

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. Ch. 151**

*Re: Fred and Laura Viens*

Land Use Permit #5W1410-EB

**Memorandum of Decision**

This matter is an appeal by Thomas and Kathleen Tafuto (Tafutos) to the Environmental Board (Board) from certain aspects of Land Use Permit #5W1410 (Permit) and accompanying Findings of Fact, Conclusions of Law, and Order (Decision), issued by the District 5 Environmental Commission (Commission) to Fred and Laura Viens (Viens), authorizing the construction and operation of an auto body repair shop located on a 16.69 acre tract in the Town of Fayston, Vermont (Project).

**I. History**

The history of this matter through June 17, 2004 appears in the Board's Memorandum of Decision of that date.

On June 22, 2004, the Viens filed a Motion to Alter.

The Board engaged in preliminary deliberations on July 7, 2004, contingent upon the filing of an opposition to the Viens' Motion within the time allowed under Environmental Board Rule 12(F). No opposition was timely filed, and this matter is ready for decision.

**II. Discussion**

The Viens' Motion to Alter seeks to limit the description of the Project to the 8.92-acre parcel on which the house and repair shop sits.

The Viens own, either together or individually, three contiguous parcels - - the 8.92-acre parcel on which the house and shop sit, and two other parcels which together encompass 7.77 acres, for a total of 16.69 acres.

After the Commission issued its Permit, the Viens filed a motion, pursuant to the Board's decision in *Re: Stonybrook Condominium Owners Association*, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order (May 18, 2001), asking that the "permitted project" (for purposes of triggering the need for a permit amendment under EBR 34(A)) be restricted to the 8.92-acre house/shop parcel. The Commission allowed this restriction, revising the description of the Project's location to read, "The project is located on a [sic] 8.92 acre tract off North Fayston Road in the Town of Fayston."

The Board believes that the Commission's revision may be misleading, as it could be read to limit the "involved land" of this Project to only the 8.92-acre tract. Because jurisdiction in this matter is grounded on 10 V.S.A. §6001(3)(A)(i) and not on §6001(3)(A)(ii), considering the amount of "involved land" to be less than ten acres would call into question the assertion of jurisdiction over the Project in the first instance. The better solution, the Board believes, is to add the following paragraph to the Land Use Permit:

The "permitted project," for purposes of Environmental Board Rule 34(A), see *Stonybrook Condominium Owners Association*, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order (May 18, 2001), is the 8.92-acre tract owned by Fred and Laura Viens identified in Book 58, Pages 71-72 of the land records of Fayston, Vermont.

The addition of the above paragraph informs all interested persons (and future title searchers) that, while the Project involves more than ten acres, only those changes that occur on the 8.92-acre tract may require a permit amendment.

### III. Order

1. Land Use Permit #5W1410-EB (Altered) is issued.
2. Jurisdiction is returned to the District 5 Environmental Commission.

Dated at Montpelier, Vermont this 13<sup>th</sup> day of July 2004.

ENVIRONMENTAL BOARD

/s/Patricia Moulton Powden  
Patricia Moulton Powden, Chair  
George Holland  
Samuel Lloyd  
Donald Marsh  
W. William Martinez  
Patricia A. Nowak  
Richard C. Pembroke, Sr.  
Jean Richardson

Alternate Board Member A. Gregory Rainville participated in the Board's June 17, 2004 Memorandum of Decision but did not participate in this decision.