

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

*Re: Ingleside Equity Group &
Grice Brook Development Corp.;
St. Albans Cooperative & Maplefields*

Land Use Permit Amendment
#6F0391-7-EB

Findings of Fact, Conclusions of Law, and Order

This proceeding involves an appeal to the Environmental Board (Board) from certain aspects of Land Use Permit Amendment #6F0391-7 (Permit) and accompanying Findings of Fact, Conclusions of Law, and Order (Decision), issued by the District 6 Environmental Commission (Commission) to Ingleside Equity Group & Grice Brook Development Corp., St. Albans Cooperative & Maplefields (Ingleside). The Permit authorizes the construction of a 20,000 sq. ft. commercial building and the creation of a 5.03-acre lot on lands west of Exit 19 of I-89 and east of Route 104 in St. Albans, Vermont (Project).

I. History

On March 12, 2003, the Commission issued the Permit and the Decision to Ingleside.

On April 11, 2003, Ingleside filed an appeal to the Board from the Permit and Decision, alleging that the Commission erred in certain findings, conclusions, and permit conditions.

On May 13, 2003, Board Chair Patricia Moulton Powden convened a Prehearing Conference and on May 16, 2003, the Chair issued a Prehearing Conference Report and Order.

Hearing was held in St. Albans on August 6, 2003 with Ingleside, by Samuel and Rachel Smith, and the Agency of Natural Resources (ANR) by Elizabeth Lord, Esq. and Gina Campoli, participating.

At the August 6 hearing, the Board indicated its intention to request that Ingleside provide further information and details about its Project that the Board believed to be necessary in order for it to determine whether Ingleside has satisfied the requirements of Condition 20(f) of Land Use Permit #6F0391 as it relates to the Project. The Board therefore recessed the hearing in order to await the receipt of the information.

On August 27, 2003, the Board deliberated on this case.

On September 9, 2003, the Board issued a Recess Memorandum in which it requested Ingleside to provide to the parties a list of those elements of the Project (in the form of descriptions, site plans and maps) which it believed necessary to review in order for the Board to be able to determine the Project's compliance with Condition 20(f).

In its *Recess Memorandum Response*, filed with the Board on November 26, 2003, Ingleside provided further information about its Project.

ANR filed a response to Ingleside's filings on December 29, 2003.

The Board deliberated on this matter on January 21, 2004. Following a review of the evidence and arguments presented, the Board declared the record complete and adjourned. This case is now ready for decision.

II. Findings of Fact

1. Ingleside has provided the Board with information as to the specifics of all buildings to be constructed on the South Central Parcel (SCP) (including square footage, total number, height, locations and general architectural details), landscaping and greenspaces, parking areas, lighting, pedestrian and vehicular linkages, and signage.

2. ANR has requested that Ingleside provide further details (including elevations or narrative) about the buildings proposed for the Project site.

III. Conclusions of Law

Condition 20(f) of Land Use Permit #6F0391-EB states:

Prior to the further development or subdivision of the Permittees' land, the Permittees shall submit to the District Commission, for review and approval, a conceptual master plan that incorporates at least the following:

- f) the master plan shall reflect a good faith attempt to create a favorable visual statement of the Applicants' land.

In its Decision, the Commission concluded that the information provided to it by Ingleside was inadequate to allow the Commission to determine that further development of the SCP (where the Project is located) would conform to the requirements of Condition 20(f). Therefore, the Commission took it upon itself to "fill in the missing pieces," and it set forth eight provisions and limitations on future development of the SCP. With these restrictions in place, the Commission was then able to issue a Permit for the Project. *Decision* at 7 - 8; *Permit*, Condition 8. See, *In re Alpen Associates*, 147 Vt. 647 (1986) (conditions allow issuance of a permit for a project which would, were not the conditions in place, otherwise be denied); accord, *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 23 (Apr. 9, 2002); *In re McDonalds's Corp and Murphy Realty Co., Inc.*, #100012-2B-EB, Findings of Fact, Conclusions of Law, and

Order at 15 (Mar. 22, 2001). It is to these eight restrictions that Ingleside objects.

Board also found the information which Ingleside initially provided on appeal to be insufficient to meet Condition 20. It therefore requested further details about Ingleside's future development of the SCP, which Ingleside has now provided.

The Board has considered all of the information which Ingleside has submitted (in its prefiled testimony, its evidence at the hearing and its post-hearing submissions) about its proposed future plans for the SCP. The Board has also considered ANR's request for additional information from Ingleside.

The Board concludes that the information provided by Ingleside adequately addresses the Board's September 9 request. When considered in its totality, the information provided by Ingleside is sufficient to allow the Board to make a positive finding that Ingleside's Project will satisfy the requirements of Condition 20(f) of Land Use Permit Amendment #6F0391, as the Condition relates to the Project.

In order to ensure that further development on the SCP conforms to the requirements of Condition 20(f), the Board will incorporate Ingleside's November 26, 2003 *Recess Memorandum Response* into a Land Use Permit to be issued this date.

IV. Order

1. Land Use Permit Amendment #6F0391-7-EB is issued.
2. Jurisdiction is returned to the District 6 Environmental Commission.

Dated at Montpelier, Vermont this 23rd day of January 2004.

ENVIRONMENTAL BOARD

 /s/Patricia Moulton Powden
Patricia Moulton Powden, Chair
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