

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

RE: Dr. Duenner AG of America Findings of Fact and  
c/o George K. Stearns, Esq. Conclusions of Law  
P.O. Box 1228 Land Use Permit Amendment  
Stowe, Vermont 05672 #5L0674-EB

This is an appeal from Land Use Permit #5L0674 filed on December 8, 1981, by Robert P. Davison, Jr. on behalf of adjoining property owners, Andrew H. Gergely, Jr. and Billie H. Goeltz. District #5 Environmental Commission issued a permit to Dr. Duenner AG of America (the "Permittee") on November 23, 1981, authorizing the Permittee to construct and operate an herb processing facility with on-site water and waste disposal system, located off Town Road #56 (Goeltz Road) in Morristown, Vermont.

A pre-hearing conference was held on December 29, 1982, at the Environmental Board offices, 81 River Street, Montpelier, Vermont, with Chairman Leonard U. Wilson presiding. The Environmental Board (the "Board") convened public hearings on January 12, and February 9 and 23, 1982. Memoranda of Law and Proposed Findings of Fact and Conclusions of Law were filed by various parties with the Board on or before March 18, 1982.

Parties to this appeal are the following:

Permittee, by Thomas Greither and George K. Stearns, Esq.;  
Appellants, by Andrew H. Gergely, Jr. and  
Robert P. Davison, Jr., Esq.;  
Town of Morristown, by Laurie Gray;  
Morristown Planning Commission, by Paul Nesky;  
Lamoille County Development Council, by Kathy Piper; and  
Affected State Agencies, by Dana Cole-Levesque, Esq.

The Board heard testimony and oral argument and reviewed written memoranda on the issues outlined below. Our Findings of Fact and Conclusions of Law are based on the record developed at the hearing.

I. ISSUES IN THE APPEAL

Before granting a permit, the Board or district commission must find that the development conforms to the so-called "10 criteria" of Act 2513. 10 V.S.A. §6086(a). 10 V.S.A. §6086(a)(10) ("Criterion 10") requires that the Board or district commission find that the project is "in conformance with any duly adopted local or regional plan or capital program under Chapter 117 of Title 24." The District #5 Environmental Commission determined that this project was in conformance with a duly adopted local plan; however,

appellants disagreed with that determination and appealed this decision to the Board. At issue, therefore, is whether or not this project conforms to a duly adopted local plan.

## II. FINDINGS OF FACT

1. The Permittee, Dr. Duenner AG of America, proposes to grow herbs and to construct a processing plant on Goeltz Road, one-half mile from Route 100 in Morristown, Vermont. The herbs will be processed to produce herbal teas, herbal juices and herbal tablets.
2. The 80 acre project site consists of approximately 35 open acres and 45 wooded acres. The processing plant will be located within the wooded portion of the property. Clearing of the wooded area will be limited to accommodate the approximately 11,664 square footage of the plant. The plant's exterior will be stained a natural color and roofed in asphalt shingles.
3. Something less than the 35 acres of open land is tillable due to water coverage. The tillable area soils are predominacily "Adams type" soils. The Permittee intends to devote all of the tillable land within the project area to growing the herbs. Permittee anticipates an annual harvest of approximatei. 35-60 tons of herbs. The permittee may also purchase and process herbs grown off-site. Approximately 5% of the herbs processed are of a type that cannot be grown in the Morristown area.
4. No chemicals are involved in the growing, cleaning or processing of the herbs. The herbs will be harvested like hay. The herbs will be cleaned by steam-washing and dried by an air blowing system. The half-liter bottles for the herb juice will be heated to 60° Celsius. Herbs will be cut, pressed and packaged by machine. The loudest noise from all equipment used in the project will be the sound of a tractor.
5. Initially, the plant will employ one or two people. The water and waste disposal systems are designed for eight people and the Land Use Permit requires review of these systems for any increase in usage. The building and parking areas are designed for a maximum of 35 employees.

6. The project area abuts a Class 3 town highway in Morristown; The plant anticipates one or two **truck deliveries** of herbs per week, but the Board recognizes that the number of deliveries could be unlimited. Other types of farming operations, such as dairy farms, generally have more than one delivery per day.
7. Permittee intends to utilize the existing power line crossing the property to obtain electric service for the facility.
8. The project area is located within an area designated as "Agricultural-Rural Residential" by the "Municipal Development Plan for the Town of Morristown and Village of Morrisville, Vermont" (the "Morristown Plan"). (Exhibit #5.) The land uses proposed for this district are described as follows:

"The rural areas of Morristown include a variety of land capabilities. Some of the land capabilities in this area are suitable for residential development, and conversely, some are not. The ability of the soil to hold and maintain development, without causing erosion or irreparable harm to the land, should be a major consideration when determining the type and extent of development that should be permitted. In addition to soil conditions, other performance standards which should be used or guidelines for determining proper growth, should include the contour of the land, traffic flow, protection from measurable nuisances such as excessive odors, vibrations and noise, and adequate sewage disposal systems. Schools and other public facilities should also be examined in order to identify any adverse effects which may be caused by proposed developments in the future.

Within the Rural Residential District single-family dwelling units should be allowed on a minimum of 2 acres, providing that the criteria mentioned above is [sic] observed. Multi-family dwelling units should also be allowed in this District, but an additional acre should be required beside the 2 acre requirement for single-family dwelling units.

In order to preserve and encourage farming wherever practical in this area, commercial and industrial activities should be

located in areas where access to public utilities and services is readily available. In this way, agricultural use and the attractiveness of the rural areas of Morristown may be enhanced.

Borne occupations should be permitted in this area, and home industry as a conditional use, enforced with realistic performance standards, should also be allowed. The inclusion of home occupations and home industry in this area should provide the flexibility and freedom of choice for property owners, so that they can utilize their land to the greatest possibility, as called for in the objectives of this plan. The opportunities for the residents of Morristown and the town itself, to further secure their economic base should be increased under this provision."

9. Subpart II, Statement of Objectives of the Morristown Plan lists the following objectives:
  - 1) The encouragement of agriculture in areas where economically feasible;
  - 2) To encourage the most desirable and appropriate use of land, yet not at the expense of others in the community;
  - 3) Encourage industrial and commercial developments to locate in the appropriate areas which will further secure and enhance the economic base of the town, while safeguarding our natural features in the process, and utilize existing facilities where feasible;
  - 4) To protect the public health by control of noise, air pollution, water pollution and other obnoxious physical influences;
  - 5) The Village/Town, in view of the problems experienced by neighboring communities, encourages a moderate rate of growth consistent with our ability to provide services;
  - 6) To encourage the appropriate and efficient expenditures of public funds.
10. Finding #8 above provides a general description of the land uses appropriate for the "Agricultural and Rural-Residential" zone. Specifically, single-family dwellings on two-acre lots and multi-family dwellings on three-acre lots are allowed. Home occupations and home industry are also encouraged. Paragraph 3 of Finding #8 allows

commercial and industrial activities in those "areas where access to public utilities and services is readily available."

11. The District #5 Environmental Commission has previously determined that this project, if built in accordance with the terms and conditions of Land Use Permit #5L0674, will not have an undue, adverse effect upon air and water pollution, soil erosion, traffic safety and the ability of a municipality to provide educational or other governmental services;
12. The proposed project, therefore, is consistent with Paragraph 3 of Finding #8 in that any necessary services are immediately available, and is consistent with the performance standards for the Agricultural and Rural Residential zone and the Statement of Objectives of the Morristown Plan.

### III. CONCLUSIONS OF LAW

1. Morristown, Vermont has adopted a local plan. (Exhibit #5.) This project lies within the so-called Agricultural and Rural-Residential zone as designated by the Plan. The description of the land uses allowed within this designated zone are not mutually exclusive but include commercial and industrial activities in areas "where access to public utilities and services is readily available." The project area is located adjacent to a Class 3 town highway and will utilize the electrical services available by an existing power line running across the property. The Board concludes, therefore, that the project, as presented to the Board, and if completed and maintained in conformance with all of the terms and conditions of the application and of Land Use Permit #5L0674, meets the requirements of Criterion 10 under 10 V.S.A. §6086(a). The District #5 Environmental Commission found that the project meets the requirements of the remaining criteria. Thus the Board concludes that this project 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).
2. Since the Morristown Plan allows industrial and commercial uses within the designated zone in question, the Board has not found it necessary to determine whether or not this project is "agricultural".

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6.

Jurisdiction over this permit shall be returned to the  
District #5 Environmental Commission.

Dated at Montpelier, Vermont this 19th day of April, 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.  
Melvin H. Carter  
Roger N. Miller  
Donald B. Sargent