

Adrian

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

Re: Robert and Nancy Cioffi
Application #6F0370-2-EB

MEMORANDUM OF DECISION

This decision, dated July 29, 1992, pertains to a stipulation and request for issuance of amended land use permit. The project at issue is a 38-lot subdivision located in the Town of St. Albans. The original application for the subdivision was for 40 lots but development of two of the lots was prohibited by the District #6 Commission pursuant to Land Use Permit #6F0370 because such development would cause an undue adverse effect on an historic site under 10 V.S.A. § 6086(a)(8) (Criterion 8 - historic sites).

The historic site at issue is a barn complex which is on the State Register of Historic Places. See 10 V.S.A. § 6001(9). There are two barns in question. One barn is on the project tract and is owned by Robert and Nancy Cioffi (the Applicants). The other is on an adjacent tract owned by their son, Frank Cioffi.

The Applicants seek to amend Permit #6F0370 to allow development of the two lots. They and the State of Vermont, Division for Historic Preservation filed a stipulation on July 2, 1992. The stipulation provides that all proceeds from development of those lots will go to fund maintenance and repair of the barns. The stipulation also provides that the St. Albans Historic Museum and Society will be allowed to use one of the barns for the display of historic tools and implements. The stipulation further provides that the barn owned by the Applicants will be deeded to their son, who will be required to adhere to the provisions of this Agreement." Nowhere in the stipulation is there a statement that Frank Cioffi will be required to preserve and maintain both barns in their historic condition. Moreover, Frank Cioffi did not sign the stipulation.

The stipulation seeks issuance of amended land use permit. In relevant part, 10 V.S.A. § 6086(a) provides:

Before granting a permit, the board or district commission must find that the subdivision or development: ...

(8) Will not have an undue adverse effect on ... historic sites

(Emphasis added.) Thus, the Environmental Board cannot issue an amended land use permit without making this finding. Instead, the Board has an affirmative duty,

7/29/92

(Docket #534)

Robert & Nancy Cioffi
Memorandum of Decision
Application #6F0370-2-EB
Page 2 (Corrected)

regardless of the position of the Division for Historic Preservation, not to issue a permit without finding that the project will not have an undue adverse effect on a historic site. In order to make the finding, the Board must have sufficient facts in the record to support the finding.

The stipulation does not meet these requirements. While the measures discussed in the stipulation constitute significant steps toward preservation of the barn complex, the stipulation does not contain facts to show why development of the lots will not have an undue adverse effect on the complex. Further, while the stipulation appears to make an attempt to require the person who will own the barn complex to maintain it as an historic site, the language used is not adequate to the task, and that person has not signed the stipulation.

Accordingly, the Board concludes that the stipulation is inadequate to support the issuance of a land use permit amendment. The Board therefore will issue an order which so states and which requires submission within 30 days of an amended stipulation which addresses the inadequacies of the stipulation discussed above. Should parties fail to file such a stipulation, the Board will set a date for hearing in accordance with Chair Elizabeth Courtney's memorandum to parties of April 14, 1992.

ORDER

1. The stipulation filed by the parties is inadequate to support the request to issue a land use permit amendment.

2. Within 30 days of the date this decision is issued, parties shall file an amended stipulation which at least includes the following:

- a. Facts sufficient to demonstrate the development of the two lots at issue will not have an undue adverse effect on the barn complex.
- b. A requirement that Frank Cioffi will preserve and maintain the barn complex as a historic site.
- c. Frank **Cioffi's** signature signifying agreement to such preservation and maintenance.

3. Should the parties fail to file an amended stipulation in accordance with paragraph 2, above, the Board will set a date for hearing in accordance with the Chair's memorandum to parties of April 14, 1992.

Dated at Montpelier, Vermont this 29th day of July, 1992.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Lixi Fortna
Steve, B. Wright

Member Arthur Gibb concurs with paragraphs 2b and 2c above, but dissents with respect to the conclusion that the stipulation is inadequate to support the issuance of an amended land use permit. Member Gibb believes that the stipulation contains facts sufficient to support a finding that development of the two lots meets Criterion 8 (historic sites).

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