

STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 V.S.A. CHAPTER 151

RE: Ammex Warehouse Company, Inc.  
8689 NW 53 Terrace  
Miami, Florida 33166

Finding of Fact and  
Conclusions of Law  
Land Use Permit  
Application #6F0248-EB'

This is an application for a land use permit for a project described as a duty-free shop and warehouse with related facilities and improvements to be located on a nine-acre parcel between Interstate 89 and U.S. Route 7 in Highgate Springs, Vermont. District #6 Environmental Commission denied the application on April 17, 1981 and denied a petition for reconsideration on May 12, 1981. Applicant, Ammex Warehouse Company, Inc., filed this appeal with the Environmental Board on June 8, 1981. The Board convened a public hearing on the appeal on July 14, 1981 in South Burlington, Vermont.

Parties present at the hearing were:

Appellants, Ammex Warehouse Company, Inc., by  
Richard Lang, Esq.  
Appellee, Vermont Agency of Environmental Conservation,  
by Dana Cole-Levesque, Esq.

The issues on appeal concern Criterion 5 (unsafe highway conditions), Criterion 8 (aesthetic impacts), and Criterion 9(K) (impacts on public investments). The Board's Findings of Fact and Conclusions of Law, below, are based upon the record developed at the hearing.

FINDINGS OF FACT

1. The proposed project is a duty-free shop and warehouse, 30' x 75', with parking lot, well and on-site waste disposal; to be located on a nine-acre parcel between Interstate 89 and Route 7 in Highgate Springs, Vermont. Customers of the duty-free shop are automobile travelers exiting from the United States. Ammex will deliver duty-free customer purchases by van to the United States-Canadian border where the customer will take possession of the purchase.
2. At the District #6 Environmental Commission proceedings, the applicant's project proposal included a sign that would be visible from the northbound lane of Interstate 89. The District Commission denied the permit application, finding that the proposed sign did not meet the requirements of Criteria 5, 8, and 9(K).

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3. On appeal, the applicant revised the proposed project, eliminating the sign visible from the Interstate. The only **signage** for the proposed project will be Business Directional Signs, approved by the Travel Information Council and a sign at the door entrance to the **duty-free** shop and warehouse, visible to visitors entering the site from Route 7. No signs will be visible from Interstate 89.
4. A second revision of the proposed project on appeal is applicant's acquisition of a one-half acre lot adjacent to the edge of the northbound lane of Interstate 89. The applicant intends to conduct selected clearing on this site to improve the visibility of the facility to northbound travelers. As a result, the applicant will increase, from 70' to 215', the setback of the facility from the edge of the northbound lane.
5. We find that applicant's revisions to the proposed project on appeal do not require the Board to remand the proposal to the District Commission. The revisions of **signage** and location and the purchase of additional land affect no new adjoining property owners nor do they affect criteria not before the Board.
5. Criterion 5 (unsafe highway conditions): If built as proposed, this project will not cause unreasonable congestion or unsafe conditions with respect to highways and area roads. The proposed site is located on a parcel of approximately nine acres between Interstate 89 on the west and north and U.S. Route 7 on the east in Highgate Springs, Vermont. The building will be situated 215' from the edge of the northbound lane of Interstate 89 and 12' below the elevation of the Interstate. Applicant proposes a selective clearing of the landscape viewed from the northbound lane of the Interstate. The setback of the facility together with the selective clearing allow sufficient sight distance for northbound drivers to perceive the facility and to decelerate in a safe manner in exiting from the Interstate (Exhibits 1,5).
7. Criterion 8 (aesthetic impact): If built as proposed, and in accordance with the terms and conditions of the land use permit issued herewith, this project will not have an undue adverse effect on the scenic or natural beauty of the area or on the aesthetics of the site. We make this finding based on the following factors: scale and location of the facility (Exhibits 1,2), the landscaping plan as amended and its maintenance schedule (Exhibit 5), the absence of a sign visible from the Interstate, and modest exterior lighting.

8. Criterion 9(K) (impact on public investments): If built and maintained in conformance with the plans presented and the terms and conditions of the land use permit issued herewith, the proposed project will not unnecessarily or unreasonably endanger the public investment in or materially interfere with the public's use and enjoyment of the scenic corridor of Interstate 89. The Board recognizes the significant value and beauty that the scenic corridor of Interstate 89 represents to Vermont's citizens and to those traveling within our state. The Board seeks to protect this value and beauty under the legislative mandate of 10 V.S.A. §6086(a)9(K). We find that the proposed 215' setback of the facility from the edge of 'the northbound lane of Interstate 89, together with the planned landscaping and maintenance schedule, the absence of signs, the screening of improvements, and the earth-tone color scheme of the shop and warehouse will preserve the public investment, use and enjoyment in the scenic beauty of the Interstate 89 corridor (Exhibits 1,2,3,5).

#### CONCLUSIONS OF LAW

1. We conclude that the proposed project, as revised on appeal, does not require the Board to remand the permit application to District #6 Environmental Commission. In drawing this conclusion, we are guided by the Supreme Court's decision in In re Juster Associates, 136 Vt. 577, 396 A.2d 1382 (1978). In that case, the Court held that the Environmental Board did not have concurrent jurisdiction with the District Commission to consider a permit amendment that included the development of a four-acre parcel not originally reviewed by the District Commission. In that case, the development of the four-acre parcel affected persons who had not participated in the hearings regarding the original permit application. In the instant case, applicant's acquisition of an additional one-half acre adjacent to its proposed site does not affect persons who were not parties at the District Commission proceedings. All parties in the present case were notified of the proposed changes and were invited to make known any objection to the Board's review of them. (Pre-hearing Conference Report, June 30, 1981). Because the expansion of the site is on immediately-adjacent land, the changes involve no new potential parties, and a remand for further review by the District Commission would serve no useful purpose.

Nor is a remand required under the considerations governing our decision in Windsor Improvement Corporation (2S0455-EB, March 27, 1980). In that case, we concluded

that where there is a substantial change in a proposed project's design, affecting criteria not before the Environmental Board on appeal, the proposed project must be remanded to the District Commission. In the instant case, the applicant's revised site plan does not materially affect any other criteria not before the Board in the present appeal; therefore, we conclude that the Board has jurisdiction to review the proposed project as revised.

2. We conclude that the proposed project, as proposed to the Board and limited by the terms and conditions of our Findings of Fact and the permit issued herewith, meets the requirements of Criteria 5, 8, and 9(K) under 10 V.S.A. §6086(a). The District Commission found that the project meets the requirements of the remaining criteria. We therefore grant a permit to the applicant.

Dated at Montpelier, Vermont this 3rd day of August, 1981.

ENVIRONMENTAL BOARD

By: Jan S. Eastman  
Jan S. Eastman  
Executive Officer

Members participating  
in this decision:  
Leonard U. Wilson  
Ferdinand Bongartz  
Melvin H. Carter  
Warren Cone  
Roger N. Miller