

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

RE: Eastern Landshares, Inc.
Application #4C0790-EB

MEMORANDUM OF DECISION

This decision pertains to two issues raised by Sunset Cliff, Inc., the appellant in this matter. First, Sunset Cliff seeks party status on criteria on which it did not have party status at the District Commission. Second, Sunset Cliff believes that additional parties should be joined as co-applicant to this application.

At the prehearing conference held on March 26, 1991, Sunset Cliff agreed to file legal memoranda in support of its positions. A prehearing conference report was issued on April 18, in which the issues were delineated and dates for filing documents were established.

On May 23, Sunset Cliff filed memoranda on the issues it raised; on May 30, the permittee Eastern Landshares filed response memoranda. The Board deliberated on June 27.

1. Co-aoulicancy

Sunset Cliff requests the Board to require the following persons or entities to be co-applicants: Sunset Cliff, the Estate of Henry Leavenworth, Elton Demers, and the John J. Flynn Trust Estate. Sunset Cliff owns an easement to use a right-of-way known as Sunset Cliff Road.

Board Rule 10(A) provides that "[t]he record owner(s) of the tract of involved land shall be the applicant(s) or co-applicant(s) unless good cause is shown to support waiver of this requirement. ... The district commission or board may ... find that the property interest of any ... person is of such significance that the application cannot be accepted or the review cannot be completed without their participation as co-applicants."

The Applicant contends that it is the record owner of the subject property by virtue of its 98-year lease to the property from the Trust Estate of John J. Flynn which grants Eastern Landshares a possessory interest in the parcel of land where the proposed project will be built as well as in the strip of land known as Sunset Cliff Road. According to

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the Applicant, the lessor is the record owner of the property and the Sunset Cliff Road, and is already a co-applicant./1/ The Applicant also claims that no other parties are the record owners of the land on which it proposes to construct this subdivision.

With regard to the Appellant's claim that the Applicant is not the record owner of the road, the Board declines to adjudicate disputes over ownership of property but accepts an applicant's assertion of ownership for purposes of reviewing an application for an Act 250 permit. The Applicant claims to have a possessory interest in the land and the road. If it does not have the right to use the road, it will not be able to construct its project.

It is also not necessary to make other parties co-applicants to ensure compliance with any permit conditions. Compliance with permit conditions is the responsibility of the permit holder; lack of compliance can result in the revocation of a permit. Accordingly, the Board denies the Appellant's request to make other persons and entities co-applicants.

2. Party Status

Sunset Cliff was granted party status by the District Commission on Criteria 1(B), 4, 5, 8, and 9(A). Apparently it sought party status on Criteria 9(B) and 9(K) from the District Commission but was denied. It now seeks party status on Criteria 6, 7, and 10 as well as 9(B) and 9(K).

Because Sunset Cliff sought and was denied party status on Criteria 9(B) and 9(K), it must demonstrate to the Board that it satisfies the standards for party status under either Board Rule 14(A) or (B). Because Sunset Cliff did not seek party status from the District Commission on Criteria 6, 7, and 10, it must also persuade the Board that substantial inequity or injustice would result if not

¹ The agent for the John J. Flynn Estate did co-sign the application but is not identified on the permit as a co-permittee. If the Board issues a permit in this matter, the John J. Flynn Estate will be a co-permittee with Eastern Landshares.

granted party status on these criteria. Re: Sherman Hollow, Inc., #4C0422-5R-1-EB, Memorandum of Decision at 6 (Mar. 19, 1991); Re: James Davenport, Jr., #1R0667-EB, Memorandum of Decision at 3 (Aug. 30, 1989); Re: Maple Tree Place Associates, #4C0775-EB, Memorandum of Decision at 12-13 (Dec. 22, 1988).

In its memorandum in support of its request for party status on these additional criteria dated May 20, 1991, Sunset Cliff does not provide sufficient information concerning its eligibility for party status under Criteria 6, 7, 9(B), 9(K), or 10. There is no information on the direct effect the proposed subdivision may have on Sunset Cliff's property, as required by 10 V.S.A. § 6085(c) and Board Rule 14(A), nor any information on how the subdivision may affect its interests under Criteria 6, 7, 9(B), 9(K), or 10 [Rule 14(B)(1)(a)] or on how its participation will materially assist the Board "by providing testimony, cross-examining witnesses, or offering argument or other evidence relevant to the provisions of section 6086(a)." [Rule 14(B)(1)(b)]. Further, it offers no information on the "substantial inequity or injustice" that would result were it denied party status on Criteria 6, 7, and 10.

Accordingly, the Board denies Sunset Cliff's request for party status on Criteria 6, 7, 9(B), 9(K), and 10.

Order

1. Sunset Cliff's request to require additional parties to be co-applicants is denied.
2. Sunset Cliff's request for party status on Criteria 6, 7, 9(B), 9(K), and 10 is denied.

Dated at Montpelier, Vermont this 13th day of August, 1991.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Lixi Fortna
Arthur Gibb
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