

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

Re: Northwestern Developers, Inc. by
Jesse D. Bugbee, Esq.
Kissane, Yarnell & Cronin
2 North Main Street
St. Albans, VT 05478-1668
and
Mildred LaFleur
Holiday House Nursing Home
RD #1, Sheldon Road
St. Albans, VT 05478

Findings of Fact,
Conclusions of Law,
and Order
Land Use Permit #6F0416-EB

This decision pertains to an appeal of a decision of the District #6 Environmental Commission denying an application to subdivide an **18-acre** tract of land into 25 residential lots. The denial was based on a finding that the proposed project did not comply with 10 V.S.A. § 6086(a)(9)(B) (primary agricultural soils). As is explained below, the Board concludes that the project site does not contain primary agricultural soils, and therefore is issuing a permit.

I. SUMMARY OF PROCEEDINGS

On August 6, 1990, the District #6 Environmental Commission issued Findings of Fact, Conclusions of Law, and **Order #6F0416**, denying an application by Northwestern Developers, Inc. to subdivide an **18-acre** tract of land into 25 residential lots. The project is to be located off LaFleur Drive in the Town of St. **Albans**. The application was denied pursuant to Criterion 9(B) because the District Commission found that the project site contains primary agricultural soils, and that the proposed project will significantly reduce the agricultural potential of those soils. The District Commission also found that the application **did** not meet the subcriteria of Criterion 9(B) which involve reasonable rates of return and clustering. See 10 V.S.A. § 6086(a)(9)(B)(i), (iii).

On August 29, 1990, the Applicant filed an appeal with the Board, asserting that the District Commission erred in finding that the project site contains primary agricultural soils. On October 1, former Chair Stephen Reynes convened a prehearing conference in Essex Junction. On November 28, the Board issued a prehearing conference report.

On January 4, 1991, the Applicants filed a motion for issuance of a permit, attaching a stipulation between them and the State of Vermont Agency of Natural Resources and Department of Agriculture, Food, and Markets. On January 28,

the Board issued a memorandum of decision on the motion, stating that it would hold a hearing on the motion to question the parties and inviting them to file a further stipulation addressing various questions outlined by the Board. On February 28, the parties filed a supplemental stipulation. The Board convened a hearing in Montpelier on March 6, with the following parties participating:

The Applicants by William Counos, Esq.
The State of Vermont Agency of Natural Resources and
Department of Agriculture by Kurt **Janson**, Esq.

After taking testimony, the Board recessed the hearing pending deliberation and decision, and conducted a deliberative session. On April 11, the Board determined that this matter is now ready for decision. To the extent that any requested findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. ISSUES

The issue before the Board is whether to grant the Applicants' motion for issuance of a permit. The Applicants' motion is based on an argument that the proposed project complies with Criterion 9(B) because the project site does not contain primary agricultural soils.

III. FINDINGS OF FACT

1. The proposed project consists of the division of an **18.11-acre** tract of land into 25 single family lots to be served by municipal water and wastewater services and the construction of 2,224 feet of road to serve the lots. The project is located off LaFleur Drive in the Town of **St. Albans**.
2. Seventeen of the acres on the tract have the potential for growing food and forage crops. The site has been hayed in the past.
3. Planting on the parcel is delayed until late spring due to a perched water table. During the wettest part of the year (late fall to late spring), the water table is less than one foot below the surface.

4. Soil depressions are scattered intermittently across the tract. The depressions in total cover approximately half the acreage of the tract. Water ponds in these depressions. During any year in which there is above-average rainfall at the times when crops would be **sowed** or harvested, mechanized equipment used for sowing or harvesting becomes mired in the soil. Installation of subsurface drainage at a cost of approximately \$9,416 would be necessary to allow sowing or harvesting with mechanized equipment during years when rainfall is above-average.
5. A gravel road connecting with LaFleur Drive crosses the tract and divides the 17 acres of agricultural soils into two small pieces. The smaller of these two sections is too narrow to permit farm equipment to turn around. To make this section suitable for farm equipment, the road would have to be reclaimed for cultivation. Reclamation of the road would require gravel removal, decompaction of the soils through deep plowing, and topsoil application at a depth of four to six inches over the surface.

IV. CONCLUSIONS OF LAW

Prior to issuing a permit, the Board must find that the proposed project complies with Criterion (n) (primary agricultural soils). 10 V.S.A. § 6001(15) defines primary agricultural soils in relevant part to mean soils which are "sufficiently well drained to allow sowing and harvesting with mechanized equipment ... and have few limitations for cultivation or limitations which may be easily overcome." Based on the above facts, the Board concludes that the soils on site are not sufficiently well drained and have limitations for cultivation which are not easily overcome, and therefore that the **site** does not contain primary agricultural soils.

Accordingly, the Board grants the Applicants' motion to issue a permit. The permit will incorporate those conditions which are appropriate to the findings of fact made by the District Commission which were not appealed (see Conditions 5 through 11 of the attached permit). In addition, the permit will include conditions to ensure that the project is

constructed and maintained as approved, and that the permit is enforceable (see Conditions 1, 2, 3, 4, 12, and 15 of the attached permit). 10 V.S.A. § 6086(c).

Rule 32(B) requires that the Board include construction completion and expiration dates in the permit. Based on the District Commission's findings, the nature of the proposed project, and the evidence presented to the Board, the Board determines that it is reasonable to require construction completion by November 15, 1992 and to issue a permit expiration date of 30 years from the date of issuance, unless the project is abandoned pursuant to Rule 38(B).

V. ORDER

1. The Applicants' motion for issuance of a permit is granted.

2. Land Use Permit #6F0416-EB is hereby issued. Jurisdiction over this matter is returned to the District #6 Environmental Commission.

Dated at Montpelier, Vermont this 16th day of April, 1991.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Arthur Gibb
Samuel Lloyd
Charles F. Storrow

Member Dissenting:

Steve E. Wright

CERTIFICATE OF SERVICE

I hereby certify that I, Aaron Adler, Assistant Executive Officer, Environmental Board, sent a copy of the foregoing Land Use Permit #6F0416-EB and Findings of Fact, Conclusions of Law, and Order by U.S. Mail, postage prepaid, on this 16th day of April, 1991, to the following:

Northwestern Developers, Inc. by
Jesse D. Bugbee, Esq.
Kissane Yarnell & Cronin
2 North Main St.
St. Albans, VT 05478-1668

Mildred LaFleur
Holiday House Nursing Home
RD #1, Sheldon Road
St. Albans, VT 05478

Town of St. Albans Board of Selectmen and
Planning Commission
c/o Town Clerk
PO Box 37
St. Albans Bay, VT 05481

Franklin-Grand Isle County Regional Planning
and Development Commission
140 South Main St.
St. Albans, VT 05478

Kurt Janson, Esq.
Representative, State Agencies
Agency of Natural Resources
103 So. Main St. - 2 Center
Waterbury, VT 05676

Marcia Aleksiewicz
RD 2, Box 67
St. Albans, VT 05478

FOR INFORMATION ONLY

Basil LaFleur
Highgate Road
Swanton, VT 05488

Geoffrey W. Green, Coordinator
District #6 Environmental Commission
111 West St.
Essex Jct., VT 05452



Aaron Adler
Assistant Executive Officer

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