

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

RE: Barre City School District
Land Use Permit #5W1160-Reconsideration-EB

MEMORANDUM OF DECISION AND ORDER

I. BACKGROUND

On January 30, 1995 the Board issued Re: Barre City School District, #5W1160-Reconsideration-EB, Findings of Fact, Conclusions of Law, and Order (Jan. 30, 1995) (the Decision).

On February 21, 1995 Marcia Kepnes (the Appellant) filed a Motion to Alter the Decision pursuant to EBR 31(A) (the Motion). The Appellant also requested oral argument relative to the Motion.

On March 14, 1995 Acting Chair Gibb issued a memorandum to parties providing deadlines for the submission of memoranda, and informing them that the Board would deliberate on the Motion on April 26, 1995.

The Chair's March 14, 1995 memorandum gave the Appellant until March 22, 1995 to file a memorandum in support of her Motion, and the Barre City School District (the Permittee) until April 7, 1995 to file a reply. The parties complied with these deadlines.

On April 20, 1995 the Appellant filed an additional memorandum. The Appellant's memorandum was not sent to the Board members because the Chair's March 14, 1995 memorandum did not provide for further filings after April 7. The Chair's March 14, 1995 memorandum is incorporated herein.

On April 26, 1995 the Board deliberated on the Motion.

II. DECISION

EBR 31(A) authorizes parties to file, within 30 days of the date of a decision, such motions to alter as may be "appropriate." The rule provides:

(A) Motions to alter decisions. A party may file within 30 days from the date of a decision of the board or district commission such motions to alter as may be appropriate with respect to the decision.

The board or district commission shall act upon motions to alter promptly. The running of any applicable time in which to appeal to the board or supreme court shall

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be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on any motion.

The board or district commission may on its own motion, within 30 days from the date of a decision, issue an altered decision or permit. Alterations by board or district commission motion shall be limited to instances of manifest error, mistakes, and typographical errors and omissions.

The Board has issued several decisions which set out the nature of what is appropriate under EBR 31(A).

A motion to alter is to be based on the existing record. Re: Swain Development Corp., #3W0445-2-EB, Memorandum of Decision at 3-4 (Nov. 8, 1990). New hearings are not held and new evidence is not taken. Id. at 4; Re: Berlin Associates, #5W0584-9-EB, Memorandum of Decision at 7 (April 23, 1990).

One reason for these limits on the use of EBR 31(A) is that parties should not be encouraged to use motions to alter to convert Board decisions into "proposed" decisions to which they can later respond. Evidence and argument should be given to the Board before decision so that it is fully informed and can make the best decision, and so that the process is not unnecessarily elongated by motions to alter. As the Board has previously stated:

[The Board's] interpretation is based on the need to maintain the integrity of the Board's appeal process by ensuring that arguments and evidence are introduced prior to final decision.

Re: Finard-Zamias Associates, #1R0661-EB, Memorandum of Decision at 2 (Jan. 16, 1991).

The Board denies the Motion, including the Appellant's request for additional oral argument. In issuing the Decision, the Board carefully considered all matters raised by the Appellant in her submissions and at the oral argument held on May 25, 1994. The Board concludes that the Decision is sound for the reasons stated therein. Specifically, that the Appellant's concern relative to non-driving parents is beyond the scope of the regional, city, and town plans that were or should have been used under Criterion 10, that is, the City of Barre Comprehensive

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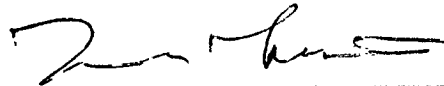
Master Plan, dated November 13, 1985; the Central Vermont Regional Planning Commission Regional Land Use Plan, adopted June 13, 1989; the City of Barre Municipal Plan adopted on November 17, 1992; and the Town of Barre Municipal Plan, adopted June 30, 1992. These plans are the relevant plans since the Permittee filed its original application for Land Use Permit #5W1160-Revised on December 1, 1992.

III. ORDER

The Appellant's Motion, including her request for additional oral argument, is denied.

Dated at Montpelier, Vermont, this 5th day of May, 1995.

ENVIRONMENTAL BOARD



Arthur Gibb, Chair
Lixi Fortna
Steve Wright
Larry Bruce
Anthony Thompson

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