

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

RE: **George Tardy**
Box 80B
Moretown, Vermont 05660

FINDINGS OF FACT AND
ORDER
Application #5W0534-EB

This is a Motion for Reconsideration of this Board's decision dated March 21, 1980, denying the applicant, George Tardy, a land use permit for the development of a tent and travel trailer park off Route 100 in Waitsfield, Vermont. The request was filed by the applicant on April 7, 1980, pursuant to Board Rule 15(E), which states, in pertinent part, "A party may file within 15 days from date of the decision such motions as are appropriate with respect to the decision." Following a prehearing conference on May 1, 1980, during which the appellant requested a clarification of the applicant's motion, on May 12, 1980, the applicant submitted a revised Motion for Reconsideration. On June 10, 1980 the Environmental Board met and considered applicant's motion. The Board granted the appellant's request to decide the matter on the papers without oral argument.

CONCLUSIONS OF LAW

1. Applicant's motion, although entitled a Motion for Reconsideration, is not in fact a Motion for Reconsideration pursuant to the provisions of 10 V.S.A., §6086(c). That section authorizes an applicant whose permit is denied to apply to the District Environmental Commission for reconsideration of the application, provided that he supplies an affidavit that the deficiencies of the application and project have been corrected. Applicant's present motion does not contain such an affidavit or indicate in any way that the applicant has altered the proposed project to meet its deficiencies under the criteria of Act 250. The applicant's motion does contain a series of allegations of deficiencies in the Board's Findings of Fact and Conclusions of Law, and a number of requests for minor editorial changes in the language of the decision. For the reasons stated below, these requests are denied.
2. Applicant's motion states that the Board's decision of March 21, 1980 does not satisfy the requirement of 10 V.S.A. §6086(c) to "contain the specific reasons for denial." We have carefully considered the grounds advanced for this argument, and we find them to be without merit. Our written decision in this case was both thorough and detailed, running 9 single-spaced pages in length, and containing 21 major findings, each supported by additional findings and discussion. Those findings satisfy the requirements of the statute and our own policies to clearly explicate the reasons for our decisions, particularly when a land use permit is denied.

3. The applicant's motion appears to be a request to the Board for instructions as to what development projects the Board would approve a permit for on the site in question. We are, of course, unable to comply with this request; Our decision in this case was based upon three days of hearings, numerous exhibits, and the oral arguments and briefs of the parties concerning a specific application for a specific development on this parcel. The Act requires detailed scrutiny of each specific application with respect to the criteria of the Act. Our decision was based upon the proposal the applicant brought before the District Commission and presented to this Board. We cannot speculate on the suitability of any other potential development project the applicant might have in mind. The applicant* has the right to apply to the District Commission for a permit for another project, or for a permit to build this project on another site, if he so chooses.
4. Paragraph 11 of applicant's motion notes five findings in our decision of March 21 which are allegedly "not based on sufficient evidence." We interpret this portion of the motion to be a request for reconsideration of the evidence put before the Board. We believe that it serves no useful purpose to reargue every point in a decision with which the parties do not fully agree. We have considered the applicant's objections and reject them as either immaterial to our decision (e.g., whether the Vermont Agency of Transportation "requires" or merely "recommends" a 1 to 4 slope on an earthen berm); within our competence to conclude as a matter of common knowledge (e.g., unless prohibited, clotheslines are likely to be used in campgrounds); or fully supported by the evidence submitted to the Board (e.g., the applicant introduced the decision of the Waitsfield Zoning Board of Adjustment without presenting any evidence, or indeed any argument, as to its invalidity).
5. Applicant has requested that the Board specify the period for which the Board's decision governs this application, arguing that Board Rule 15(D) requires a statement of a "reasonable period" for which the findings are valid and binding. We conclude that this language does not require the Board or Commission to define in advance the time period for which its findings will be valid. The Rule merely authorizes the Commission or Board to rule, in the context of a motion for reconsideration or a renewed application, that its prior findings are still valid and binding. In the case of a permit denial, the findings are valid so long as the circumstances of the project application do not change significantly in relation to the criteria of the Act. In the present case, for example, our finding that the project is not in conformance with the Town's plan is valid so long as the plan is not changed

in any way material to that finding. We are unable to surmise in advance when, if ever, that change might occur.


ORDER

The applicant's Motion for Reconsideration is denied. The applicant must either apply for and receive a permit for the work that has been done on this site, or return the site to its condition prior to commencement of construction undertaken in furtherance of this project. In particular, the applicant does not now have a valid permit for construction of the earth berm or for the sale of topsoil from this site. The applicant will have 20 days from the date of this decision to rehabilitate the site or seek approval from the District Commission for the development that has occurred.

Dated at Montpelier, Vermont this 25th day of June, 1980.

ENVIRONMENTAL BOARD

By


Margaret P. Garland
Chairman

Members voting to
issue this decision:
Margaret P. Garland
Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter
Donald B. Sargent