

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

RE: Circumferential Highway State of Vermont Agency of Transportation 133 State Street Montpelier, VT 05602 and Chittenden County Circumferential Highway District Lincoln Hall P.O. Box 175 Essex Jct., VT 05452	Memorandum of Decision Dismissal Order Application #4C0718-EB
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This decision pertains to various decisions the Environmental Board made on August 2, 1989 with respect to the following preliminary issues: /1/ 1) whether Criterion 8 (aesthetics) can be considered in this appeal in the absence of final findings by the District Commission; 2) whether the Conservation Law Foundation (CLF) and the Vermont Natural Resources Council should be admitted as parties on Criteria 8 and 9(B); 3) whether International Business Machines Corporation (IBM) should be admitted as a party on Criterion 9(B); and 4) whether to grant the motion of the Town of Williston for severance and remand. This decision also pertains to a motion for stay and remand filed by the Town of Essex on August 31, 1989 which was decided by the Board on September 6, 1989.

1. Criterion 8 (aesthetics)

The District Commission did not make final findings with respect to Criterion 8, but stated that it generally needs more information about the visual effect of the highway. Appeals may only be taken from final decisions of the Board, except for interlocutory appeals under Rule 43. Therefore, the Board is without authority to review this appeal on Criterion 8. At such time that the District Commission renders its final decision on that Criterion, parties may bring an appeal to the Board.

2. Party status requests of CLF and VNRC on Criteria 8 and 9(B)

On July 21, 1989 Lewis Milford, Esq. filed a petition for party status on behalf of CLF and VNRC on Criteria 8 and 9(B) pursuant to Rule 14(B)(1) and (2). On July 28, the Towns of Colchester and Essex filed objections to the party status of CLF and the VNRC.

Because Criterion 8 will not be considered by the Board at this time, the party status requests on that Criterion are moot. With regard to Criterion 9(B), the Board is persuaded that CLF

/1/ On August 7, the results of the Board's decisions were sent to all parties by the Assistant Executive Officer; this decision constitutes the written text.

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has adequately demonstrated that it can materially assist the Board by cross-examining witnesses and presenting legal argument that will not be provided by any other party, and therefore grants party status to CLF pursuant to Rule 14(B)(2). Because such assistance will be provided by CLF, and no claim has been made that VNRC will provide anything additional, the Board denies party status to VNRC.

3. Party status request of IBM

On July 21, 1989, IBM filed a request for party status on Criteria 8 and 9(B) pursuant to Rule 14(A) and (B)(1). IBM owns property on which it operates plant facilities in the Towns of Essex and Williston and believes its interests will be affected by requirements imposed by the Board under Criterion 9(B). IBM also owns a drainage easement which adjoins the proposed highway right of way.

The Board grants party status to IBM on Criterion 9(B), pursuant to Rule 14(B)(1).

4. Motion for severance and remand of the Town of Williston

On July 27, 1989, the Town of Williston filed a motion requesting the Board to issue an order modifying condition 5 of the District Commission's permit to require each member municipality of the Chittenden County Circumferential Highway District (CCCHD) to submit individual farmland conservation programs and to remand this appeal to the District Commission to the extent of allowing Williston to demonstrate to the District Commission that it has adopted a farmland conservation program which complies with the District Commission's directives.

The Board believes it cannot determine the Town of **Williston's** request without a hearing on the issues before the Board. Until the Board hears the evidence in this case, it cannot determine whether the farmland conservation program is necessary for the Applicants to satisfy the requirements of Criterion 9(B).

5. Motion for Remand

On August 30, 1989, the Town of Essex filed a motion requesting the Board to stay the appeal and remand the matter to the District #4 Environmental Commission for its consideration of a Stipulation also filed with the Board. The Stipulation, signed by Essex, Williston, the Vermont Agency of Transportation, the Conservation Law Foundation, and the Chittenden County **Circumferential Highway** District, asks the District Commission, in essence, to revise the permit condition requiring submission of a farmland conservation program to allow the Towns of

Colchester, Essex, and Williston to prepare and submit individual mitigation plans. On August 31, the Executive Officer of the Environmental Board sent a memorandum to all parties inviting comments on the motion to remand to be filed on or before September 5. On that same date, the Board received letters in support of the motion to remand and the stipulation from CCCHD, the Chittenden County Regional Planning Commission, and IBM. The Town of Colchester did not sign the Stipulation or file any comments on the motion for remand; all other parties have agreed to the remand and support the Stipulation.

On September 6 the Board considered the Motion for Remand and the Stipulation and determined to dismiss the appeal without prejudice. The new proposal, as described in the Stipulation, should be submitted to the District Commission in the form of a permit amendment application, since it substantially alters the project as approved in Land Use Permit #4C0718. After the District Commission reviews the application and issues a decision, any party may appeal that decision to the Board. At that time, appropriate issues may be raised, including the necessity for any permit conditions imposed regarding farmland conservation.

ORDER

1. Criterion 8 (aesthetics) cannot be appealed until such time as the District Commission makes final findings.
2. CLF is granted party status on Criterion 9(B) pursuant to **Rule** 14(B)(2).
3. VNRC is denied party status.
4. IBM is granted party status on Criterion 9(B) pursuant to **Rule** 14(B)(1).
5. The Board declines to address the Town of **Williston's** motion for severance and remand at this time.
6. This appeal is dismissed without prejudice.

Dated at Montpelier, Vermont this 25th day of September, 1989.

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman
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