

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

RE: Waterbury Shopping Village, Inc.
c/o William Dunn
207 South Union Street
Burlington, VT 05401

Memorandum of
Decision
Land Use Permit
#5W1068-EB

This decision pertains to a motion to apply 10 V.S.A. § 6086(a)(1)(G) (Criterion 1(G) - conformance with Vermont Wetland Rules) to this application. The motion was filed by Waterbury Citizens for Responsible Growth (WCRG) on December 14, 1990.

On January 4, 1991, the Applicant filed a memorandum in opposition to the motion and a motion for a stay of various conditions in Land Use Permit #5W1068 issued by the District #5 Environmental Commission on October 5, 1990. The Environmental Board deliberated on January 9 in Montpelier.

DECISION

1. The motion to apply Criterion 1(G) is denied. The Board has previously determined on an interlocutory appeal by WCRG that Criterion 1(G) **does** not apply to this application. Re: Waterbury Shopping Villaae, Inc., Application #5W1068-EB, Memorandum of Decision at 2-3 (June 26, 1990). That decision is final with respect to this case.

WCRG asserts that an opposite result is required by the Supreme Court's ruling in In re Maole Tree Place Associates, 151 Vt. 331 (1989). In that case, the Court **ruled that** a denial of party status by a district commission was reviewable before the Board following the district commission's final decision on an application. The ruling was based on a Board order refusing to accept an interlocutory appeal on party status and the Court recognized that the party status issue had not been conclusively determined. *Id.* at 331, 332. In this case, the Board did accept the interlocutory appeal and decided the question. Waterbury Shopping Villaae, supra. Accordingly, WCRG's reliance on the Supreme Court's Maple Tree decision is misplaced.

2. The Board declines to rule on the Applicant's stay motion at this time because parties have not had an opportunity to respond. Parties will be given such an opportunity in accordance with the attached order.


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ORDER

1. **WCRG's** motion to apply Criterion 1(G) is denied.
2. Parties shall file responses to the Applicant's stay motion on or before January 31, 1991.
3. The Board will consider the stay motion in deliberative session likely to be held during its meeting of February 6, 1991.

Dated at Montpelier, Vermont this **11th** day of January, 1991.

ENVIRONMENTAL BOARD



Stephen Reynes, Chairman
Elizabeth Courtney
Arthur Gibb
Samuel Lloyd
Charles F. Storrow
Steve E. Wright

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