

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

RE: Topnotch Associates)	Findings of Fact and
c/o Arthur Kreizel)	Conclusions of Law
Box 1260)	Land Use Permit
Stowe, Vermont 05672)	Amendment #5L0365-3-EB

This is an appeal from a land use permit amendment issued on October 27, 1980 by the District #5 Environmental Commission for the construction of a 24-room hotel addition and a 10,000 square foot seepage bed to serve that addition. An appeal was filed by Nils Andersen, an adjoining property owner, on November 25, 1980. The Environmental Board appointed the chairman to conduct the hearing on this matter as an administrative hearing officer with the agreement of the parties as provided in Board Rule 17.

Hearings were held on December 31, 1980 and on February 4, 1981, with Chairman Wilson presiding. The hearing was then recessed to permit the Environmental Board to consider whether the record contained sufficient information upon which to base its decision. On March 24, 1981 the Board voted to adjourn the hearing and directed that a decision be issued within 20 days thereafter.

The following parties were present at the hearings:

Applicant, Topnotch Associates, by Thomas Salmon, Esq.
and Thomas Kreizel
Appellant, Nils Andersen, by Bruce Bjornlund, Esq.
Town of Stowe Planning Commission, by Dorothy Rogers and
Helen Beckerhoff
Town of Stowe, by Herbert O'Brien
Lamoille County Development Commission, by Anthony J.
Ciaraldi.

Findings of Fact

1. Appellant Nils Andersen, an adjoining property owner, was admitted before the District Commission only on Criterion 1(B), adequate waste disposal. We find that in item #1 of the statement of appeal, filed November 26, 1980, Mr. Andersen addressed the substance of Criterion 1(B) even though the statement does not specifically note the criterion itself. This appeals statement, however, also requested a de novo review by the Board of several additional matters, claiming that the Commission was in error:

in finding that subcriteria 1(D) and 1(E) are not **applicable** to this amendment request: in finding that the project will not adversely affect the land's capacity to hold water (Criterion 4); and in failing to review the master plan for the applicant's entire development project. Appellant has not presented any evidence that he raised or attempted to raise these questions before the District Commission.

2. On December 24, 1980, the Agency of Environmental Conservation, through Dennis Dryer, Assistant Chief Engineer, issued Certification of Compliance #5L0365-3 for this project, certifying that the septic disposal system proposed for the project satisfies the requirements of the State Board of Health Regulations for wastewater treatment by land application. Pursuant to Board Rule 13(C), this certification creates a rebuttable presumption of compliance with Criterion 1(B) of Act 250. We find that the appellant has failed to present evidence sufficient to rebut that presumption in any regard, and more particularly has failed to rebut the presumption with respect to the potential impacts of the project's septic disposal field on the appellant's property. This finding is based upon the following:
 - a. The septic disposal field involved in this appeal ("Field D" on Exhibit #2) is a 10,000 square foot field to be fed from a pumped system in conjunction with Topnotch's three other disposal fields. Altogether, these fields have substantial excess capacity to handle existing and projected flows from the Topnotch project.
 - b. Field D is approved for disposal of a maximum of 3600 gallons per day. The 24-room addition involved in this amendment would under normal conditions generate only 2400 gallons per day in wastewater, well below the approved capacity of the disposal field.
 - c. Although the Sudbury and Merrimac soils located on this site have some limitations for the treatment of sewage, the effects of these limitations can be mitigated by restricting flows into the field. The management plan proposed by the applicant is adequate in this respect.
 - d. Test wells dug in the vicinity of Field D show that the depth to groundwater is 9 to 10 feet, an adequate depth for safe operation of the field.
 - e. The hydrogeologic study of this area reveals that the groundwater flow in the area of Field D is away from the appellant's property: even appellant's expert witness testified that there

was no reasonable likelihood of an undue adverse effect on the appellant's property from the operation of this disposal area.

Conclusions of Law

- EB #97
1. The appellant's request for a de novo review of this project under Criteria 1(D), 1(E), and 4, and for a review by the Board of the master plan of the entire Topnotch development must be denied. Ordinarily, an appellant may seek review by the Board only of those matters on which it has requested party status before the District Commission. The appellant did not raise these matters before the District Commission, nor has he appealed the limitation on the scope of his participation contained in the District Commission's decision. While this Board has ruled in other cases that this limitation on the scope of appeals may be waived in certain circumstances, see e.g. In re Peter Guille (#2W0383-EB, dated March 18, 1980, at 11), appellant has presented no argument supporting a waiver in the circumstances of this appeal. The appeal is therefore limited to a review of the application with respect to Criterion 1(B), and in particular, to the impact of the project under that criterion on the property of the appellant.
 2. Under Board Rule 13(C), ^{now 14(F)} the issuance of a certification of compliance by the Agency of Environmental Conservation for a septic disposal system serving a public building creates a rebuttable presumption of compliance with the requirements of Criterion 1(B). A Certificate of Compliance has been issued for this project, and we have not found any evidence sufficient to rebut the presumption it creates. Therefore, based upon the evidence presented in this appeal, we conclude that this project, if constructed and operated in accordance with the terms and conditions of the application and land use permit #5L0365 and its amendments, will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A. §6086(a).

Dated at Montpelier, Vermont this 13th day of April, 1981.

ENVIRONMENTAL BOARD

By Richard H. Cowart
Richard H. Cowart
Executive Officer

Members participating in this decision:

Leonard U. Wilson
Dwight E. Durnham, Sr.
Melvin H. Carter
Daniel C. Lyons
Roger N. Miller