

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

RE: Jerrold D. MacKenzie and Katherine G. Stone,  
Cross-Appellants, by Paul P. Hanlon, Esq.  
25 Court Street  
Montpelier, VT 05602

Findings of Fact,  
Conclusions of Law,  
and Order,  
Land use Permit #5W1047-EB

This decision pertains to an appeal and cross-appeal regarding a gravel pit in Worcester, Vermont. As is explained below, the Board concludes that the proposed project complies with 10 V.S.A. § 6086(a)(1) (air and water pollution) and (5) (traffic). The Board also concludes that the number of truck trips need not be limited to five per day if the total number is limited to 20 per week.

I. SUMMARY OF PROCEEDINGS

On March 15, 1990, the District #5 Environmental Commission issued Land Use Permit #5W1047 to the Applicants, authorizing them to operate a gravel pit for personal and light commercial use over a 20-year period. The pit will be located on an approximately 30-acre tract of land off West Hill Road in Worcester. On March 22, 1990, Jerry and Wendy Russell (the Appellants) filed a motion to alter with the District Commission. The motion was denied on April 26.

On May 21, 1990, the Appellants filed an appeal with the Board seeking a stay of the permit and review of the project with respect to Criteria 1 and 5. On June 13, the Applicants filed a cross-appeal with respect to Condition 18 of the permit and the supporting findings of fact which limit truck trips associated with the pit to five per day.

Chairman Stephen Reynes convened a prehearing conference on July 19, 1990 in Montpelier. On September 23, the Board issued a memorandum of decision denying the stay requested by the Appellants. On October 30, the Appellants submitted a request that the Agency of Natural Resources test the water from the Appellants' well and the soil nearby. On November 1, the Applicants filed a response to this request.

On November 1, 1990, the Applicants and the Appellants submitted prefiled testimony. On November 7, the Appellants submitted a letter stating disagreement with prefiled testimony of the Applicants. On November 16, the Board deliberated on and denied the Appellants' request for testing. An administrative hearing panel of the Board convened a hearing in this matter on November 21 in Worcester, Chairman Reynes presiding. The only party appearing at the hearing was the Applicants, with their attorney, Paul P. Hanlon.

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The Appellants did not appear or send a representative to appear for them. After taking a site visit and hearing testimony, the panel orally ruled that an amended permit should be granted and requested the attorney for the Applicants to submit proposed findings of fact and conclusions of law. The hearing was recessed pending such submission, deliberation, and issuance of a proposed decision. On **December** 4, 1990, the Applicants submitted proposed findings of fact and conclusions of law. At that time, the Applicants also submitted a statement that they were in agreement with the proposed decision and did not desire to file written objections or to request oral argument before the Board.

A proposed decision was sent to the parties on March 19, 1991, and the parties were provided an opportunity to file written objections, and to present oral argument before the full Board. No party submitted objections to the proposed decision or requested the opportunity for oral argument. The Board deliberated concerning this matter on April 18, 1991. On that date, following a review of the proposed decision and the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent that any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

## II. ISSUES

The following issues are before the Board:

1. Whether, pursuant to 10 V.S.A. § 6086(a)(1), the proposed project will create undue air pollution in the form of noise, dust, and fumes from trucks leaving the proposed project and traveling down a private right-of-way past the Appellants' property to West Hill Road.
  2. Whether, pursuant to 10 V.S.A. § 6086(a)(1), trucks associated with the proposed project which use the right-of-way will cause undue water pollution due to effects on the Appellants' water supply.
  3. Whether, pursuant to 10 V.S.A. § 6086(a)(5), the proposed project will create unsafe traffic conditions or unreasonable congestion along the right-of-way. In
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addition, the Applicants **seek to** eliminate a limit of five truck trips per day imposed by the District Commission. The Applicants claim that the limit is not justified by the traffic impacts of the proposed project.

### III. FINDINGS OF FACT

1. On March 15, 1990, the District #5 Environmental Commission issued Land Use Permit #5W1047. The permit authorizes the Applicants to operate a gravel pit for personal and light commercial use over a 20-year period. The pit is located on an approximately 30-acre tract of land off West Hill Road in Worcester. A right-of-way connects the pit and West Hill Road.
  2. In Condition 11 of the permit, the District Commission required the Applicants to post the right-of-way with signs limiting the speed to 15 mph. One such sign, at the West Hill Road entrance to the right-of-way, must state that children are at play. Another such sign, placed at the exit from the pit, must also state that the speed limit may not be exceeded in order "to protect children in the road," and that failure to comply will result in "exclusion from the pit."
  3. Condition 12 of the permit requires the Applicants to apply water over the length of the right-of-way "whenever truck traffic generates dust." Condition 13 prohibits the Applicants from using calcium chloride for dust control at the pit or along the road.
  4. In Condition 18 of the permit, the District Commission required the Applicants to limit the number of truck trips to 20 per week and five per day.
  5. In Condition 20 of the permit, the District Commission limited the time each year during which gravel may be hauled from the pit to between April 1 and October 31. In Condition 21, the District Commission limited the pit's hours of operation to Mondays through Fridays between 8:00 a.m. and 3:00 p.m. This limit includes gravel hauling. In Condition 22, the District Commission required the Applicants to maintain the right-of-way between April 1 and October 31 of each calendar year.
  6. The right-of-way provides common access to the homes of the Appellants and Applicants. At least six turnouts presently exist on the right-of-way. The right-of-way varies in width from 16 to 24 feet. The Applicants
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plan to install additional turnouts where necessary to allow two vehicles to pass each other. Traffic from the pit will not stop or idle near the Appellants' home.

7. Traffic along the right-of-way is light. Some traffic is generated by two homes **which are** occupied. Neighbors and townspeople using the right-of-way generate some additional traffic. Traffic will also be generated by another home which is under construction.
8. In the past, the right-of-way has been used for log removal from timber operations, for gravel extraction to improve the right-of-way, and for home construction. Trucks have been associated with these generations. The truck traffic has compacted the right-of-way.
9. The Appellants' water supply is a well which was dug in a location 34 feet from the traveled portion of the right-of-way. The Appellants' septic system is located near this well. The Appellants' well is supplied by groundwater.
10. The Appellants' property drains land which is uphill along the same side of the road to the south. A water table lies under and connects the two properties.
11. The bottom of the Appellants' well is approximately four feet below grade. Below the bottom of the well there is crushed stone over a ledge of bedrock. The ledge runs to near the edge of the right-of-way closest to the well, at which point the ledge drops precipitously to a deeper level below grade. The water which supplies the well runs along the ledge.

#### IV. CONCLUSIONS OF LAW

##### A. Criterion 1: Water Pollution

The Appellants assert that the compaction of the right-of-way by trucks using the pit **will affect** recharge of their well. The Appellants also claim that spillage of fluids from these trucks will pollute the well.

The Applicants have persuaded the Board that such effects will not occur. Because the right-of-way is already compacted, the additional truck traffic is not likely to adversely affect recharge of the Appellants' well through further compaction. The well also appears to be supplied by

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water running downhill from the same side of the road, rather than from water running under or across the road. (See Findings 9 through 11, above.) Further, the Board believes that fluid spills from the trucks are not likely to affect the well because of the location of the well as described in Finding 11, above, as well as the fact that trucks will not stop or idle near the Appellants' home. On this basis, the Board concludes that the proposed project meets Criterion 1 (water pollution) with respect to the issues raised on the appeal.

B. Criterion 1: Air Pollution

The Appellants assert that noise, dust, and fumes from truck traffic associated with the proposed project will cause undue air pollution. The Applicants have persuaded the Board that the conditions imposed by the District Commission referred to in Findings 3, 4, and 5, above, as well as the weekly truck trip limit, are adequate to ensure that undue air pollution will not be caused in the manner alleged by the Appellants.

C. Criterion 5: Traffic Safety and Congestion

The Board concludes that truck traffic from the proposed project will not create unsafe traffic conditions or unreasonable congestion on the right-of-way. The conditions imposed by the District Commission cited in Findings 3 and 5, above, along with the weekly truck trip limit, are adequate to ensure compliance with Criterion 5 in this case. The daily limit of five trips imposed by the District Commission, however, is not necessary under these circumstances. Indeed, eliminating the daily limit while maintaining the weekly limit may have the effect of reducing the number of days on which there is gravel truck traffic on the right-of-way. Accordingly, the Board will modify Condition 18 to delete the daily limit, and the weekly limit of twenty trips will remain in place. On this basis, the proposed project complies with Criterion 5.

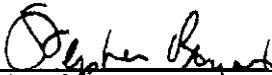
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V. **ORDER**

Land Use Permit #5W1047-EB is hereby issued.  
Jurisdiction is returned to the District #5 Environmental  
Commission.

Dated at Montpelier, Vermont this 23rd day of April,  
1991.

ENVIRONMENTAL BOARD

  
Stephen Reynes, Acting Chair  
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Rebecca J. Day  
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