

1/2/70

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

Re: Waterbury Shopping Village by Richard W. Darby, Esq. Darby, Laundon, Stearns & Thorndike 89 South Main Street Waterbury, Vermont 05676	Memorandum of Decision Application #5W1068-EB (Interlocutory Appeal)
---	--

On April 4, 1990, Waterbury Citizens for Responsible Growth (CRG) filed a motion for interlocutory appeal concerning a memorandum of decision issued by the District #5 Environmental Commission on March 26, 1990. The memorandum of decision concerns a pending application for the construction of a 75,000 square foot retail shopping facility with related site improvements, located off Vermont Route 100 in the Town of Waterbury, Vermont. In the memorandum of decision, the District Commission ruled that the application will not be reviewed for compliance with 10 V.S.A. § 6086(a)(1)(G), which requires compliance with wetland rules issued by the Water Resources Board. On April 12, 1990, the Applicant filed a memorandum in opposition to the motion for interlocutory appeal. The Board deliberated on April 25 in Montpelier.

DECISION

The question presented is whether the Applicant has a vested right not to have this application reviewed for compliance with the wetland rules pursuant to Criterion 1(G). The Board has determined that this question is suitable for interlocutory appeal because it satisfies the standards for interlocutory appeal as set forth in Board Rule 43. See Re: Maple Tree Place Associates, Application #4C0775-EB, Memorandum of Decision at 9-15. In particular, one requirement for accepting interlocutory appeal is that the question presented be one of law. The question presented here is one of law because the District Commission's decision contains sufficient facts for the Board to decide the question without engaging in factfinding. Maole Tree Place at 10-11. In deciding this interlocutory appeal, the Board therefore will base its decision on the facts stated in the District Commission's decision.

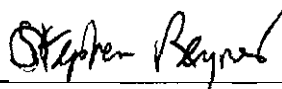
477M. 3

ORDER

1. The motion for interlocutory appeal is granted.
2. The Board will decide this matter in deliberative session at its meeting tentatively scheduled for June 13, 1990.
3. On or before May 23, 1990, all memoranda challenging the District Commission's decision shall be filed.
4. On or before June 6, 1990, all memoranda in opposition to those challenging the District Commission's decision shall be filed.
5. Persons may file memoranda if they have party status before the District Commission with respect to this application.
6. Persons shall file an original and ten copies of all documents with the Board, and shall send a copy to all persons on the attached certificate of service.

Dated at Montpelier, Vermont this 2nd day of May, 1990.

ENVIRONMENTAL BOARD



Stephen Reynes, Chairman
Ferdinand Bongartz
Elizabeth Courtney
Rebecca J. Day
Arthur Gibb
Charles Starrow
W. Philip Wagner

5W1068EB.mod (apl)