

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

RE: Pilgrim Partnership by Findings of Fact,
Peter S. Sidel, Esq. Conclusions of Law
P.O. Box 115 and Order
Waitsfield, VT 05673-0115 Land Use Permit
Application #5W0894-1-EB

This decision pertains to an appeal filed with the Environmental Board on December 24, 1987, by A. G. Anderson co., Inc. through its attorney, James Mathis, Esq., from the District #5 Environmental Commission Land Use Permit #5W0894-1 dated December 1, 1987. This permit authorizes Pilgrim Partnership to convert an existing 5000 square foot building into a dry goods storage facility located off Park Row and Batchelder Street in Waterbury, Vermont.

In its appeal, Anderson argued that the traffic generated by the Permittee will cause unsafe conditions and unreasonable congestion on a private right-of-way which provides access to the project. Anderson also requested that the Board stay the District Commission's decision.

On January 26, 1988, Board Chairman Leonard Wilson conducted a prehearing conference and on February 18, 1988, a Prehearing Conference Report and Order was issued. On February 18, 1988, the Board notified all parties of its denial of the request for a stay. An Administrative Hearing Panel, with Chairman Wilson presiding, convened a public hearing on March 23, 1988 with the following parties participating:

- Pilgrim Partnership (Permittee) by Peter S. Sidel, Esq.
- A. G. Anderson, Inc. (Anderson) by C. James Mathis, Esq.

The Panel heard testimony, conducted a site visit and recessed the hearing on March 23, 1988 pending the filing of proposed findings and memoranda by the parties, a review of the record, and preparation of a proposed decision by the Panel. On April 25 and April 26, 1988, respectively, the parties filed proposed findings of fact and conclusions of law and order and memoranda regarding Anderson's status as a necessary co-applicant pursuant to Board Rule 10. A proposed decision was sent to the parties on July 28 and the parties were provided an opportunity to file written objections and to present oral argument before the full Board. On August 10 the Permittee filed a response to the proposed decision and on August 12 the Appellant filed written comments. On August 18 the Board convened a public hearing in Mendon and heard oral argument from the parties. The Board deliberated on this matter on August 18 and September 14. On September 14, following a review of the

proposed decision, the evidence presented in the case and the written objections, legal memoranda and oral arguments of the parties, the Board declared the record complete and adjourned the hearing. This case is now ready for decision. The following findings of fact and conclusions of law are based exclusively upon the record developed at the hearing. To the extent the Board agreed with and found necessary any findings proposed by the parties, they have been incorporated herein: otherwise, said requests to find are hereby denied.

I. PARTY STATUS

A. G. Anderson, Inc. is an adjoining landowner and the owner in fee of the land underlying the road right-of-way. Anderson was granted party status pursuant to Board Rule 14(A)(3) on Criterion 5 (traffic) as an adjoining property owner directly affected by the project on this issue and entitled to party status pursuant to 10 V.S.A. § 6085(c).

II. ISSUES IN THE APPEAL

Anderson alleges that the project does not comply with Criterion 5 of 10 V.S.A. § 6086(a) because the roadway cannot safely and adequately accommodate the vehicles associated with the project. Anderson contends that unsafe conditions and congestion will result from the Permittee's traffic traveling along the roadway which is unsafely configured and too narrow for vehicles to pass and turn.

It is Anderson's position that the roadway must be widened to safely accommodate traffic and prevent congestion. Widening the road would require that the Permittee obtain additional land from Anderson. Anderson argues therefore that in accordance with Rule 10((A), as the owner of the land, Anderson would need to participate as a co-applicant.

III. FINDINGS OF FACT

1. On December 1, 1987, the District Commission issued Land Use Permit Amendment #5W0894-1 to the Permittee for the conversion of an existing 5000 square foot building on 1.6 acres of land into a dry goods storage facility. The property is located off Park Row and Batchelder Street in Waterbury, Vermont.
2. Anderson owns adjoining lands and operates both a concrete plant and a building supply company on these lands.

3. Access to the project is provided by a private right-of-way which crosses lands owned by Anderson. This right-of-way also provides access to the Anderson businesses, S. T. Paving, Vermont Iron Stoveworks and Johnson Woodshop.
4. The right-of-way is twenty feet wide from the point where it commences on the Anderson property at the east end of Park Street, and as it travels in an easterly direction for approximately 300 feet. It then turns to the south and is 50 feet wide as it travels 150 feet across the Anderson property to the Permittee's property. S.T. Paving, Vermont Iron Stoveworks and Johnson Woodshop are located to the south of the Permittee's property.
5. The developed gravel roadway within the right-of-way varies from 17 feet to 20 feet in width. The road is level and does not have ditches or shoulders. It contains a curve on Anderson's land which has a radius of 57°.
6. Assuming a maximum speed of 20 mph, a curve of 57° would require a width of approximately 35 feet for two tractor-trailers to pass safely in opposite directions at the same time. Neither two trucks nor a passenger car and a truck are able to pass simultaneously through this curve. With only a 30-foot width, two passing trucks would be touching.
7. A minimum width traveled way required for two trucks to safely pass on a straight road is 24 feet. In addition to the traveled way, there should be a minimum of two feet of shoulders on each side.
8. Anderson generates approximately 375 vehicle trips, or 187.5 round trips, per day. The vehicles include cars, pickup trucks, delivery trucks and cement trucks. The cement mixer and lumber trucks regularly back across the roadway, crossing between the yard and the buildings using the land immediately adjacent to the roadway. When backing up, these trucks have limited sight distances. In order to gain access to Anderson's storage sheds and parking areas, vehicles must travel beyond the curved portion of the right-of-way.
9. S. T. Paving generates traffic similar to the traffic generated by Anderson. The vehicles used by S.T. Paving include tandem axle dump trucks with "tag-along" trailers used to tow bulldozers, backhoes, and rollers; large flatbed trucks; and various smaller vehicles such as pickup trucks.

10. The majority of the traffic generated by the Johnson **Woodshop** and Vermont Iron Stoveworks companies is from the employees. Occasionally a tractor-trailer picks up their products.
11. The project will generate a maximum of 30 additional vehicle trips, or 15 round trips, per day which include cars, pickup trucks, and one or two tractor-trailers.
12. In September of 1987, the other businesses using the roadway generated approximately 180 vehicle trips, or 90 round trips, per day.

IV. CONCLUSIONS OF LAW

A. Criterion 5 - Traffic Safety

The Board concludes that the traffic associated with this project will cause unsafe conditions and unreasonable congestion on the road serving this project. Traffic hazards and congestion will result from the addition of 30 vehicles per day, including trucks, to a very narrow road with a blind curve that is used primarily by trucks. The Board believes the road cannot safely or adequately accommodate the addition of 30 daily vehicle trips associated with this project.

B. Necessary Co-Applicant

The Permittee argues that the Board is precluded from examining the question of whether Anderson is a necessary co-applicant in accordance with Rule 10(A) because of Rule 10(D) which states that "[o]nce a district commission convenes a hearing on the merits of an application, the application is deemed to be complete, and a subsequent appeal may be had only on the merits of the application, not on its sufficiency." Since the commission had convened a hearing, the Permittee contends, the issue of necessary co-applicants may no longer be raised.

Previously, the Board has determined that the question of who must be a co-applicant may be raised at any time during permit application proceedings and that it is a separate issue from the coordinator's determination of completeness of an application pursuant to Rule 10(D). See RE: Flanders Building Supply, Inc., Application #4C0634-EB (October 18, 1985). In that decision, the Board explained the different purposes served by Rules 10(A) and 10(D). The justification for requiring the record owner(s) of any involved land to be co-applicants under Rule 10(A) includes 1) the need to ensure that any permit conditions imposed by

a commission or the Board will be enforceable, 2) the need to ensure that the owners of lands involved in subdivision or development have consented to the activity under review, and 3) the need to ensure that persons with a substantial interest in the involved lands have an opportunity to participate in the permit proceedings.

Rule 10(D) addresses an application's deficiencies in the descriptive material submitted with respect to the ten criteria of 10 V.S.A. § 6086(a) for the purpose of a commission's review of the application and is unrelated to the issue of co-applicancy status. Rule 10(D) does not preclude the Board from addressing questions of co-applicant status during the course of a proceeding; sometimes a person's true interests are not revealed until after a hearing has been convened. Pursuant to Board Rule 10(A), the Board may make a determination at any time that a person has a substantial property interest and must be made a co-applicant.

The question before the Board, therefore, is whether the property interests of Anderson are of such significance that an application cannot be reviewed without its participation. The existing roadway and the underlying right-of-way are inadequate to accommodate the traffic from this project. The improvements of the road to acceptable standards must involve lands beyond the right-of-way that are owned or controlled by Anderson and not by the Permittee. Consequently, the Board concludes that Anderson, as owner of the land over which the right-of-way crosses, is a necessary co-applicant.


V. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit Amendment #5W0894-1 is remanded to the District #5 Environmental Commission. It is ordered that:

1. Pilgrim Partnership, Ltd. shall prepare a revised area plan for this project for review and approval by the District Commission.
2. Pilgrim Partnership Ltd. may not use the roadway over Anderson lands for this project until such time as a revised access has been approved by the District Commission.
3. Anderson, as the owner of the land underlying the right-of-way, must be a co-applicant in any further proceedings involving this project.

Dated at Montpelier, Vermont this 4th day of October, 1988.

ENVIRONMENTAL BOARD



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