

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

RE: State of Vermont Findings of Fact and
Agency of Transportation - Conclusions of Law
Belvidere Highway Project Land Use Permit
Application #5L0083-2-EB

These proceedings concern an appeal filed with the Environmental Board from the decision of the District #6 Environmental Commission, dated June 3, 1980, denying an application for a land use permit amendment for certain elements of the reconstruction of the State Highway 109 in Belvidere, Vermont. The appeal was filed on July 3, 1980 by the applicant, Vermont Agency of Transportation. The long history of this controversy is summarized in our earlier decisions, dated September 13, 1979; November 6, 1979; and March 18, 1981.

We now address the substantive issues remaining in the appeal following the Board's order of March 18, 1981. Our decision on these substantive matters is based upon the record developed at the Board's hearings of December 8, 1980; January 13, 1981; February 10, 1981; and March 24, 1981; and on the written submissions from the parties received into the record in connection with those hearings. The following parties participated in these hearings:

Applicant, Vermont Agency of Transportation, by
Robert C. Schwartz, Esq.
Kenneth W. and Mary B. Tallman, by Douglas L. Molde, Esq.
Geoffrey and Kathleen Hobart
Mark and Suzannah Schroeder
Richard LeBoeuf
Ralph Martel
Roger Poquette
Catherine H. Carter
Richard G. Spaulding
Town of Belvidere and Belvidere School District, by
Richard Sargent, Esq.
Lamoille County Regional Planning and Development Council,
by Anthony Ciaraldi, Executive Director.

Pursuant to the Board's decision of March 18, 1981, Ralph Martel, Roger Poquette, and Richard Spaulding were without party status with respect to the issues then remaining in appeal, and they did not participate in the final hearing on the merits of those issues.

Findings of Fact

A. Scope of the Appeal

1. The Board's decision of **March 18, 1981**, identified seven substantial changes in the plans originally approved for the development of this project. Following that decision, the applicant again redesigned the project, in order to eliminate four of those substantial changes. The adjoining property owners with party status with respect to those changes have agreed that those revisions eliminate the substantial changes, and bring the highway project within the scope of the original permit. Based upon these facts and the Board's own review of the evidence, we now find that substantial changes #7 (the turnout), #10 (alignment in the vicinity of the Schroeder property), #11 (alignment in the vicinity of the Tallman property), and #12 (alignment in the vicinity of the Hobart property), have been eliminated, and are no longer subject to our consideration in this appeal. In addition, we note that the Agency's latest plans continue to show a realignment between stations 260 and 276, an alteration that the Agency has agreed is a substantial change in the project design.

Therefore, four substantial changes remain for the Board's review: broadening the curve located generally between stations 154 and 158, with accompanying construction in the streambed of the North Branch of the Lamoille River; the relocation of Otter Brook; the demolition of a house located near the Elementary School; and the realignment between stations 260 and 276.

2. We have reviewed carefully the Findings of Fact and Conclusions of Law issued by the District Commission in this matter, together with the Notice of Appeal filed by the Agency from that decision, in order to determine which substantive issues raised under the criteria of Act 250 addressed in those documents remain for the Board's review. We find that the District Commission made only two findings with respect to the substantive changes remaining for our review that are also under appeal here: (a) The District Commission found that the relocation of the North Branch of the Lamoille River and the relocation of approximately 100 feet of Otter Brook will cause undue water pollution; (b) The Commission found that road segments relinquished to the Town would cause an unreasonable maintenance burden on Town services. These findings are reviewed on a de novo basis below.

B. Substantive Issues:

1. The Board finds that the relocation of approximately 400' of the North Branch of the Lamoille River, and a short section of Otter Brook, if completed in conformance with the plans submitted to the Board, will

not cause undue water pollution.

- a. The blasting that will be necessary for the realignment of the channel of the North Branch will for the most part be in ledge. The Agency states that it will place rock fill over any newly-exposed streambank that is composed of erodable soil rather than ledge. The Agency has received a Stream Alteration Permit from the Agency of Environmental Conservation with conditions added to insure adequate control of erosion and other potential sources of water pollution. The Agency has also received a permit from the U.S. Army Corps of Engineers for the same work, also with conditions attached to protect the streambank and the water quality of the stream. The Board will incorporate the pertinent terms of those permits into the Act 250 permit amendment to be granted for this work.
 - b. We find that the relocation of approximately '100 feet of Otter Brook through a culvert associated with this project will not cause undue water pollution, if completed in conformance with the plans submitted to the Board, and the conditions of the permit to be issued by the Board. This work will involve a relatively minor disturbance to the stream: erosion from the culvert itself will be minimal. If properly carried out, this work will not result in undue water pollution.
2. We find that the relinquishment of a road section between stations 260 and 276 will not cause an undue burden on Town services. The Agency and the Town have entered into an agreement (Exhibit #13) which adequately protects the Town and which satisfies the requirements of Criterion 7. The terms of this agreement will be incorporated into the permit amendment issued for this project.

Conclusions of Law

1. As this Board has stated on previous occasions, the scope of review of amendments to permits issued under Act 250 is limited to the changes to the permitted project that are inherent in the amendment itself. See In re Stanmar, Inc. (Dec. 21, 1979), In re Belvidere Highway Project (Sept. 13, 1979). The Board's findings with respect to the scope of the amendment application presented by the Agency necessarily restrict the scope of the appeal.

2. We have found that the only issues remaining for the Board's de novo review in this appeal were the application of Criterion #1 (water pollution) to the two stream relocations involved in the project, and the application of Criterion #7 to the relinquishment of a road section.

The Agency, however, previously appealed the findings and conclusions of the District Commission with respect to several other criteria of the Act. For the purpose of clarifying the record of the appeal, we now address those criteria:

- A. Under Criterion 5, the District Commission found that the highway would cause unsafe conditions because of its 40 mph design speed, particularly in the area of the Elementary School. This Board has found that there is no substantial change in the design speed of the road, as compared with the road which was previously approved. More specifically, we have found that there has been no substantial change in the project in the vicinity of the Elementary School. We therefore conclude that the District Commission's findings with respect to Criterion 5 are not relevant to the present application, and may not form the basis for the denial or conditioning of the amended permit.
- B. Under Criterion 6, the District Commission expressed its concern with the impact of the project on the Elementary School. Due to the Board's decision with respect to the school, this matter is not associated with any substantial changes in the project, and is no longer in issue.
- C. The District Commission found that the modification of the road in several areas would cause an undue adverse effect upon aesthetics, scenic beauty, historic sites or natural areas (Criterion 8). During the course of these proceedings, the Agency has altered the 'alignment of the road, eliminating the substantial changes which gave rise to the Commission's findings. These matters are therefore no longer in issue.
- D. The District Commission found that the project as proposed would have destroyed the agricultural potential of the Tallman property (Criteria 9B and 9C). Because the Agency has redesigned the road in the vicinity of the Tallman property, eliminating the substantial change previously proposed in that area, this finding is no longer applicable, and the matter is no longer in issue.

3. Based upon the Findings of Fact above, the Environmental Board concludes that if this project is completed and maintained in conformance with the terms and conditions of the application and with Land Use Permit #5L0083 and its amendments, including the amendment issued herewith, it will not cause or result in a detriment to the public health, safety, or general welfare under the criteria described in 10 V.S.A. §6086(a).

Dated at Montpelier, Vermont this 12th day of June, 1981.

ENVIRONMENTAL BOARD

BY Richard H. Cowart
Richard H. Cowart,
Executive Officer

Members participating
in this decision:
Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter
Leonard U. Wilson