

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

RE: George Tardy  
Box 80B  
Moretown, Vermont 05660

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
10 V.S.A., Chapter 151  
(Act 250)

This is an appeal of Land Use Permit #5W0534 issued by the District #5 Environmental Commission on September 9, 1979 for the construction and operation of a 13 site tent and travel trailer park on a 5<sup>±</sup> acre tract of land off Vermont Route 100 in the Town of Waitsfield, Vermont. Appeals were filed with the Environmental Board on October 5, 1979 by the Town of Waitsfield and the Waitsfield Planning Commission, and on October 9, 1979 by the Vermont Agency of Environmental Conservation. A pre-hearing conference on these appeals was held on October 15, 1979. The Board heard testimony and oral argument on the matter on October 23, 1979, January 22, 1980, and February 19, 1980.

These findings and conclusions are based upon the documents submitted by the parties, and the testimony and evidence submitted at the hearings on this matter. The Board did not accept the appellants' suggestion to schedule an official site visit as part of these proceedings. However, a majority of the individual members of the Board are familiar with this site and the surrounding area and the Board therefore takes judicial notice of the character of the site and area, including views from Route 100.

These appeals brought the following criteria of Act 250, 10 V.S.A. 6086(a) into consideration: Criterion 5 (regarding traffic congestion and safety); Criterion 8 (regarding the scenic or natural beauty of the area and aesthetics); and Criterion 10 (regarding conformance with the duly adopted local plan).

Parties participating in these appeals were:

The Applicant George Tardy by Peter S. Sidel, Esq.  
The Town of Waitsfield and the Waitsfield Planning  
Commission by John D. Hansen, Esq.  
The State of Vermont Agency of Environmental  
Conservation by Stephen B. Sease, Esq.  
Fleurette Lareau, an adjoining landowner, by Paul  
Marble, participating solely on Criterion 8.

FINDINGS OF FACT

Criterion 5: If built as proposed, and with additional conditions as noted herein, this project will not cause unreasonable congestion or unsafe conditions with respect to highways or other means of transportation.

1. The development site is located to the west side of Route 100 between Warren and Irasville, Vermont. The **site** is located directly across the highway from the existing restaurant owned by the applicant. The proposed development is interrelated with the existing restaurant in that customers of the campground would use the restaurant for registration and related purposes, and would patronize the restaurant.
2. The project site is located on a stretch of Route 100 posted for a maximum speed of 50 MPH and is marked as a no passing zone. The safe stopping-sight distance for rural highways at 50 MPH is 350 feet.
3. The restaurant currently has two driveway connections to Route 100; the northerly drive enters Route 100 approximately 160' to the south of a concrete bridge across the Mad River; the southerly drive enters Route 100 approximately 430' to the south of the bridge. The bridge is constructed so as to impede the clear view of drivers on the bridge who are heading south. Although it is likely that some buses or recreational vehicles brought to the restaurant on campground-related business might enter Route 100 heading in a southerly direction from the northerly driveway of the restaurant, we do not find that any unsafe condition would thereby be created. There is no accident record at the existing location, which is currently utilized by buses and recreational vehicles. While the distance from the bridge to the driveway is substantially shorter than the recommended safe stopping sight distance, drivers are able to see large vehicles in the northerly driveway from the far side of the bridge.
4. The proposed project will include a pedestrian crossing of Route 100 between the campground and the existing restaurant. This crossing is appropriately located because it is a short, "natural" walk line between the restaurant and campground. If signs are placed to warn motorists of the crossing, and if the crossing is well marked on the highway, it will not create an unsafe condition. There are adequate sight distances from this location to both the north and south along the highway. If pedestrians were to cross the road further to the north, however, an unsafe condition would result because south-bound drivers on the bridge would not have an adequate stopping-sight distance. If a permit were to be granted for this project, we would impose conditions to discourage pedestrians from leaving the campground and crossing the highway at the northerly end of the site.
5. The conditional use permit for this project that was issued by the Waitsfield Zoning Board of Adjustment contained a condition that if the applicant were to build this project

as planned, he must construct an earthen berm along the project's entire boundary with Route 100, "which berm shall be five feet above road elevation" and planted "so that the Applicant's trailer park is completely shielded from the highway." The applicant has constructed a berm which is less than five feet above the highway along most of its length, and which does not run the entire boundary with the highway. In addition, as presently constructed, this berm creates an unsafe roadway condition. At present, the grade slopes down from the roadway and then rises abruptly along the east face of the berm. Earthworks constructed close to a highway of this type should have a relatively gentle slope back from the highway so that any vehicle leaving the road can negotiate the grade safely. Vermont Agency of Transportation regulations require a "1 on 4" slope for berms within their right-of-way. If we were to grant a permit for this project, we would include a condition that this berm be constructed to that standard for the entire face along the highway.

6. The project's driveway will connect with the highway at the southerly end of the project site. Sight-stopping distances from this driveway exceed 350' in both directions, and we find that no unsafe condition would result from its location and use as proposed. If we were to grant a permit for this project, we would, however, impose a condition requiring the applicant to maintain the vegetation on the site to keep the drivers' line of sight unobstructed.

Criterion 8: We find that this project will have an undue adverse effect on aesthetics and on the scenic or natural beauty of the area.

1. The project site is a 5<sup>±</sup> acre parcel situated on a narrow strip of land (between 150 and 250 feet in width) lying between the Mad River and Route 100. The site is bounded on the east by Route 100 and on the north, northwest and west by the Mad River. The elevation of the site is eight to ten feet below the elevation of the highway. The site has historically been an open meadow, used for farming for many years.
2. This meadow is naturally visible along its entire length from Route 100, as there are no natural barriers between it and the road. The meadow is also visible from the highway a considerable distance to the south, and to the north at least as far as the bridge over the Mad River. The site is also visible from the Lareau property and home directly across the Mad River.
3. The present view from the highway across the site includes the river banks, an unobstructed view of undeveloped mountainsides rising up from the valley, and the Lareau

farmhouse, barn, and outbuildings. These structures are traditional rural Vermont farm buildings.

4. In the vicinity of this meadow there presently exist two modern structures: the Tardy restaurant and the Our Lady of The Snows church. These structures detract from the natural beauty and traditional character of the view to the east from Route 100. There is no modern development, however, in the immediate project vicinity to the west of Route 100, toward the Mad River, where the project site is located.
5. Route 100 has been designated a scenic corridor by the State of Vermont at least since the 1967 Vermont State Comprehensive Outdoor Recreation Plan. The 1973 version of that plan lists the Route 100 corridor as a chief example of a scenic corridor which is important not only for its natural attractiveness, but because it is a **heavily-**travelled tourist route as well. The designation of scenic corridors in the state's plans was based on an analysis of both immediate and long views from the highway, elements of visual contrast, and the traditional Vermont character of the man-made structures in the corridor. Based on these principles, the view from Route 100 across the project site contains high visual contrast of meadow, river and mountain-side; pleasing short and long views; and traditional Vermont farm structures. The Town of Waitsfield has also designated Route 100 as a scenic arterial, and adopted a policy of preserving and enhancing scenic vistas along the highway, and particularly along the Mad River.
6. The proposed development of a recreational vehicle and trailer campground on this site would have a substantial adverse impact on the project site and the project area. The applicant proposes to construct an access and internal road system, a pedestrian pathway, an internal lighting system, a service building and sewage dumping station for transient buses and campground users, as well as sites for 13 vehicles. We find that in this location, this type of development would have an undue adverse effect on aesthetics, the scenic character, and natural beauty of the site and area. We do not find that any development on this site would have such a negative impact, merely that this particular development would. Components of this adverse impact include: the physical changes to the land itself; a number of relatively large vehicles parked **on** the site in a parking lot pattern; buses and other vehicles using the dumping station; and additional visual impacts associated with the occupation of the trailers and recreational vehicles, such as picnic tables, clotheslines, and interior and exterior lights used by campground customers.
7. This site is visually inappropriate for the type of development proposed not only because of its location and contribution to the scenic beauty of the area, but because of its

physical characteristics as well. This is a narrow strip of land lying between the highway and the river. It is flat and open. There is no internal topographic variety or vegetation to mitigate the parking lot effect that would result from the placement of a number of vehicles **on** the field, or to shield those vehicles from the highway or from each other. The site is immediately adjacent to, and lower than the road, resulting in high visibility from the road.

8. The applicant has proposed to construct a berm to shield this project from the highway. We cannot find that this proposal satisfies the requirements of this criterion. The Waitsfield Zoning Board of Adjustment granted a conditional use permit for this project with explicit conditions: in order to develop this project, the applicant must build the berm five feet higher than the road elevation, along the entire boundary of the project with Route 100, and must landscape the berm with 10-foot high red pine, "so that the Applicant's trailer park is completely shielded from the highway." Satisfaction of these conditions has consequently become part of the applicant's proposal to this Board. We find that this project will have an undue adverse impact on aesthetics, and the scenic and natural beauty of the area even if it is shielded as proposed by the applicant. A berm of this sort is essentially a wall; this is especially true if it is planted along its crown in tightly-spaced trees or shrubs. This berm would be an obvious, man-made structure, not a natural feature of a scenic Vermont landscape. If it is to be high enough to shield the meadow completely from view, it will also screen out a portion of the river, Lareau farm, and mountainside beyond the project site.
9. In his presentations to this Board, the applicant has suggested that the berm will not be built according to the requirements imposed by the Board of Adjustment, but will be a much less substantial structure. He thus presents us with an alternative proposal, one that has not yet been approved by the Zoning Board of Adjustment. **While** we do not normally wish to review proposals presented in the alternative, we have heard substantial evidence on the size and characteristics of the berm as it is presently constructed, and for the sake of procedural economy have also considered the impacts of this proposal. We find that this project as proposed, with the smaller berm as presently constructed, also will have an undue adverse impact on aesthetics and the scenic and natural beauty of the area. The reasons for this finding have been stated above. While the smaller berm is a lesser artificial intrusion, it also shields less of the campground development and use from the highway. This berm fails to shield the project at all at its northern or southern edges, and is too low along most of its length to provide an effective screen from the highway. We cannot find that the underlying aesthetic and scenic limitations of this project and this **site can** be mitigated effectively by an

artificial screen of this sort.

10. In valuating the evidence on this criterion, we have considered and weighed the following factors: the existing scenic, man-made and natural characteristics of the project area: the visual impact of the project on that area, including both long and short views from the public highway; the area's designation as a scenic corridor by local and state agencies; the heavy use of the corridor by local citizens and tourists; the design of the project itself: and the mitigating factors, including landscaping and use controls proposed by the applicant to lessen the adverse visual effects of the development. We are aware, of course, that there are existing commercial and noncommercial developments in the Route 100 corridor that are neither beautiful nor traditional in appearance in the estimation of most observers. There are structures of this sort in the vicinity of this project site. We find that these structures, viewed in context, have not degraded the scenic and natural beauty of the project area to such an extent that this project would not have an undue adverse effect on it. We believe that Criterion 8 was not intended to protect the natural beauty of only the pristine areas of the State of Vermont. The visual impact of the existing development in the project area is relevant to our evaluation of the evidence on this criterion, but it is only one of the factors involved. Similarly, we are unable to find, as requested by the applicant, that this project could satisfy the requirements of Criterion 8 even though it has an undue adverse effect on the scenic and natural beauty of the immediate project area, solely because it comprises a small percentage of the entire scenic corridor. Such an interpretation would permit the piecemeal destruction of the values that the General Assembly sought to protect in the Act.

Criterion 10: We find that this project is not in conformance with a duly adopted local plan.

1. The Town of Waitsfield has a municipal development plan entitled "Analysis and Plan for the Town of Waitsfield," and filed with the Town Clerk on February 1, 1978.
2. We find that when read in its entirety, this plan provides for the preservation of the scenic and natural character of the open fields, scenic vistas, and traditional rural character of the Town's rural meadowlands, particularly those along Route 100 and along the Mad River. For the reasons stated in our findings with respect to Criterion 8, above, this project would have an undue adverse effect upon aesthetics and scenic and natural beauty of this area. For these reasons the project also does not conform to the requirements of the Town Plan.

3. Stated generally, the goals of this plan are to preserve the characteristic beauty of the town by controlling development in outlying areas, by restricting development in scenic areas, and by focusing commercial development in stable commercial concentrations. The objectives of the plan include the following:

(pp 1-2) : -Develop a variety of land uses which do not detract from the rural residential and recreational characteristics of the Mad River Valley;  
-Preserve the characteristic beauty of the landscape;  
-Encourage conservation of agricultural lands;  
-Control growth of outdoor recreational facilities;  
-Preserve, maintain and enhance the Mad River Valley watershed;  
-Preserve and enhance scenic and environmentally important areas.

(p 5) -To preserve and enhance the Mad River as a natural resource; and  
-To preserve visual amenities of fields, pastures and lonely mountain ridges.

The Town Plan devotes particular attention to the goal of preserving the town's natural and scenic beauty. On page 6, the plan states:

"Preservation of Visual Amenities

"Expanses of tillage, hay fields and open pasture provide the open spaces through which the vistas showing Waitsfield's beauty can be viewed. They are themselves also a significant part of the beauty of the vista. Waitsfield should consider the open character as a natural resource as valuable as the river, and use every means available to the Town to assist property owners in keeping these lands open.

"Accordingly, the Town should encourage land use patterns which tend to maintain and encourage these open spaces, and any development which may occur should employ principles that emphasize the concepts of open-space planning by incorporating cluster development types and open land preservation."

We find that the proposed development would impair the scenic beauty of the town if developed as planned and in this location, and is therefore not in conformance with the town's plan for the preservation of visual amenities.

5. The plan also addresses the needs of the town for commercial, residential, and recreation development; we find that the component on recreational development is also pertinent to our review of this application. Under the heading, "Recreation and Open Space" the plan states that the Town of Waitsfield should promote "Development of a camping area within the Mad River Valley region" (emphasis added). On the same page, the plan also states that the Town should promote: "Continued efforts to keep the Mad River free of pollution and encroachment," "Scenic areas and views," and "Preservation of Route 100 as a scenic arterial." While the first statement could be read to conflict with the latter three, we do not believe that as applied to the development under consideration, any conflict exists. The plan clearly states that development of a "camping area" is desirable somewhere in the "region." Such a development, if properly designed and properly located, would be permitted by the plan. However, the plan explicitly states that the Mad River is to be kept free of encroachment, that scenic areas and views are to be protected, and that Route 100 in particular is to be preserved as a scenic arterial. We find that the proposed development of this travel trailer and recreational vehicle park on an open meadow adjacent to the Mad River and to Route 100 fails to conform with these more specific objectives of the town's plan for recreation and open space.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, it is the conclusion of the Environmental Board that the development of this project, as presently designed, and in this location, would be detrimental to the public health, safety and general welfare. This conclusion is required by our Findings that the project fails to meet the requirements of Criteria 8 and 10 of 10 V.S.A. 6086(a). We have found that this project could meet the requirements of Criterion 5 if properly conditioned as noted in this decision.

The Board has received proposed findings and conclusions from the Applicant and the appellants. We have reviewed these proposals but have adopted none of them directly: we have however incorporated their substance into this decision as we deem appropriate. All proposed findings and conclusions inconsistent with this decision are therefore denied.

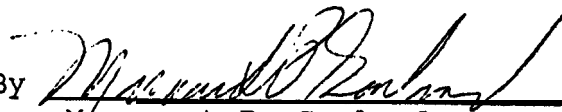
#### ORDER

Pursuant to the provisions of Chapter 151 of Title 10, the application of George Tardy for a land use permit is herewith denied, and the permit #5W0534 dated September 7, 1979, issued by the District Environmental Commission, is declared null and void.



Dated at Montpelier, Vermont this 21st day of March, 1980.

ENVIRONMENTAL BOARD

By   
Margaret P. Garland  
Chairman

Members votins to issue this  
decision:

Margaret P. Garland  
Ferdinand Bongartz  
Roger N. Miller  
Donald B. Sargent  
Leonard U. Wilson

Members opposed in whole or  
in part:

Melvin H. Carter  
Michael A. Kimack  
Daniel C. Lyons