this causes diversion ditches to overflow. The fast-moving water, they asserted, leaves gravel deposits on their property. They were concerned that the construction of houses on the hill would increase the amount of stormwater flowing onto their property.

At the February 3 hearing, the Board reconsidered its decision denying party status to the Montagnes on Criteria 1(B) and 4. The Chairman announced the Board's ruling orally. The policy of the Board has long been that once a criterion has been made an issue in an appeal, any other party may then participate without the need to cross-appeal. At the **prehear-**ing conference, the Montagnes were led to believe that they could be admitted as parties on Criteria 1(B) and 4 if they could demonstrate that their property would be affected under those criteria, and they were not told that they would have to file a formal cross-appeal. Since Criteria 1(B) and 4 had been opened up by the Applicants and the Montagnes did demonstrate a sufficient interest to participate under those criteria, the Board decided to admit them as parties.

The Board offered to consider a request from any party for additional time for preparation under Criteria 1(B) and 4. No such request was made.

B. Substantive Issues

At the request of the Applicants, the District Commission reviewed Phase I (11 lots, a community wastewater system, roads, and the 50-acre Slimmon property) under all ten criteria, and reviewed the total project of 60 lots under criteria 9 and 10. Approval of all the roadway necessary for the 60-lot project was sought in the review of Phase I. The Commission concluded that Phase I would meet the ten criteria if construction of the "Meadow Ridge Road" were deleted and several other modifications made to the 11-lot subdivision proposal, and if steps are taken to mitigate the undue adverse aesthetic impact created by the construction on the Slimmon property. The Commission issued a permit for Phase I which included a number of conditions. The following issues were raised in the appeal of the permit:

1. Phase I

a. Criterion 1 - Air pollution - Landmark believes that compliance with the blasting guidelines it presented to the Board will prevent undue air pollution during its construction of the project and that there is no need for the Commission to retain continuing jurisdiction over blasting as it did in Condition #5.

b. Criterion 4 - Stormwater runoff - The Montagnes are concerned that construction of houses on the hillside above their home will increase the amount of stormwater runoff flowing onto their property. Landmark requests that Condition #9 of the Commission's permit be amended to refer to Waldo Siple's property instead of Ward Johnson's property regarding a drainage easement.

c. Criteria 8 and 9(K) - Visual Impacts - Landmark objects to the Commission's denial of a subdivision sign and of construction of Meadow Ridge Road from the sewage disposal field to South Road because of its potential visual impact upon the I-89 scenic corridor (Condition #15 and related findings). Landmark also objects to that portion of Condition #19 that requires the homes to be finished in "dark" earth tone colors (earth tone colors would be acceptable), and to Condition #20, because it wants to be permitted to install lighting at the three intersections within the subdivision and to install yard lights if downshielded with low wattage. Landmark wants Condition #22 amended so that the Homeowners Association has no obligation for maintaining the landscaping on the Slimmon property. The Montagnes oppose the light proposed for the intersection of South Road and Meadow Ridge Road and want the height of the houses in the subdivision to be limited to 35 feet. Slimmon objects to the Commission's retaining jurisdiction over the landscaping on his property for ten years, as required in Condition #21.

d. Criteria 8(a) and 9 (K) - Deer Yard and Deer Path - The Applicants believe that the Commission's findings regarding the existence of deer yards or deer paths on the site are erroneous and that Condition #17 and that portion of Condition #19 relating to deer habitat should be deleted.

e. Construction Completion Date - Landmark wants the construction completion date extended from one year to three years.

2. Phase II

The Commission found that the project conforms with the Williston Town Plan under Criterion 10, but could not make positive findings with respect to all of Criterion 9 for Phase II. Pursuant to 10 V.S.A. § 6086(b), the Applicant appealed the Commission's findings under the following subsections of Criterion 9:

a. Criterion 9(B) - Primary Agricultural Soils - Landmark objects to the Commission's findings that the project should be redesigned to preserve the 16 acres of primary agricultural soils contained on the property.

b. Criterion 9(C) - Forest and Secondary Agricultural Soils - Landmark believes that the Commission's findings that the project will result in a significant reduction to the potential of the forestry soils are erroneous.

c. Criterion 9(K) - Deer Yard and Deer Path - Landmark objects to the Commission's findings that the loss of paths of travel used by the deer on the project site will adversely affect a deer yard located on the property.

d. Criterion 9(K) - Impact on Scenic Corridor of I-89 - Landmark objects to the Commission's finding that the project will create an undue visual intrusion onto the scenic corridor of I-89.

II. FINDINGS OF FACT

A. The Project

1. Applicant Landmark owns approximately 442 acres of land, 290 of which are involved in the 60-lot subdivision proposal. Ninety of those acres will be held as common land. Most of the land is wooded; a 20-acre meadow will **remain undeveloped.**
2. Approximately 342 acres of the property are located in Williston; the remainder is located in Richmond.

3. Applicant Slimmon owns a 50-acre parcel of land involved in this project. A house was constructed on the property at the top of French Hill.
4. The property lies south of I-89, approximately 1½ miles east of the Williston exit. Access to the project site is by way of an existing driveway extending from Yantz Hill Road which will be upgraded and extended. A new road, Meadow Ridge Road, is proposed to be constructed beginning at South Road, intersecting with the existing driveway and forming a loop to provide access to both Phase I and Phase II lots. The roads will be constructed to town specifications and will be taken over by the town.
5. The elevations in the development area range from 600' to 1,000'. The elevation at the top of the ridge is 1150'. The highest elevations of the houses will be 150' to 200' lower than the ridge line.
6. The houses will be clustered on plateaus on the west and south sides of Yantz Hill. There will be a minimum 50' change in elevation between each cluster.
7. Marcel and Elizabeth Montagne's property adjoins the Landmark site.

B. Criterion 1 - Air Pollution

8. The project will require blasting of rock for construction of new building sites and roads as well as for the installation of sewer lines. The blasting guidelines submitted to the Board (Exhibit #14) include limitations for ground vibration that will minimize the possibility of flying debris, air concussions, and air-borne shock waves. If these guidelines are followed, the likelihood of damage to structures in the vicinity is very low.

C. Criterion 4 - Capacity of Land to Hold Water

9. Based upon Landmark's stormwater management plan, the Department of Water Resources and Environmental Engineering issued a temporary pollution permit #10-17-029 on May 27, 1986.
10. Prior to Landmark's ownership of the land, a diversion swale had been constructed along the western boundary of the project area. This swale causes runoff to be diverted from the project site to East Hill Road, potentially resulting in serious erosion and washout of the roadway.

11. The stormwater management plan developed by Landmark's consultants included the restoration of the drainage into its natural path across the property of Waldo Siple. A 30-foot drainage easement through Mr. **Siple's** property was obtained. In addition, a series of channels and swales will be designed to control the direction of runoff and a stormwater retention pond will be constructed.
12. The new drainage path will have no adverse impact on the Montagnes' property and may reduce the amount of **storm-**water flowing onto their property because the runoff will be diverted to a swale away from their land.

D. Criteria 8 and 9(K) - Aesthetics

13. The property is part of a panorama that includes meadows in the foreground, foothills in the middle, and the Green Mountains in the background. This view can be seen from the scenic corridor of I-89 and from lands and roads to the north. The project will be built in the foothills.
14. The majority of the project area slopes to the west. Phase I is located at the lower elevations of the property in an area of moderate to gentle slopes that is forested largely with coniferous trees. The houses on Phase I will be situated in two clusters on plateaus with forested common land in between. Land will be cleared for construction of the houses, driveways, and associated site work.
15. The elevation of the highest house will be 900'; the elevation at the top of the ridge is 1100'. The maximum height of the houses will be 35'. No houses will be built on the steepest slopes.
16. The Slimmon property is located at the top of French Hill in an area of steep slopes, fragile soils, and high exposure to winds. During construction of the Slimmon residence and related site improvements, approximately seven acres near the top of the hill was cleared of trees. This **clearcut** area allows the house to be visible from great distances from both the east and west on the interstate and from the valley floor.
17. Access to the property is currently by way of a driveway that extends from Yantz Hill Road up to the Slimmon residence. The Applicants have proposed to construct 9,824 feet of roadway. This would include upgrading the existing driveway and constructing a looped road within the project area to provide access to the lots in both Phase I and Phase II. Another access road (Meadow Ridge Road) would be constructed from the South Road. The

proposed new roadway intersection of Meadow Ridge Road with South Road was required by the Town of Williston to reduce the traffic on Yantz Hill Road during construction of the project and in the future; to provide a second access to the project, closer to the interstate than Yantz Hill Road, for emergency vehicles; and to reduce the amount of traffic through a farm crossing on South Road just south of the proposed new intersection.

18. Several hundred feet of the proposed project roadway will be constructed through the meadow and will be visible from off the project site. Trees will be planted along the road. The remainder of the roads will cross the contour of the hillside and will be screened by vegetation.
 19. Construction of all the proposed roads would create three new intersections. The Applicants have proposed installing a light at each of the intersections and the town has required the installation of these lights because it believed it necessary for safety reasons. The lights at the intersections will have a maximum height of 20' and will consist of a 175-watt metal halide lamp. The luminaire and pole will be bronze-color aluminum. The visibility of these lights from off site will be minimized.
 20. A Declaration of Covenants that runs with the land in perpetuity is included in every deed. (Exhibit #24). The covenants provide for the appointment of an Architectural Standards Committee composed of two members appointed by the Declarants and one member appointed by the Williston Planning Commission. The Committee is required to review all lot development plans and specifications for compliance with the Design and Use Standards contained in the covenants, and has the final say with respect to approval of the cutting, planting, exterior lighting and other fixtures, site plans, and the materials, colors, and architecture of the homes.
 21. The covenants provide for the Committee to review all proposed clearing and tree cutting to ensure minimum visibility from the interstate and the village of Williston and to ensure harmony with the natural character of the site and the surrounding structures.
 22. Any paint or stain to be used on buildings will be earth tone colors which blend with the natural surroundings and the roofs will be non-reflective and of darker earth tones.
 23. No outside antennae or satellite dishes will be installed without approval of the Committee and must be screened to prevent visibility from off site.
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24. Exterior lights will be downshielded incandescent lights of 150 watt maximum. The lights will be kept to the minimum number and wattage necessary and will be screened for minimum visibility from off site. Lights will be visible at night in the wintertime.
 25. All utilities will be placed underground.
 26. The Applicants have proposed a project sign to be located at the entrance to the project at the proposed Meadow Ridge Road where it intersects with South Road. The sign will be 5' high, 2' wide and 8' long. It will consist of stone pillars and a painted wooden "Meadow Ridge" sign and it will be unlit and surrounded by trees and bushes.
 27. Clearing of lots for home sites and related improvements is limited to the larger of one-third or four times the square footage of the buildings on each lot, with a maximum allowable clearing of two-thirds of an acre but no more than 50% of any lot. Some deciduous and evergreen trees will be planted after the houses are built to provide screening.
 28. Areas of each lot and portions of the common land will be thinned to provide view corridors 50' wide at the **viewface** of the house and not to exceed 100' wide, 200' out from the **viewface** of the house, continuing at that angle. The covenants contain very specific standards for the number, species, and sizes of trees to be retained and removed on the five tree stands on the project area, as delineated on Board Exhibit #10.
 29. The covenants include a forestry management program for the areas of the property that will be developed. This program requires that any trees in common areas and trees larger than 2" in diameter must only be maintained, pruned, cut, or removed in accordance with a forestry program developed and maintained by a forestry consultant.
 30. The Board takes official notice that I-89 is a scenic corridor based upon the official designation in the State Comprehensive Outdoor Recreation Plan.
 31. The lots and roads proposed will be minimally visible from the interstate or from Routes 2 and 2-A.
- E. Criteria 8(a) and 9(K) - Deer Yard and Deer Path
32. The 204 acres on the west side of Yantz Hill that are proposed for development do not contain a deer wintering yard. Adjacent land owned by the Applicants, **approx-**

mately 200 acres on the east side of **Yantz** Hill, does contain a deer wintering yard. The Applicants agree that if they should undertake development of the adjacent land in the future, they will accept a restriction that no construction or improvement shall be undertaken within 500 feet of the deer yard.

F. Criterion 9(B) - Primary Agricultural Soils

33. The property contains 16 acres of primary agricultural soils, 12 of which are within the Phase II project area. These soils are located in an area in the far westerly portion of the property near South Road. Seven of the 12 acres are included in the proposed lots.
34. Adjacent to the primary agricultural soils are 17 acres of soils which are not currently primary agricultural soils because of the limiting factor of extreme stoniness and wetness.
35. The stones will be removed from these soils and drainage improved so that the soils will qualify for primary agricultural soil status. This effort will create a meadow of 22 acres instead of the previous 12. This meadow will be dedicated to agricultural use.

G. Criterion 9(C) - Forest and Secondary Agricultural Soils

36. The property is mostly wooded, with mixed hardwoods and softwoods.
37. The proposed subdivision contains approximately 204 acres of land. Of these 204 acres, approximately 155 acres contain commercial forest soils.
38. Of these 155 acres of forest soils, approximately 44 acres are within the area of Phase I which has been previously approved. The remaining 111 acres of forest soils are located in Phase II of the project.
39. Of the 204 acres in the project, a maximum of 46 acres will be cleared for roads and lots.
40. The Declaration of Covenants and Homeowners Association documents specify maintenance and landscaping standards for each lot. The Declaration provides that a professional forester will develop and maintain a continuing forestry management plan and requires the Association to implement said plan.

III. CONCLUSIONS OF LAW

1. Criterion 1 (Phase I) - The Commission was concerned that the blasting guidelines filed by the Applicants did not address air concussion and air-borne shockwaves and therefore retained jurisdiction over the blasting to require further conditions if necessary during the blasting to control such air pollution. The Board believes that if the blasting guidelines submitted to the Board (Exhibit #14) are strictly followed, there will be little or no flying debris, air concussion, or air-borne shockwaves. The Board therefore concludes that the blasting will not result in undue air pollution.

2. Criterion 4 (Phase I) - In addition to the stormwater permit issued to the Applicants by the Department of Water Resources and Environmental Engineering, the Applicants submitted considerable evidence that its stormwater management plan has been designed to take into account any additional runoff caused by the construction of this project. The construction of new drainage channels and swales will likely decrease the amount of runoff that currently flows onto the Montagnes' property. The Board therefore concludes that the project will not result in unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The Board will amend the permit to reflect a 30-foot drainage easement across the property of Waldo Siple instead of Ward Johnson.

3. Criteria 8 and 9(K) (Aesthetics and Impact on Scenic Corridor)

(a) Phases I and II

In Re: Quechee Lakes Corporation, Land Use Permit #3W0411-EB and #3W0439-EB, issued November 4, 1985, the Board set forth the analysis that should be applied when-criterion 8 (aesthetics) is at issue. The first step in this analysis is the determination of whether the proposed project will create an "adverse" impact on the aesthetics or natural and scenic beauty of the area. This requires the identification of the context in which a proposed project will be situated and the determination of whether the project would fit into that context.

The proposed residential development will be located in the foothills of the Green Mountains in an area visible from the scenic corridor of the interstate. This area currently presents a panoramic view of forested mountains in the distance and forested foothills in the foreground,

undisturbed by development. This subdivision clearly does not fit into the context of the area, and the Board therefore concludes that the project will have an adverse effect upon the aesthetics of the area.

The second step of the "Quechee analysis" consists of a determination of whether the adverse impact is "undue." It will be found undue if a positive conclusion can be reached with regard to any one of the following:

- 1) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? Such standards may, for example, be set forth in the local or regional plan, or be adopted in the creation of an historic design district, or be incorporated into a municipal or State scenic road designation. If the Board or Commissions find that such standards do exist, and that the project as designed would violate those standards, the adverse impact would be undue.
- 2) Does the project offend the sensibilities of the average person? The Legislature has directed the Commissions and this Board, composed of lay people from many different communities within Vermont, to determine what is acceptable in terms of new developments' impact on aesthetics and scenic and natural beauty. If our sensibilities are, collectively, offended by a project, its impact under Criterion 8 is undue. **It** is not enough that we might prefer to see a different design or style of building, or that we might prefer a different type of land use, but that the project, when viewed as a whole, is offensive or shocking, because it is out of character with its surroundings, or significantly diminishes the scenic qualities of the area.
- 3) Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings? Such steps may include selection of less obtrusive colors and building materials, implementation of a landscaping plan, selection of a less obtrusive building site within the project area, or reduction of the mass or density of a project. If there are reasonable alternatives available to the Applicant that would mitigate the adverse impact of the project, failure to take advantage of those alternatives may, in some circumstances, render undue an otherwise acceptable aesthetic impact.

The Board has not found any written community standard applicable to this area of Williston. While the State Comprehensive Outdoor Recreation Plan (**SCORP**) report indicates that I-89 is a scenic corridor, there are no clear, written aesthetic standards set out in that report against which this project can be evaluated. The Board also does not believe that this proposed project is so out of character with its **surroundings** and with growth in Chittenden County that the average person would be offended or shocked by the development.

The Board does believe, however, that the third question can be answered negatively only if the restrictions on clearing and tree cutting, which are contained in the Declaration of Covenants and the approved landscaping plans, are strictly complied with. The project is low enough in the hills that the visual impact can be mitigated by careful planting to provide screening and by strict prohibitions on tree cutting and clearing. The Board will incorporate the Declaration of Covenants into the permit as a condition to ensure compliance with the requirements of the Covenants.

The Board further believes that the requirements contained in the Declaration of Covenants with regard to the color of the houses and the exterior lights provide sufficient assurance that the visual effect of the project upon the aesthetics of the area and upon the I-89 scenic corridor will be minimal. The permit will allow the installation of one light at each intersection in the subdivision.

The Board will approve the extension of Yantz Hill Road to provide access to the Phase I lots, and the construction of a new road running from South Road to its intersection with the Yantz Hill Road. The Board will not approve the remaining proposed roadway that forms a loop for access to Phase II lots because it would be premature to approve construction of a road when the lots have not yet been reviewed by the Commission.

Based upon the modifications described above, the Board believes that Phase I will not create an undue **adverse** effect upon aesthetics.

(b) Slimmon property

Although the Board believes that Phases I and II of the project will not create an undue adverse effect upon visual impacts, this conclusion cannot be reached with regard to the Slimmon residence. Under the "Quechee analysis," development in sensitive areas such as ridgelines is subject to careful scrutiny due to the high visibility of such areas. A **substantial** portion of the east side of the hill was stripped bare of vegetation during construction and the house and large swath through the trees are visible from the interstate travelling both west and east as well as from the valley floor.

The Board finds that the strip of **clearcut** forest and the highly visible house are incompatible with their surroundings. The Board therefore concludes that the Slimmons' project has an adverse effect upon the aesthetics of the area. The Board also concludes that the adverse impact is undue. The stark visibility of the house and **clearcut** strip are so out of character with the area, and they so significantly diminish the scenic qualities of the area, that they are offensive to the viewer. The Board will include a condition in the permit that will require a landscaping plan to mitigate the undue adverse effect of the construction of the Slimmon residence. The purpose of the revised landscaping plan is to mitigate the visual impact of the **clearcut** strip around the Slimmon residence from the various points of visual access. This plan shall outline the phasing of a planting, restoration, and **woodlot** management master plan for the disturbed areas and the adjacent wooded slope sides. Objectives the Board believes must be addressed include, as a minimum:

1. To create the appearance of an uninterrupted ridge line by reducing the abrupt nature of the cut in the existing wooded area.
2. To reduce exposure of soils to the erosion potential of wind and precipitation.
3. To reduce the visibility of the residence to viewers from the valley floor and the scenic Interstate corridor, when viewed from both the east and west.
4. Criterion 8(a) and 9(K) (Deer Yard and Deer Path)
(Phases I and II)

The only evidence submitted to the Board relating to the existence of a deer yard in the proposed project was a statement contained in the stipulation between the Applicants and the State that the proposed development area does not contain a deer yard, but that a deer yard is located on **adja-**cent land owned by the Applicants. The Board concludes that no conditions are necessary at this time to protect the deer yard but it will require, as agreed by the Applicants, that no construction or improvement shall be undertaken within 500' of the deer yard should the Applicants undertake future development of the adjacent land.

5. Criterion 9(B) - Primary Agricultural Soils (Phase II)

Phase II of the project site currently includes 12 acres of primary agricultural soils. The Applicants propose to create a meadow of 22 acres of agricultural soils and to devote this meadow to agricultural uses in exchange for any depletion

of existing primary agricultural soils. Consequently, the Board concludes that the project, as proposed, will not significantly reduce the agricultural potential of primary agricultural soils on this site.

6. Criterion 9(C) - Forest and Secondary Agricultural Soils (Phase II)

The only evidence submitted on Criterion 9(C), forest and secondary agricultural soils, indicates that at least 155 acres of the 204 total acres or 111 acres of Phase II of the project contain such soils.

The applicant has the burden of proof on Criterion 9(C). 10 V.S.A. § 6088(a); In re Spear Street Associates, 145 Vt. 496 (1985). Without sufficient evidence, the Board cannot find that the Applicants have satisfied Criterion 9(C). See In re Spear Street Associates, supra.

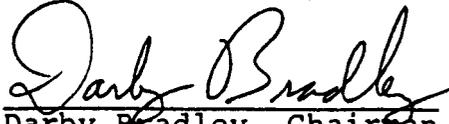
The Board cannot make an affirmative finding under Criterion 9(C) without more evidence from the Applicants that the project will not significantly reduce the potential of the soils for commercial forestry, or that the Applicants have satisfied the three subcriteria. The Board suggests that the Applicant submit additional information to the Commission on this subcriterion relative to Phase II of the project when Phase II is reviewed under Criteria 1-8 of 10 V.S.A. § 6086. The Board's decision under Criterion 9(C), therefore, is issued without prejudice and may be reconsidered in further hearings to be held by the District Commission.

ORDER

Land Use Permit #4C0667-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, except that the Board retains jurisdiction for the purpose of approving the landscaping plan for the Slimmon property.

Dated at Montpelier, Vermont this 22nd day of January, 1988.

ENVIRONMENTAL BOARD



Darby Bradley, Chairman
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Elizabeth Courtney
Jan S. Eastman
Samuel Lloyd
Roger N. Miller

FF 4C0667-EB (ap114)