

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

RE: State of Vermont
Agency of Transportation
Belvidere Highway Project

Memorandum of Decision
Petition to Revoke
Land Use Permit Amendment
#5L0083-2-EB

On September 24, 1982 the Environmental Board (the "Board") received from Kenneth and Mary **Tallman** a Petition to Revoke Amended Land Use Permit **#5L0083-2-EB**. The amended permit specifically authorizes the Agency of Transportation (the "Agency") to: (1) broaden the curve located generally between stations 154 and 158 with accompanying construction in the stream bed of the North Branch of the Lamoille River; (2) relocate the Otter Brook as specified in the plans; (3) demolish a house located near the elementary school; and (4) realign the road between stations 260 and 276. The permit itself is for a project generally described as the reconstruction of Vermont Route 109 in the Town of Belvidere, Vermont. Petitioners allege that the land use permit should be revoked pursuant to 10 V.S.A. **§6090(b)** and Board Rule 38 because of the Agency's failure to abide by the terms of the permit.

The Board convened a public hearing on this petition on October 12, 1982 in Winooski, Vermont, Chairman Leonard U. Wilson presiding. Parties present were the following:

Permittee, Agency of Transportation by Robert C. Schwartz, Esq. and Arthur Goss;
Petitioner, Kenneth and Mary **Tallman** by Douglas L. Molde, Esq.; and
Lamoille County Development Council by Anthony Ciaraldi, Executive Director.

At the hearing the Agency moved to dismiss the Tallman's Petition based on lack of jurisdiction. The Board heard oral argument on the motion, deliberated, granted the motion and dismissed the Petition.

The Petitioners and the Agency do not dispute that they entered into an agreement that the Agency would not elevate the section of road directly in front of Petitioners' residence higher than four feet and would construct the road at the lowest possible elevation. Certain letters in the record between the Petitioners and the Agency, however, indicate that the parties arrived at a private agreement concerning the elevation of the road. Petitioners claim that this agreement is incorporated into the Findings of Fact contained in Land Use Permit **#5L0083-2-EB**, specifically Findings of Fact A. #1. The Board can find no evidence of such incorporation in this paragraph.

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In reaching its decision, the Board relied on the five letters in the record: those of Mr. Schwartz of April 13 and 24 and May 1, 1981 and Mr. Molde of April 27 and May 13, 1981, and the permit of June 12, 1981. The letters confirm the agreement of the parties which the Board relied on in issuing the permit which permit, by acknowledgment of the parties, is the basis on which construction has proceeded.

Dated at Montpelier, Vermont this 21st day of October, 1982.

ENVIRONMENTAL BOARD

By Jan S. Eastman
Jan S. Eastman
Executive Officer

Board Members participating
in this decision:
Leonard U. Wilson
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Dwight E. Burnham, Sr.
Melvin H. Carter
Priscilla N. Smith .