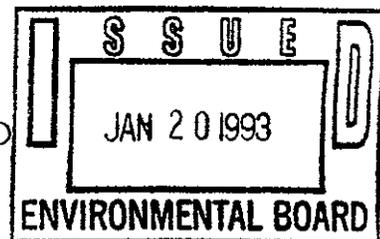


AA



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

II

Re: Salvas Paving, Inc. and Jerome and Joan Salvas
Application #5L1149-EB

MEMORANDUM OF DECISION

This decision pertains to a motion to dismiss filed by the above-named Applicants with respect to the inclusion of 10 V.S.A. § 6086(a)(8) (aesthetics, scenic and natural beauty) in an appeal filed by the Town of Stowe Planning Commission. As is explained below, the motion is denied.

BACKGROUND

On June 20, 1991, the Environmental Board issued Declaratory Ruling #229, finding that an Act 250 permit was and is required for the project at issue in this appeal. The declaratory ruling was not appealed to the Vermont Supreme Court.

On November 15, 1991, the Applicants filed an application for an Act 250 permit with the District #5 Environmental Commission.

On August 5, 1992, the District Commission issued Land Use Permit #5L1149, authorizing the construction and use of an office, vehicle storage and maintenance and material storage and processing areas for an existing construction, excavation, and paving company located at the intersection of Moscow Road and Vermont Route 100. The project is on a tract of land within the Town of Stowe consisting of 37.5 acres.

The Town of Stowe Planning Commission subsequently filed an appeal with respect to Criteria 8 and 10 (conformance with local plan). The Board issued a prehearing conference report and order on November 10, 1992 which is incorporated by reference.

On December 31, 1992, the Applicants filed a motion to dismiss Criterion 8 from the Planning Commission's appeal, arguing that the Planning Commission staff had not properly been authorized to include that criterion.

On January 11, 1993, the Planning Commission filed a memorandum in opposition to the Applicants' motion and two supporting affidavits. One of the affiants is Gar Anderson, the Chair of the Planning Commission, who states in his affidavit that the Planning Commission did authorize the inclusion of Criterion 8 in the appeal.

The Board deliberated on January 13, 1993,

559M

DECISION

In the case of Re: Swain Development Corp., #3W0445-2-EB, Memorandum of Decision (July 31, 1989), the Town of Hartland challenged an appeal filed by the Two Rivers Planning Commission and sought dismissal of the appeal. We believe that the pertinent discussion in that case is dispositive of the Applicants' motion in this case and we quote it as follows:

Hartland argues that Two Rivers cannot maintain this appeal because the vote to authorize it was improper under Commission procedures. Specifically, Hartland contends that the vote is invalid under 1 V.S.A. sec. 172, the By-Laws of the Two Rivers Commission, and Robert's Rules of Order, all of which Hartland maintains apply to Commission votes. Hartland believes that the Board has authority to inquire into whether the Two Rivers Commission properly followed its procedures in authorizing the appeal. Hartland likens this inquiry to those of (1) whether a person seeking party status in an Act 250 proceeding as an adjoining property owner actually owns said property, and (2) whether a person purporting to represent a body in such a proceeding is a valid representative of that body. Hartland asserts that the Board and district commissions routinely make these inquiries regarding property ownership and validity of representation.

* * *

The Board concludes that it does not have authority to determine whether the Two Rivers Commission properly followed its procedures in authorizing this appeal. Act 250 does not grant such authority expressly. Further, such authority is not implicitly granted by 10 V.S.A. §§ 6084 and 6085, which enable regional planning commissions to be parties in Act 250 proceedings. In this regard, the Board does not believe that inquiry into voting procedures is the same as asking a purported representative of a commission or other body to prove the validity of his or her representation. The latter question involves only the production of a document officially issued by the body in question stating that the representation is valid. The former inquiry involves an exercise in the construction of statutes, rules, and procedures governing the internal workings of another body, as well as a determination of what that body did or did not do.

Salvas Paving, Inc. and Jerome and Joan Salvas
Memorandum of Decision
Application #5L1149-EB
Page 3

The Board views the Applicants' contention regarding ownership of adjoining property similarly. With respect to adjoining property owners, the Board and district commissions can only seek to have produced those documents which are the indicia of ownership, such as title, warranty deeds, etc. The Board and district commissions do not have authority to determine whether a person is the legal owner of property. That authority resides with the civil courts.

Id. at 2-3.

Since, as stated in Swain, we do not have authority to inquire into whether a planning commission properly followed its procedures, we decline to determine whether the Town of Stowe Planning Commission properly authorized its staff to include Criterion 8 in this appeal. Further, we have received an affidavit signed by the Chair of the Planning Commission stating that its staff is authorized to include Criterion 8. Accordingly, the Applicant's motion is denied.

ORDER

The Applicants' motion to dismiss Criterion 8 is denied.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Terry Ehrich
Arthur Gibb
Samuel Llod
Steve E. Wright

salvas.mem(awp8)