

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

Re: Hector **LeClair**
Application **#4C0926-EB(Reconsideration)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated August 2, 1993, pertains to an appeal of a permit issued for a project consisting of the subdivision of a **146-acre** parcel into 19 residential lots and one open space lot, with the construction of 2,800 feet of roadway and associated utilities, located off Route 2A and West Oak Hill road in Williston, Vermont (the Project). As is explained below, the Environmental Board concludes that the Project complies with 10 V.S.A. § 6086(a)(5) (traffic), the sole criterion which is the subject of this appeal. Accordingly, the Board issues an amended permit.

I. SUMMARY OF PROCEEDINGS

On February 11, 1993, the District #4 Environmental Commission issued Land Use Permit **#4C0926** to Hector **LeClair** (the Applicant) authorizing the Project. On March 10, 1993, an appeal was filed with the Environmental Board by Lawrence A. Monserrate, adjoining landowner, challenging the Commission's decision with respect to 10 V.S.A. § 6086(a)(5) (traffic). On April 15, 1993, a prehearing conference was convened in Essex Junction and, on April 26, 1993, a **Pre-hearing** Conference Report and Order was issued. Prefiled testimony was filed by Monserrate and the Applicant on May 14, 1993. A public hearing was convened on June 9, 1993, in Williston before a hearing panel of the Environmental Board, pursuant to Board Rule 41. The following parties participated in the hearing:

The Applicant by Philip C. **Linton**, Esq.
Lawrence A. Monserrate

After hearing testimony and taking a site visit, the Panel recessed the matter. The Panel deliberated concerning this matter on June 9, 1993.

A proposed decision was sent to the parties on July 16, 1993. The parties were provided an opportunity to submit written objections to the proposed decision and to present oral argument before the full Board. On July 22, 1993 Mr. Monserrate filed a written response to the proposed decision. No party requested oral argument. On July 28, 1993, following a review of the proposed decision and the evidence and arguments presented in this case, the Board declared the record complete and adjourned the hearing. On August 2, 1993 the Board issued Land Use Permit **#4C0926-EB**.

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II. RECONSIDERATION

On August 17, 1993 Mr. Monserrate filed a motion for reconsideration, pursuant to Board Rule 31(A), of the Board's decision to issue Land Use Permit #4C0926-EB on the ground that his written response to the proposed decision was not distributed to the Board members prior to their July 28, 1993 **deliberation.**¹ On August 19, 1993 Mr. Monserrate's motion for reconsideration and written response to the proposed decision were mailed to all Board members. On September 1, 1993 the Board deliberated on Mr. Monserrate's motion for reconsideration.

After consideration of Mr. Monserrate's written response to the proposed decision, the Board declines to alter its decision to issue Land Use Permit #4C0926-EB. This matter is now ready **for** decision.

III. ISSUE

Whether, pursuant to 10 V.S.A. § 6086(a)(5), the Project will create unsafe traffic conditions or unreasonable highway congestion.

IV. FINDINGS OF FACT

1. The Project involves the construction of 2,800 feet of roadway. This roadway will be an extension of the existing Highlands Drive. Highlands Drive is currently planned as a dead end road and is accessed from West Oak Hill Road.
2. The Project is bounded on the east by a development known as Oak Knoll Development. The rear line of the easterly lots in the Project abut the rear line of the westerly lots in the Oak Knoll Development. The Oak Knoll Development is accessed by the Oak Knoll Road. The speed limit for Oak Knoll Road is 25 mph.

¹Mr. Monserrate contacted Associate General Counsel David Grayck and inquired why no mention was made of his written response to the proposed decision. In response to his inquiry, Associate General Counsel Grayck ascertained that his written response to the proposed decision was not distributed **to the** Board members.

3. The Project also includes the construction of an emergency access road which will connect Highlands Drive and Oak Knoll Road. The emergency access road will be open only to emergency and snow removal vehicles and will be closed to all other vehicular traffic.
4. The emergency access road will consist of a 20 foot wide gravel road with locked gates at both ends. Keys will be provided to the Town of Williston public works director and the fire and police departments.
5. Corner sight distances were measured from a point on the emergency access road 15 feet from the adjacent roadway (Oak Knoll Road), from a driver's eye level height of 3.5 feet on the emergency access road to an object height of 4.25 feet on Oak Knoll Road.
6. The corner sight distances of the intersection of the emergency access road and Oak Knoll Road are 320 feet to the south, towards West Oak Hill Road, and 235 feet to the north, towards the terminus of Oak Knoll Road.
7. The recommended Vermont Agency of Transportation (VAOT) B-71 standard is a sight distance of 275 feet for a drive entering a street having a speed limit of 25 mph.
8. The recommended American Association of State Highway and Transportation Officials' (AASHTO) standard is a sight distance of 300 feet for a drive entering a street having a speed limit of 25 mph.
9. The minimum stopping sight distance on wet pavement, including driver reaction time, is 161 feet traveling north, and 140 feet traveling south.
10. The sight distances for the proposed emergency access road are greater than the minimum sight stopping distance on wet pavement in both directions.

V. CONCLUSIONS OF LAW

10 V.S.A. § 6086(a)(5) provides that prior to issuing a permit, the Board must find that the proposed project will not cause unreasonable congestion or unsafe conditions with respect to use of the highways. The Board may not deny a permit pursuant to Criterion 5, but may impose reasonable conditions. 10 V.S.A. § 6087(b). The burden of proof is on the opponents under Criterion 5, but the applicant must provide sufficient information for the Board to make

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affirmative findings. 10 V.S.A. § 6088(b); Re: University of Vermont, #4C0895-EB, Findings of Fact, Conclusions of Law, and Order at 20 (Oct. 22, 1992); Re: Berlin Associates, #5W0584-9-EB, Findings of Fact, Conclusions of Law, and Order at 15 (Feb. 9, 1990).

We conclude that the visibility at the intersection of the emergency access road and Oak Knoll Road is sufficient and will not create an unsafe condition.

Although the 235 foot available sight distance to the north is less than the recommended VAOT and AASHTO standards, we believe this sight distance is adequate. Only seven lots are located on the dead end of Oak Knoll Road southerly of the access road and the sight distance exceeds the minimum stopping distance. Furthermore, since the only vehicles which will use the emergency access will be emergency and snow removal vehicles, the lights or sirens which may be used by such vehicles can provide additional warnings for motorists traveling north towards the access road.

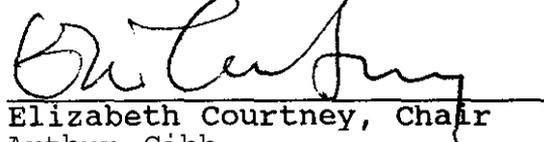
We conclude that the Project complies with Criterion 5 with respect to the traffic use of the emergency access road.

VI. ORDER

Land Use Permit #4C0926-EB is hereby issued.
Jurisdiction of this matter is remanded to the District #4 Environmental Commission.

Dated at Montpelier, Vermont, this 15th day of October, 1993.

ENVIRONMENTAL BOARD



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