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

Re: Town of Barre
Land Use Permit Application #5W1167-EB

MEMORANDUM OF DECISION

This decision pertains to several preliminary issues raised by the parties at the prehearing conference. For the reasons explained below, the Environmental Board has decided 1) that the issue of a town vote is not relevant to the Board's consideration of any of the issues under appeal; 2) to grant party status to Randy and Sue Walker and Kim Hanson on Criterion 1(F); 3) to defer a decision on which regional plan applies until after the hearings; and 4) to request a representative from the Central Vermont Regional Planning Commission to attend the hearing to answer questions from the Board on the changes in the Regional Plan.

I. BACKGROUND

On August 13, 1993, the District #5 Environmental Commission issued a decision denying the Town of Barre's application for the reconstruction and partial alignment of approximately 1.4 miles of Town Highway #7 (Bridge Street/Booth Morrison Road), including the construction of a new bridge over the Stevens Branch of the Winooski River and a new intersection with Vermont Route 14. On October 8, the District Commission issued a decision denying a motion to alter filed by the Town.

On October 28, the Town filed an appeal of the District Commission's decision with respect to 10 V.S.A. § 6086(a)(1)(F) (shorelines), (5) (traffic), and 8 (aesthetics). On November 9, a cross-appeal was filed with respect to 10 V.S.A. § 6086(a)(10) (local and regional plans) by Kim Hanson, John and Regan Howard, Lee Martinson, George Masi, Priscilla Paquet, William Paquet, Anna Shannon, Randy and Sue Walker, and Ray and Val Vallerand (the Residents).

On December 6, a prehearing conference was convened, at which several preliminary issues were raised.

II. ISSUES

1. Whether a town vote on a municipal project is relevant to Criteria 1(F), 5, 8, or 10.

2. Whether to grant party status to Randy and Sue Walker and Kim Hanson on Criterion 1(F).

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3 . Whether the regional plan in effect when the application was filed with the District Commission or the one in effect when the appeal was filed applies in this appeal.

4. Whether the Board will request a representative from the Central Vermont Regional Planning Commission (CVRPC) to provide testimony on Criterion 10.

III. DISCUSSION

1. At the prehearing conference and in subsequent documents, Mr. **Tarrant** stated that an attorney from his office met with Val Vallerand, one of the parties to this proceeding, approximately a year ago concerning the validity of municipal votes. In the cross-appeal filed by the Residents with respect to Criterion 10, the Residents stated the following:

Residents will present evidence showing that the proposed project, or one similar, was voted upon twice by the citizens of Barre Town and rejected. ...

Mr. **Tarrant** believes that the issue of a Town vote is not relevant to the Board's inquiry under any of the criteria at issue, and that therefore he may continue his representation of the Town. If, however, the Board believes that issue is relevant, **he** may withdraw his representation. Therefore, he is seeking a ruling from the Board as to whether the Board considers a municipal vote on a project relevant to the Act 250 criteria.

The Residents believe that evidence related to previous town votes could be relevant to the criteria at issue in this proceeding. They argue that the rejection of the project by the voters indicates a clear community standard that is relevant to a consideration of Criterion 8 (aesthetics).

The Board believes that a municipal vote is not relevant to any of the criteria at issue in this appeal. In their argument that the town vote expresses a "clear community standard," we assume that the Residents are referring to the Board's standards for evaluating projects under Criterion 8 enunciated in Re: Ouechee Lakes Corp., Applications #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law and Order at 18-19 (January 13, 1986). In that decision, the Board stated that when evaluating

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whether adverse effects on aesthetics and scenic beauty are undue, it analyzes three factors and concludes that a project is undue if it reaches a positive conclusion with respect to any one of these factors, one of which is whether the project violates "a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area."

A vote does not fall within the standard of "a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area." We must therefore reject the Residents' argument that a town vote is relevant to our consideration of the project under Criterion 8.

2. At the prehearing conference, a request for party status on Criterion 1(F) was made on behalf of Randy and Sue Walker and Kim Hanson. Subsequently, they filed a written petition in support of their request for party status.

Randy and Sue Walker live along the Stevens Branch in South Barre Village. Their property is located on Stevens Drive, with the Stevens Branch flowing along the westerly portion of their property. The Walkers use and enjoy the banks of the Stevens Branch in the area of the proposed project and will be affected by the project both during and after construction.

Kim Hanson lives across Route 14 and just south of the proposed intersection of this project with Route 14. She uses the banks of the Stevens Branch for enjoyment, and she believes that the project will disrupt her use of the shoreline of the river.

Randy and Sue Walker and Kim Hanson intend to present witnesses and cross examination on the issue of the effect of the project on the banks of the Stevens Branch under Criterion 1(F).

Based upon the information filed by Randy and Sue Walker and Kim Hanson, the Board believes that their interests will be affected by the project and that they will materially assist the Board in its consideration of Criterion 1(F). The Board therefore grants them party status on Criterion 1(F) under Board Rule 14(B)(1)(a) and (b).

3. The Residents raised the issue of which **Regional Plan** applies to this project: the one in effect when the application was filed with the District Commission or the

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one in effect when the appeal was filed. The Residents argue that the current Plan should apply.

The Town argues that the Regional Plan is not an issue in this appeal because in their cross-appeal on Criterion 10 the Residents mentioned the Town Plan but did not mention the Regional Plan. The Town also argues that if the Regional Plan is an issue, the Plan in effect when the application was filed should apply.

The Board does not agree with the Town's argument that the Regional Plan is not an issue in this appeal because the Residents only mentioned the Town Plan in their **cross-**appeal. Once a criterion is appealed, all issues within that criterion are properly before the Board. In re Taft Corners Associates, Inc., No. 92-215 at 8 (Vt. Apr. 30, 1993), In re Killinston, Ltd., 3 Vt. L.W. at 253. This has been the Board's consistent practice, unless parties agree to limit the issues to only one aspect of a criterion.

With respect to which Regional Plan should apply, the Board will defer ruling until after the hearing. Thus, for the purpose of preparing testimony, parties should assume that both plans are applicable. Parties may then submit additional legal argument on this issue when they file proposed findings.

4. The Residents filed a motion requesting the Board to ask the Central Vermont Regional Planning Commission (CVRPC) to participate in this appeal on Criterion 10. The Residents state that a new regional plan has been adopted since the District Commission hearings and that testimony from the CVRPC concerning how this project fits into the transportation element of that plan would be helpful. The Residents also assert that the Barre-Berlin-Montpelier Urban Area Transportation Plan is being updated into a Regional Transportation Plan and that the participation of the CVRPC will assist the Board in understanding how this project fits with other transportation efforts throughout the region would be helpful.

The Town believes that it is unnecessary to request the participation of the CVRPC, and that traffic consultants are the appropriate witnesses on the transportation plan and not CVRPC representatives.

The Board does not need to hear from the CVRPC concerning the transportation element of the Regional Plan or the Regional Transportation Plan, as the documents speak

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for themselves. However, the Board would like a representative from the CVRPC present at the hearing to answer questions from the Board concerning the process the RPC went through in changing the Regional Plan (with respect to those aspects relevant to their project) and the reasons for the changes.

IV. ORDER

1. Testimony concerning a Town vote on this or any related project is not relevant to any consideration of the Board in this appeal and will be excluded.

2. Party status is granted to Randy and Sue Walker and Kim Hanson on Criterion 1(F) pursuant to Board Rule 14(B)(1)(a) and (b).

3. The Regional Plan is an issue in this appeal. The determination of which Regional Plan applies will be made after the hearings.

4. The Board will request a representative of the CVRPC to attend the hearing for the purpose of answering questions about the changes in the Regional Plan and the reasons for the changes.

Dated at Montpelier, Vermont this 23rd day of December, 1993.

ENVIRONMENTAL BOARD

Elizabeth Courtney (sk)
Elizabeth Courtney, 'Chair
Lixi Fortna
Arthur Gibb
Samuel Lloyd
Steve E. Wright

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