

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

RE: J. Philip Gerbode
Land Use Permit #6F0396R-EB-1

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated January 29, 1992, pertains to an appeal filed with the Environmental Board by J. Philip Gerbode (Applicant) on June 7, 1990 from the decision of the District #6 Environmental Commission denying a land use permit for the subdivision of a 77-acre tract of land into 10 industrial and light commercial lots (known as the Franklin Business Park) and a 4,600-foot access road. The project is located off Highgate Road in the Town of St. Albans, Vermont.

On March 25, 1991, the Board issued a decision pursuant to Rule 21 that made findings relative to Criteria 5, 8, 9(K), and 10 and found that the project complies with Criteria 5 and 10. Those findings are binding and are incorporated into this decision.

The Board concludes that the project complies with 10 V.S.A. § 6086(a)1(B) (waste disposal), 2 (sufficient water available), 3 (burden on existing water supply), 5 (traffic), 8 (aesthetics, scenic or natural beauty), 9(K) (public investments and facilities), and 10 (local plan).

I. SUMMARY OF PROCEEDINGS

This application was originally denied by the District Commission on December 20, 1988. The Applicant appealed to the Board, but because the Applicant had substantially revised its application since consideration by the District Commission, the Board dismissed the appeal to allow review of the modified application by the District Commission.

The Applicant filed an application for reconsideration with the District Commission on February 2, 1990. After the hearing, the District Commission issued a decision dated May 11, 1990 denying the application for failure to comply with 10 V.S.A. § 6086(a)1(B) (waste disposal), 2 (sufficient water available), 3 (burden on existing water supply), 5 (traffic), 8 (aesthetics, scenic or natural beauty), 9(K) (public facilities), and 10 (local plan).

The Applicant appealed the District Commission's decision with respect to the above-listed criteria. The Town of St. **Albans** (Town) filed an appeal with respect to the District Commission's decision on the project's conformance with the local plan under Criterion 10.

The Applicant requested the Board to review the project under Criteria 5, 8, P(K), and 10 before proceeding on Criteria 1(B), 2, and 3, pursuant to Board Rule 21; no other parties objected and the request was granted. The Board convened a public hearing on September 26, 1990; participating were the Applicant by Richard A. Spokes, Esq. and the Town by Joseph F. Cahill, Jr., Esq. Subsequent to the hearing, the Applicant and the Town filed proposed findings of fact and conclusions of law. The Applicant also submitted a revised Declaration of Covenants to substitute for Exhibit #A-11 and prints of the slides used at the hearing and admitted as Exhibit #A-17. The Town and the St. **Albans** Planning Commission (Planning Commission) filed a memorandum of law.

After conducting deliberative sessions on November 29, 1990, January 23, 1991, and March 6, 1991, the Board issued a decision on March 25, 1991. In that decision, the Board issued affirmative findings and conclusions on Criteria 5 and 10 and requested additional information on Criteria 8 and P(K). This decision incorporates and supersedes the March 25 decision.

An administrative hearing panel of the Board convened a public hearing on July 18, 1991 concerning Criteria 1(B), 2, and 3. Subsequent to the hearing, the Applicant filed a revised Declaration of Covenants (Exhibit #G-19A) and copies of a Water Supply and Wastewater Disposal Permit dated September 6, 1991 (Exhibit #G-25); a Subdivision Permit dated September 6, 1991 (Exhibit #G-26; and a Deferral of Permit dated September 6, 1991 (Exhibit #G-27).

A proposed decision was sent to the parties on December 6, 1991, and the parties were provided an opportunity to file written objections, and to present oral argument before the full Board. No other party submitted objections to the proposed decision or requested the opportunity for oral argument. The Board deliberated concerning this matter on December 19, 1991. On December 19, 1991, following a review

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town plan under Criterion 10.

In a de novo proceeding, the Board does not review the actions or method of reaching a decision of a district commission, but only reviews a project for compliance with the criteria raised on appeal. 10 V.S.A. § 6089(a). Therefore, the Board will not review the District Commission's actions with regard to this application.

The issues for the Board's resolution are:

1. Whether a district commission or the Board must accept an applicant's local site plan approval and zoning permit as satisfying the applicant's burden with respect to the town plan portion of Criterion 10.
2. Whether the project complies with Criteria 1(B), 2, 3, 5, 8, 9(K), and 10.

III. FINDINGS OF FACT

A. Description of the Project

1. The project consists of the subdivision of 10 lots for industrial and light commercial purposes on a 77-acre tract of land in St. Albans Town. Three lots will be set aside for agricultural purposes.
2. The project will be located on the north side of Interstate 89 at Exit 20. The site is bounded on the north by the St. Albans and Swanton boundary, on the south by the Interstate, on the east by the Central Vermont Railroad, and on the west by Vermont Route 207.
3. A 4,600-foot access road will be constructed along the northern border of the site to provide access to the lots. The project will be served by municipal water and sewer.

B. Criteria 1(B) (waste disposal), 2 and 3

4. The project will connect to the St. Albans City wastewater treatment facility and will use St. Albans City water. Existing municipal sewage and water lines will be extended to the project. Three pump stations, each serving an individual development cluster, will be constructed and will connect to a common six-inch diameter pvc pressure sewer. The route of the sewer line has been shifted from its original location near the Eveready Battery Corporation property boundary to approximately 750 feet north of this boundary to place it beyond the approximate boundary of a groundwater contamination plume emanating from the Eveready Battery plant. Construction plans are being reviewed by the Hazardous Waste Division of the Agency of Natural Resources to ensure that the contamination is avoided during construction. The Applicant will pay for the construction of the sewer line, pumping stations, and water main; the City of St. Albans will own and maintain them.
5. As of March 26, 1991, the treatment facility had an uncommitted reserve capacity of 362,632 gpd. The City has approved a water and wastewater allocation of 33,500 gallons per day based upon the following uses:

Light Industrial and Administrative (750 employees) - 11,250 gpd; Motel, 100 units (plus employees) - 15,500 gpd; and Restaurant, 150 seats - 6,750 gpd.

6. The water line extension will not affect any of the existing users of the City's distribution system.
7. The Applicant has received the following permits relative to waste disposal and water supply for the project: 1) Discharge Permit #1-0766 dated July 5, 1990 authorizing stormwater runoff; 2) Wastewater Disposal Permit #WW-6-0145 dated September 6, 1991 approving construction of the water main extension and connection to the St. Albans wastewater treatment facility for a maximum of 33,500 gallons per day; 3) Subdivision Permit #EC-6-1612 dated September 6, 1991 for subdivision of Lots 3 and 4.
8. There are several intersections in the vicinity of the project: Vermont Route 207 meets U.S. Route 7 just south of Exit 20 of the Interstate; two Interstate access ramps intersect with Route 207; and the Franklin Business Park access road intersects with a driveway that provides access to a business directly across Route 207 called Pedigree U.S.A. The Franklin Business Park access driveway will be located approximately 500 feet to the north of the Interstate exit ramp.
9. The Applicant conducted a traffic study to determine existing traffic conditions, to estimate traffic to be generated by the Franklin Business Park, to determine the effect the additional traffic will have on existing conditions, and to consider what highway design improvements would be necessary to accommodate the additional traffic.
10. Traffic counts were conducted on the afternoon of Friday, October 27, 1989, a warm and sunny day, at the two Interstate access ramp intersections and the intersection of Route 207 with Route 7. The traffic counts were adjusted by a factor of 1.094 for design hour volume conditions and by a factor of 5.4 percent per year to account for growth in traffic not including traffic from the Franklin Business Park.

11. The growth rate of 5.4 percent a year takes into account traffic which might result from an expansion to the Highgate Commons Shopping Center or other possible projects of similar size. The only major project in the area that has received all its permits but which has not been built is the Champlain Greyhound Park. Most of the traffic from the Greyhound Park will occur on weekends and after 5:30 p.m. on weekdays.
12. Most of the traffic from the Franklin Business Park will occur during the morning and afternoon peak hours. The afternoon peak hour is from 4:15 to 5:15 p.m.
13. Level of Service (LOS) A means "little or no delays," B means "short delays," C means "average delays," D means "long delays," E means "very long delays," and F means "extreme delays."
14. Without the Franklin Business Park, the LOS at the intersections referred to above are:

<u>Intersection</u>	<u>Movement</u>	1990 <u>No Build</u>	1995 <u>No Build</u>
Driveway	Exit Right	N/A	N/A
	Exit Left	N/A	N/A
	Enter Left	N/A	N/A
Northbound Ramps	Exit Right	A	A
	Exit Left	C	E
	Enter Left	A	A
Southbound Ramps	Off-Ramp	A	A
	Enter Left	A	A
Rt 7/Rt 207	Right from Rt 207	A	A
	Left from Rt 207	E	F
	Left from Rt 7	A	A

15. Afternoon peak hour trip generation rates were calculated for the proposed office, industrial, motel, and restaurant uses based on figures published in the book, Trip Generation, 4th edition, published by the Institute of Transportation Engineers. A traffic count at a similar facility was done for the convenience store/gas station combination because such information is not contained in Trip Generation. The following

uses were assumed for purposes of the estimated trip generation numbers: Cluster 1: 100-room motel, 150-seat restaurant, and convenience store with gas pumps; Clusters 2 and 3: a mix of commercial and industrial uses. The middle category for trip generation at the restaurant was used, which assumes 80 peak hour trips. If the restaurant were fast-food, there would be several times as many trips during the peak hour. It was assumed that the maximum employment totals will be reached and that no trips will be from one use in Franklin Business Park to another. Total employment for each cluster was estimated at 300 persons for Cluster 1 and 450 persons for Clusters 2 and 3. At full build-out, the number of afternoon peak hour trips will be 665.

16. If full build-out of the project were to occur by 1995, the LOS at each intersection would be:

<u>Intersection</u>	<u>Movement</u>	<u>1995 Build</u>
Driveway	Exit Right	A
	Exit Left	F
	Enter Left	A
Northbound Ramps	Exit Right	A
	Exit Left	F
	Enter Left	B
Southbound Ramps	Off-Ramp	E
	Enter Left	B
Rt 7/Rt 207	Right from Rt 207	A
	Left from Rt 207	F
	Left from Rt 7	A

17. In order to accommodate the additional traffic from the Franklin Business Park, certain improvements will be necessary at the Interstate access ramps, the Route 7 and Route 207 intersection, and Franklin Business Park and Pedigree U.S.A. driveways. Prior to the construction of any improvements on any of the lots, a southbound left turn lane on Route 7 shall be constructed. Once the traffic warrants are met at the Interstate access ramps and the intersection of Routes 7 and 207, no further construction on or occupancy of any of the

lots will take place. When the Franklin Business Park generates 532 afternoon peak hour trips, a separate right turn lane into the project will be constructed.

18. If all the improvements described in Finding 13, above, are implemented, the LOS at each of the affected intersections will be:

<u>Intersection</u>	<u>Approach</u>	<u>1995 No Build</u>	<u>1995 Build</u>
Northbound Ramps	Rt 207 NB	B	B
	Rt 207 SB	B	B
	NB Off-Ramp	B	B
	Overall	B	B
Southbound Ramps	Rt 207 NB	B	B
	Rt 207 SB	B	B
	SB Off-Ramp	B	B
	Overall	B	B
Rt 7/Rt 207	Rt 7 NB	B	B
	Rt 7 SB	B	B
	Rt 207	C	C
	Overall	B	B

19. The Applicant agrees that the number of afternoon peak trip hours may not exceed 665 without the issuance of a land use permit amendment.
20. The Applicant agrees that each amendment application for development of a lot at the Franklin Business Park will include updated traffic counts at the two Interstate access ramps, the intersection of Routes 207 and 7, and the Franklin Business Park/Pedigree U.S.A. driveways, and will also include the estimated afternoon peak hour trips to be generated by the prospective uses, together with a determination of whether any of the traffic thresholds at the affected intersections have been met or will be met with the new uses. If any such thresholds have been met, prior to construction of any new uses, the Applicant will file a certification with the District Commission stating that the permits for any necessary improvements have been obtained.

C. Criterion 8 (aesthetics, scenic or natural beauty)
Criterion 9(K) (public investments and facilities)

21. The project site is relatively flat, sloping gently up from west to east. A natural berm is located roughly in the center of the site on proposed Lots 4 and 5 approximately 15 feet high and 900 feet long adjacent and parallel to the Interstate. The land consists mostly of hayfields and wet areas, with several mature deciduous trees located around the houses near Route 207 and a grove of approximately 40-foot evergreen trees situated on proposed Lot 8.
22. The site is bounded on the south by Interstate 89; on the east by the Central Vermont Railroad which adjoins additional acreage of flat, agricultural fields and meadows; on the west by the Interstate and Vermont Route 207; and to the north by the Swanton Town line which adjoins more acres of flat, agricultural lands.
23. The Interstate rises up approximately 35 feet from the site to pass over the railroad tracks at the southern boundary. Thus, in the area where Lots 8, 9, and 10 are proposed, the Interstate is significantly higher than the site.
24. The project site is located in a mostly flat, expansive landscape of open agricultural fields and meadows. The foothills of the Green Mountains end southeasterly of the site, leveling out to a plane which extends north to the St. Lawrence River. Views of the Adirondack Mountains in New York and Lake Champlain are visible to the west.
25. The northern side of the Interstate in this location remains primarily in agricultural use, except for the Pedigree U.S.A. building on Route 207 directly across from the Franklin Business Park site. Commercial development is located on the southern side of the Interstate, at the intersections of Routes 207 and 7, consisting of a medium-sized shopping center, a drive-in theater, and fast food franchises.
26. From the northbound lane of the Interstate, distant views across the site consist of flat open fields broken by hedgerows extending from the foreground to the horizon. Brief glimpses of Lake Champlain and the

Adirondack Mountains can be seen in the distance to the west through the Interstate corridor, but these views are **visible** only at the high point where the Interstate rises over the railroad tracks. The midground view includes commercial and residential development around Exit 20.

27. From the southbound lane of the Interstate, distant views across the site terminate at a ridgeline of hills approximately two miles to the east. The midground consists primarily of flat open fields and wooded areas.
28. Views of the hills to the east are visible throughout the 50-second drive past the Business Park sites, although Lots 8, 9, and 10 in the fore- and midground will be obscured by the raised grade of the Interstate as it crosses the railroad tracks.
29. The landscape surrounding Exit 20 is part of the level St. Lawrence River Valley landscape extending from St. Albans to the St. Lawrence River 60 miles to the north. This wide expanse of level farmland is not typical of the topographically more varied landscape normally associated with Vermont scenery.
30. Most of the site is visible from the Interstate as well as from Route 207. Development of the site will alter the visual experience of travelers on the Interstate.
31. The Franklin Business Park has been designed to minimize the visibility of the development by siting the buildings to take advantage of the mitigating features located on and adjacent to the site. The Business Park will consist of three clusters of development in the least visually sensitive areas of the site. Covenants will require that Lots 3, 6, and 7 be devoted only to agriculture and open space uses and that view corridors to the distance are provided and retained. The existing berm provides some screening of Lots 4 and 5 from automobiles passing directly adjacent to the lots. The grade of the Interstate where it rises up approximately 35 feet to pass over the railroad tracks is well above the grade of the site along Lots 8, 9, and 10. Existing evergreen trees further screen Lot 8 from the Interstate. From the southbound lane, these lots cannot be seen at all. The

area along Route 207 is clearly visible from the Interstate but has an existing pattern of farm and residential structures.

32. The Applicant has proposed covenants that require design standards for the park as a whole and define a general character for each of the three building clusters.
33. Lots 1 and 2 will consist of a hotel and restaurant and commercial cluster located in the general location of two existing buildings. These existing buildings will be removed and the cluster will be designed as a traditional farmstead with buildings defining a working courtyard. This courtyard will provide a parking area, and the surrounding buildings will screen the parked cars from the Interstate. The three buildings in this cluster will be, respectively, 40,000, 6,000, and 1,000 square feet and will be primarily wood or masonry, with dark colored roofs with a minimum pitch of 5.4:12. The buildings will conform to the architectural style and site layout of farm structures in the area. Parking spaces for 204 vehicles are designated on the site.
34. Lots 4 and 5 will consist of an office and incubator and warehouse complex of four buildings, and may also contain a commercial component. The four buildings will be 10,000 square feet each, with room for an additional 50,000-square foot expansion in the cluster. Parking spaces for 200 vehicles are planned, with room for expanded parking in the future. The berm on the southern boundary of these lots will provide some screening of this cluster from the Interstate, and the Covenants require that the trees on the berm must be augmented, if necessary, to ensure sufficient screening from the Interstate. The Covenants also require that clusters of native evergreen and deciduous trees must be planted near the buildings on the northwest boundary of Lot 4 and along the stream on the northeast boundary of Lot 5 to further screen and soften the appearance of the buildings from the Interstate. At least 40 percent of the building exteriors must be masonry or wood. Earthtone colors that will blend in with the surrounding hayfields will be required for the buildings. The Covenants further require that the roofs may not break the horizon line of the hills to the southeast. Parking and loading docks will be concealed within the

enclosure of the buildings and proposed landscaping. The cluster is designed to reflect a form similar to town and farm clusters.

35. Lot 8 will consist of a light industrial, storage, distribution, and light manufacturing facility. The building will be 30,000 square feet, with room on the site for an expansion of 20,000 square feet. Parking will be provided for 43 vehicles, and an area is designated for parking expansion. Parking and loading areas will be screened from the Interstate by the buildings. The higher grade of the Interstate adjacent to Lot 8 and the existing grove of evergreen trees which will be preserved will help shield buildings from the Interstate. Any deciduous trees on the lot west and south of the building site larger than 6-inch caliper will be preserved and maintained to the extent possible. Clusters of native evergreen and deciduous trees will be planted on the west side of the building to soften the appearance of the buildings from the Interstate.
36. Lots 9 and 10 consist of light industrial uses. Two 60,000-square foot industrial buildings are planned on this site, with an additional 30,000-square foot future expansion for each building. Parking spaces for 168 vehicles are provided. The siting of the buildings for these lots is based on the visual screen provided by the 35-foot high railroad overpass. The existing evergreen trees on Lot 9 will be preserved and maintained. The buildings will be located close to the Interstate embankment to take advantage of the natural screening.
37. The interior access road will extend for 4,600 feet in a straight line beginning at Route 207 along the northern boundary of the site and terminating in a cul-de-sac at Lot 9 with a short driveway into Lot 9. Access to Lot 10 is gained by a drive leading from the cul-de-sac. Lots 1 and 2 will each have one curb cut; Lots 4 and 5 will share a curb cut, and Lot 8 will have two curb cuts.
38. The Covenants require that the buyer of each lot must obtain approval from the Applicant for the design and construction of improvements on the lot, including architectural elevations and material specifications

for the structures; a site plan showing the location of all site improvements; a landscaping plan including a detailed plan of proposed plantings; and an exterior lighting plan. The Covenants also require that the undeveloped lots remain undeveloped; that all parking lots and loading docks shall be located in such a manner to minimize their visibility from the Interstate; that all garbage dumpsters, propane tanks, and other storage tanks shall be screened from the Interstate by fencing, walls, or trees which are integrated into the overall site and building designs; and that all utilities shall be underground.

39. With respect to the design of the buildings, the Covenants prohibit any building from having a blank, unbroken elevation visible from the Interstate, and that other steps be taken to break up the visual monotony of an uninterrupted wall surface. No structures are allowed to be higher than 35 feet. Roofing and siding colors must be consistent and coordinated within each development cluster. Non-reflective, light earthtone colors which blend with the spring and fall colors of the surrounding hayfields are preferred, and white, primary colors, shades of blue, and very dark colors are prohibited. All roofs must be dark colored and non-reflective.
40. The Covenants require all exterior lighting to be designed to avoid off-site impacts and fixtures to be of concealed lamp design with shielding of direct lamp exposure to be 45 degrees below horizontal. Parking lots fixtures may be no more than 25 feet from ground level and other outdoor fixtures may be no more than 20 feet from ground level. Building mounted security lighting fixtures may not project above fascia or roof lines.
41. The Covenants require that signage and other means of identification be architecturally compatible with other improvements on the lots. The Covenants also provide that externally lit signs must be lighted to avoid direct glare of the lamp or fixture; that floodlighting may not exceed the actual area of the sign; that free-standing signs may not be pole mounted and may not exceed a height above a grade of eight feet; and that

no sign or other means of identification may be erected or maintained in such a location to be readable primarily from Interstate 89.

42. An Open Space Plan has been developed that includes a landscaping plan for the Franklin Business Park including the internal roadway and the individual lots. Immediately after constructing the roadway, the Applicant will plant eighty-two 2"-2½" caliper trees to soften and interrupt the linear visual appearance of the road. The Applicant has proposed to plant 31 red maples in the vegetative buffer zones along the stream, and 51 green ashes for street trees adjacent to the building clusters. No trees will be planted along the boundary of the internal roadway and the open space lots in order to allow visual continuity between those lots and the adjoining fields to the northeast.
43. The Covenants provide detailed standards for landscaping of individual lots. These include that the amount spent for landscaping plantings on each lot must be at least three percent of the first \$500,000 of total development cost projected for the lot and one percent of the total development cost in excess of \$500,000 but less than \$3,000,000 projected for the lot, and one-half percent of the total development cost equal to or in excess of \$3,000,000 projected for the lot. Credit will be given for the monetary value of existing vegetation and topographical features improved or used by a lot owner. The Covenants also require that landscaping and lawns must be completed and installed contemporaneously with the completion of buildings and other improvements unless precluded by the weather, in which case the landscaping and lawns must be installed as soon as weather permits. Each lot owner is required by the Covenants to maintain all landscaping on his or her lot and must replace any diseased trees, shrubs, or other landscaping; to leave all non-paved areas as a hay field or put in a lawn or other appropriate ground cover; to maintain open areas contiguous to the open-space lots in their existing state with periodic hayings or cuttings; and to plant cold-hardy shade trees with a minimum caliper width of 2 to 2.5 inches throughout the parking areas in sufficient numbers and spacing to provide ample shade and screening. Trees will be planted no farther apart than 40 feet on center. Planting strips in parking areas are required by the covenants to be a minimum of six feet wide with deep uncompacted soils to ensure healthy tree growth; newly planted trees must be properly staked, mulched, and watered until well established; and tree species suited to parking area conditions must be selected and placed in an orderly and consistent manner.

44. The Covenants also provide that the Applicant shall give each lot purchaser a copy of the Open Space Plan (Exhibit #G-18) and that each lot purchaser shall include in its application for a land use permit amendment a landscaping plan that reflects the concept shown on the Open Space Plan.

D. Criterion 10 (local plan)

45. The Town of St. Albans' Town Plan became effective on October 20, 1987. Under the provisions of the Plan, this project is located in a commercial/industrial land use planning district.

46. Goals and policies for each land use planning district are identified in the Plan. Specific provisions in the Plan concerning the commercial and industrial districts include the following:

(a) C. SPECIFIC LAND USE DISTRICTS

. . .

2. Commercial

. . .

Strip commercial development along highways will be discouraged, in favor of consolidated access points, to minimize traffic hazards and maintain smooth traffic flows. The review of commercial development must ensure adequate parking, and should reasonably promote efficiency and attractiveness for signs and site design

. . .

3. Industrial

These districts encompass the existing industries, as well as adjacent areas for expansion and new industries, to provide increased tax base and employment opportunities. These areas contain the native site characteristics desired by industries, including rail and major highway facilities and the potential for reasonably-economic servicing with water

and sewer. Because of these unique characteristics, these sites should be protected from loss to residential and other less-valuable uses. . . .

(b) GOALS AND POLICY IN BOTH COMMERCIAL AND INDUSTRIAL DISTRICTS:

. . .

POLICY: To encourage appropriate industries in suitable locations which will utilize the skills of the local labor force.

POLICY: To promote the clustering of related and compatible commercial uses and to discourage strip commercial development along highways.

. . .

Commercial uses are encouraged in specified districts. Any commercial or industrial development proposed for St. Albans should be in keeping with the rural character of the Town. It is desirable for this type of development to locate in a single, central location rather than lining the edges of the main thoroughfares. . . . Industrial development should be of small to medium scale so as not to create traffic congestion, pollution or other inappropriate aspects.

47. The Town Plan contains the following general objectives pertinent to this project:

1. A FIRST OBJECTIVE OF THIS PLAN IS TO PROVIDE FOR CONTROLLED AND ORDERLY GROWTH OF THE TOWN, AT A RATE SLOW ENOUGH THAT ST. ALBANS' DOMINANT "SMALL TOWN" AGRICULTURAL RURAL CHARACTER IS MAINTAINED.

2. IT IS THE SECOND, FUNDAMENTAL OBJECTIVE OF ST. ALBANS TOWN TO PROTECT THE RURAL NATURE OF THE TOWN.

Every effort should be given to the maintenance and furtherance of agricultural enterprises in St. Albans. Agricultural land will be protected.

48. The Zoning Administrator of the Town of St. Albans believes the project conforms with the Town Plan. The chairman of the Town Zoning Board of Adjustment, who is also a previous member of the Town Planning Commission and who participated in the hearings to adopt the Town Plan, believes that the project conforms with the Town Plan. The Selectboard of the Town of St. Albans also believes that the project conforms with the Town Plan.

IV. CONCLUSIONS OF LAW

A. Proof Under Criterion 10

The Town argues that 24 V.S.A. § 4472 provides that the appeal process **established** in that section is the exclusive remedy for enforcement of 24 V.S.A. Ch. 117. The Town contends that if an applicant produces evidence of compliance with a town plan and zoning bylaws, and if no appeal has been successfully pursued under 24 V.S.A. § 4472, the applicant has met its burden of showing compliance with the municipal plan under Criterion 10 of Act 250.

Act 250 requires that prior to issuing a permit, the district commission or Board shall find that the project complies with the ten criteria. 10 V.S.A. § 6086(a)(1)-(10). The district commissions and Board are required to make findings of fact and conclusions of law on all the criteria based upon all the evidence. 3 V.S.A. § 809. Although 10 V.S.A. § 6086(d) authorizes the Board to adopt a rule under which approval of a project by a municipality would constitute a presumption of compliance with Criterion 10 of Act 250, such a rule has not been adopted by the Board. While the Board considers opinion testimony from towns and other parties concerning whether a particular project conforms with the town plan, the town plan itself is the evidence and the Board must make its independent judgment. Identification of specific provisions within town plans which support parties' positions is helpful to the district commissions' and Board's consideration. However, ultimately the obligation of making independent findings is on the district commissions and the Board. Moreover, although zoning bylaws are supposed to implement the policies in a town plan, they do not always do so. See Kalakowski v. John A. Russell Corporation, 137 Vt. 219, 225-26 (1979). Thus, an approval by a planning commission or zoning board does not necessarily mean that a project conforms with the plan.

B. Criteria 1(B), 2, and 3

Criterion 1(B) requires an applicant to demonstrate that **its** project "will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells." 10 V.S.A. § 6086(a)(1)(B).

Criterion 2 requires an applicant to demonstrate that a project has "sufficient water available for the reasonably foreseeable needs of the subdivision or **development.**" 10 V.S.A. § 6086(a)(2).

Criterion 3 requires an applicant to demonstrate that its project "[w]ill not cause an unreasonable burden on an existing water supply, if one is to be utilized." 10 V.S.A. § 6086(a)(3).

Board Rule 19 provides that certain permits from other state agencies may create a presumption of compliance with specific Act 250 criteria. The Applicant submitted Discharge Permit #1-0766, Wastewater Disposal Permit #WW-6-0145, and Subdivision Permit #EC-6-1612 as presumptions that the project complies with Criteria 1(B) and 2. The Board accepts these permits as compliance with these criteria.

The Board also concludes that Criterion 3 is satisfied because the extension of St. Albans City water will not affect any other users of the system.

C. Criterion 5

Criterion 5 requires the Board to examine whether a project will cause unreasonable congestion or create unsafe conditions with respect to traffic. A permit may not be denied for failure to comply with Criterion 5, but reasonable conditions and requirements may be attached to alleviate the burdens created. 10 V.S.A. § 6087(b).

The evidence is undisputed that when this project is fully constructed and occupied, the level of service will deteriorate to F at the following intersections: left turns from Route 207 onto Route 7, left turns from the northbound Interstate ramp, and left turns onto Route 207 from the project's access road. The Applicant has proposed a number of conditions to accommodate the traffic generated from the Franklin Business Park and to alleviate the traffic

congestion that the project will cause. These are described at Findings #17 and 20, above, and will be incorporated in the permit as conditions.

Based upon the evidence and the permit conditions, the Board concludes that the project complies with Criterion 5.

D. Criteria 8 and 9(K)

10 V.S.A. § 6086(a)(8) requires that, prior to issuing a permit, the Board find that a proposed project "will not have an undue adverse effect on the scenic or natural beauty of the area, [or] aesthetics" When evaluating the visual impact of a project, the Board follows the two-step process enumerated in Re: Ouechee Lakes Corporation, Findings of Fact and Conclusions of Law #3W0411-EB and 3W0439-EB (Nov. 4, 1985). First, the Board determines whether the project will have an adverse effect. This requires the Board to evaluate whether the proposed project will be in harmony with its surroundings, or will "fit" the context within which it will be located, by considering the following factors:

- 1) What is the nature of the project's surroundings? Is the project to be located in an urban, suburban, village, rural or recreational resort area? What land uses presently exist? What is the topography like? What structures exist in the area? What vegetation is prevalent? Does the area have particular scenic values?
- 2) Is the project's design compatible with its surroundings? Is the architectural style of the buildings compatible with other buildings in the area? Is the scale of the project appropriate to its surroundings? Is the mass of structures proposed for the site consistent with land use and density patterns in the vicinity?
- 3) Are the colors and materials selected for the project suitable for the context within which the project will be located?
- 4) Where can the project be seen from? Will the project be in the viewer's foreground! middleground or background? Is the viewer likely to be stationary so that the view is

of long duration, or will the viewer be moving quickly by the site so that the length of view is short?

- 5) What is the project's impact on open space in the area? Will it maintain existing open areas, or will it contribute to a loss of open space?

Id. at 18.

The Board concludes that the proposed project will have an adverse scenic and natural beauty.

The context of this project consists primarily of open space. Large expanses of open agricultural fields and meadows are visible from the Interstate and Route 207. In contrast to the "typical" Vermont landscape of farmland

foreground,

1)

set forth in the local or regional plan, or be adopted in the creation of an historic design district, or be incorporated into a municipal or State scenic road designation. If the Board ... finds that such standards do exist, and that the project as designed would violate those standards, the adverse impact would be undue.

- 2) Does the project offend the sensibilities of the average person? The Legislature has directed ... this Board, composed of lay people from many different communities within Vermont, to determine what is acceptable in terms of new developments' impact on aesthetics and scenic and natural beauty. If our sensibilities are, collectively, offended by a project, its impacts under Criterion 8 are undue.-,- It is not enough that we might prefer to see a different design or style of building, or that we might prefer-a different type of land use, but that the project, when viewed as a whole, is offensive or shocking, because it is out of character with its surroundings, or significantly diminishes the scenic qualities of the area.
- 3) Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings? Such steps may include selection of less obtrusive colors and building materials, implementation of a landscaping plan, selection of a less obtrusive building site within the project area, or reduction of the mass or density of a project. If there are reasonable alternatives available to the Applicant that would mitigate the adverse impact of the project, failure to take advantage of those alternatives may, in some circumstances, render undue any other acceptable aesthetic impact.

Id. at 19-20.

With regard to the first question, no evidence was provided of any clear, written community standard intended to preserve the aesthetics and scenic beauty of the area. The St. Albans Town Plan does not address the preservation of aesthetics and scenic beauty.

Concerning the second question, the Board concludes that the adverse visual effect of this large industrial/commercial development located in this area of open fields will not be shocking and that the project will not significantly diminish the scenic qualities of the area to the extent that it will offend our sensibilities. We reach this conclusion largely because some commercial development already exists in the area and is visible from the Interstate, and because the site is located at an interstate exit, where some commercial and industrial development, including services for interstate travelers, would be expected.

The third question, concerning steps taken by the Applicant to reduce the adverse visual effect, is also answered in the affirmative. The Applicant has gone to great lengths to design this project to minimize its visibility. An attempt has been made to use and enhance the existing berm to provide some screening of Lots 4 and 5, and existing large trees on the site will be maintained for screening of other areas. Protective Covenants require that parking areas be located within building clusters; that building designs be compatible with the rural character of the area, that building colors blend in with the surrounding **hayfields**; that roof colors not be black and roof lines not **break the horizon**; and that extensive landscaping and buildings be designed to break up the mass of the buildings on all lots. Some of the buildings have been sited below the rising part of the Interstate to reduce their visual intrusion into the view from the Interstate; the open space between building clusters is also designed to provide a softening of the effect of the development.

Moreover, a landscaping plan has been submitted that requires the planting of 82 trees in clusters along the **internal roadway**. The Board believes that these tree clusters will help alleviate the adverse visual effect of the long, linear roadway, but that there should be more diversity than the two species proposed by the Applicant, and there should be some evergreens planted to provide some screening in the wintertime. The Board will therefore require at least five different species of cold-hardy deciduous and evergreen trees be planted as indicated on the Open Space Plan (Exhibit #G-18).

In order to ensure that the landscaping of each lot is appropriately implemented to achieve the intended screening, the Board will require that a copy of the Open Space Plan (Exhibit #G-18) be given to each lot purchaser with

instructions to provide landscaping as shown on the plan. The landscaping must include cold-hardy shade trees of a minimum caliper width of 2½"-3", planted no farther apart than 40 feet on center, planted in the parking lot areas.

Furthermore, the Covenants have been revised to prohibit any internally lit signs at the Franklin Business Park. This will help reduce the visibility of the project from the Interstate at night.

E. Criterion 9(K)

Criterion 9(K) requires an applicant to prove that his project, if located adjacent to governmental and public utility facilities, service, and lands, including highways, will not "unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or **safety** of, or the public's **use** or enjoyment of or access to the facility, service, or lands." 10 V.S.A. § 6086(a)(9)(K). The Interstate highway qualifies as public lands.

The Board concludes that the project complies with Criterion P(K). As described above, the project will be visible to motorists traveling on the Interstate and Route 207. However, implementation of the Applicant's proposed measures to mitigate the negative visual impact of the project, prohibition of internally lit signs, and review by the District Commission of all signs will ensure that the project will not materially interfere with the public's enjoyment of the views from the Interstate.

F. Criterion 10

Criterion 10 requires the Board to find that the project conforms with the St. **Albans** Town Plan. We conclude that it does. The Plan designates this area for commercial and industrial development. To the extent that it is close to an Interstate interchange and the railroad and will be served by municipal water and sewer, the location of the site is appropriate for industrial and commercial development and will advance the goals of the Town as expressed in the Plan.

V. ORDER

Land Use Permit #6F0396R-EB is hereby issued.
Jurisdiction is returned to the District #6 Environmental
Commission,

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

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Lixi Fortna
Arthur Gibb
Samuel Lloyd
William Martinez
Charles F. Storrow

C:GERBODE3 (PWP)