

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

RE: John Roach, d/b/a
Bay Harbor Yachts, Ltd.
P.O. Box 156
North Hero, Vermont 05474

Findings of Fact,
Conclusions of Law
Land Use Permit
#6G0220-1-EB

On March 17, 1980 the District #6 Environmental Commission granted a Land Use Permit to applicant John Roach for the construction and operation of the Bay Harbor Yachts Marina in North Hero, Vermont. Appeals from this decision were filed with the Environmental Board on April 16, 1980 by the Champlain Islands Lake Protection Association; on April 17 by Allan and Janet Curtis; and on May 5, 1980 by the State of Vermont Agency of Environmental Conservation. On May 13, 1980, at the request of the applicant, proceedings in this matter were postponed indefinitely. An initial pre-hearing conference was held on July 15, 1980, with Margaret P. Garland, then Chairman of the Environmental Board, presiding. The hearing was convened on August 12, 1980, with Chairman Leonard U. Wilson presiding; the Board conducted a site visit on September 30, 1980. Following an additional delay at the request of the parties, Chairman Wilson held a second pre-hearing conference on February 17, 1981. The Board heard evidence and argument on the issues remaining in the appeal on February 24, March 17, and April 14, 1981, with Chairman Wilson presiding. On May 26, 1981, after submission of proposed findings and conclusions by the parties, the Board adjourned the hearing.

The following parties participated in these proceedings:

Applicant, John Roach, by Michael Danley, Esq.
Appellants, Allan and Janet Curtis, by Joseph Cahill, Esq.
Appellants, Champlain Islands Lake Protection Association,
by Steven F. Stitzel, Esq.
State of Vermont Agency of Environmental Conservation, by
John Chase, Esq.
Town of North Hero and Town Planning Commission, by
Edwards W. Porter.

Findings of Fact

1. The applicant proposes to develop the Bay Harbor Yachts Marina, a 13-acre project on Pelot's Point, North Hero, Vermont, consisting of the following elements:
 - a. Installation of floating docks for 75 rental slips;
 - b. Conversion of four small existing camps to be used as a sales office, ship's hardware store, a grocery store, and a marina office;

- c. Placement of a travel-lift track on piers into Lake Champlain for the launching and retrieval of boats;
- d. Installation of a pump-out facility for boat wastes and a comfort station for employees and the public;
- e. Regrading the existing site to accommodate the storage of boats during the winter months and to provide parking for cars during the summer months.

The physical elements will be used by the applicant in the business of selling and storing boats, renting storage slips, and selling goods to boat owners and others using the marina facilities. The findings of fact and conclusions of law in the Board's present decision are explicitly based upon the project description contained herein. No other uses are contemplated in this decision, and no other uses are authorized by the permit issued herewith.

2. Vehicular access to the marina will be by means of three sections of road:
 - (a) First,, along Station Road, a hard-surfaced Town road for a distance of approximately two miles;
 - (b) Then, along Pelot's Point Road, an unimproved Town road, for a distance of approximately two miles; and
 - (c) Finally, along a private right-of-way, also unimproved,.for a distance of approximately 3/10ths of a mile.

The State of Vermont Department of Fish and Game has an interest in the private section of Pelot's Point Road, and has entered into an agreement with the applicant regarding applicant's use of the road (Exhibit #7). This agreement requires the applicant to upgrade and maintain that section of road to certain standards, and requires certain other actions to be taken by the applicant. Our present findings and conclusions expressly reflect and incorporate the terms and conditions of that agreement; except, however, we have not reviewed nor do we authorize any construction or use other than as outlined in Finding #1, above, and as required herein for the upgrading of the road segments.

3. Appellants Allan and Janet Curtis have appealed the District Commission's denial of party status under Board Rule 12C with respect to Criterion 9G. Upon review of the record of the Commission on this point, we find that the Curtis' are not entitled to party status on that criterion. We find that the Curtis' do not have a sufficient personal interest in protecting the municipality from the possible burden of assuming ownership of this road segment, to

justify their standing under the personal interest provision of that Rule. We further find that the Curtis' have not demonstrated that their participation on this issue would materially assist the Board in its consideration of the matters under appeal.

4. Criterion 1 (Air pollution): If built as planned, this project would cause undue air pollution. However, if properly mitigated as conditioned herein, no undue air pollution will result. This finding is based upon the following facts:
- a. The marina will cause a substantial increase in the number of vehicles that will use Pelot's Point Road and the private right-of-way, especially in the dry summer months. The Board was presented with conflicting data on the number of trips likely to be generated by the facility. In interpreting this data we have in mind the nature of marina use in Vermont, and the relatively isolated location of Pelot's Point. In this context, we find it reasonable to conclude that this project will add approximately 200 average daily trips (ADT) to the access roads when it is in operation, and may add as many as 400 trips on days of peak use. This traffic is in addition to the existing traffic load of between 150 and 250 trips per day.
 - b. The marina will cause a substantial increase in the number of large and heavy vehicles using the access road. Larger vehicles will be used to deliver and remove boats, to deliver supplies to the marina, and to service the marina facilities.
 - c. Pelot's Point Road and the private right-of-way are gravel roads. The surface of these roads is in only fair condition. The surface soils of these roads have a silt content of at least 15 percent.
 - d. At present there is no speed limit posted on Pelot's Point Road or on the private right-of-way, and vehicles commonly travel both roads at speeds in excess of 30 miles per hour.
 - e. Under existing traffic conditions, a significant air pollution problem is created in the dry summer months by fugitive dust from the surfaces of these roads.
 - f. Unless mitigating measures are employed, the traffic generated by the marina will result in the creation of undue air pollution from fugitive dust. The level of pollution which would be created could adversely affect the health of persons who reside along Pelot's Point Road and the private right-of-way, and would unreasonably diminish their enjoyment of their land, and the enjoyment of others in this recreational area.

g. If the marina were to be constructed and operated as planned, the reduction of air pollution to acceptable levels would require implementation of several mitigating measures:

- (1) A gravel base six inches in depth must be added to Pelot's Point Road and the private right-of-way. The gravel used must not contain more than seven percent silt. Drainage along the roads must be improved to prevent accumulation of additional sediment.
- (2) Traffic speeds on both road segments must be reduced; the roads should be posted at a maximum of 25 MPH.
- (3) Chemical dust palliatives must be used as necessary to control fugitive dust during critical periods of the year.

If these measures were employed, and were maintained throughout the life of the project, this project would not result in undue air pollution. We will condition the permit to be issued for this project to require implementation of these measures, or of equally effective measures approved by the District Commission.

5. Criterion 1B (Waste disposal): We find that this project, if built and operated as planned, will not result in undue water pollution and will be in conformance with applicable Department of Health and Water Resources Board regulations regarding the disposal of wastes. There is an existing need for a marina pump-out facility in this area of Lake Champlain, which this marina will provide. The applicant has agreed to secure a letter of acceptance for wastes from the pump-out from a licensed municipal waste treatment facility before operation of the pump-out. The applicant will not install or operate any toilet facilities in the converted camp buildings, and will construct a dry-pit privy on the site for the use of employees, patrons and guests of the marina.
6. Criterion 1D (Floodways): We find that this project will not restrict or divert floodwaters, or endanger the health, safety or welfare of the public. The project will be located in an area exposed to seasonal flooding. However, the flooding will not create a public hazard. All permanent structures will be located at least one foot above the historic high-water line. The project does not alter the shoreline topography so as to restrict or divert floodwaters.
7. Criterion 1F (Shorelines): This project is planned to retain the natural condition of the shoreline as much as is reasonable and appropriate for a marina operation. The

applicant will retain the natural vegetation at the site; this will protect the shoreline and will screen upland areas of the project from view from the lake. The existing cobble beach will be maintained, minimizing erosion from the heavy use of the shoreline. The applicant has presented a landscaping plan for the preservation of this shoreline; this plan is incorporated into the application and the permit issued herewith.

8. Criterion 5: (Congestion and Traffic Safety): We find that if it were built as planned, this project would cause unreasonable congestion and unsafe conditions with respect to the access roads to the site. however, if properly mitigated as conditioned herein, these unreasonable and unsafe conditions will not result. This finding is based upon the following facts:
- a. As noted with respect to Criterion 1 above, this project will cause a substantial increase in the number and size of vehicles using Pelot's Point Road and the private right-of-way which provide access to the project site. Traffic on these roads could be increased from between 150 and 250 ADT to between 350 and 650 ADT as a result of the project. There would be a significant increase in the number of vehicles pulling trailers, and in the number of trucks using the road.
 - b. Pelot's Point Road, as currently laid out and maintained, varies in width from fifteen (15') feet to twenty-one (21') feet with it being predominantly of a width of eighteen (18') feet or less. The private right-of-way, as currently laid out and maintained, varies in width from fifteen (15') feet to seventeen (17') feet with it being predominantly of a width of sixteen (16') feet or less. In addition, the access roads have several sharp bends with limited sight distances.
 - c. As we have found, the traffic using the access roads would result in a substantial increase in road dust; this dust would seriously impair the visibility of drivers operating vehicles on these roads, endangering persons in those vehicles as well as persons walking or bicycling on or near the roads.
 - d. Vehicle speed on the access roads is not now adequately controlled, except by the roads' existing physical limitations. If the roads were improved, vehicle speed would have to be restricted by legal means.
 - e. Vehicular access to this project could be maintained safely and without undue congestion if the following mitigating measures were employed:

- (1) Pelot's Point Road and the private right-of-way must be reconstructed to a minimum width of 18 feet of traveled right-of-way, and the existing sharp bends must be eliminated to improve driver sight distances wherever possible.
- (2) Both unpaved segments of the access road must be posted at 25 MPH to reduce vehicular speed to safe levels.
- (3) The gravel base and dust palliatives required to reduce fugitive dust are also required to improve visibility so as to ensure safe driving conditions on the access roads.

If these mitigating measures were implemented, this project could be built and operated without creating undue congestion or unsafe traffic conditions.

9. Criterion 7 (Burden on municipal services): We find that the development of this project would cause an unreasonable burden on the ability of the Town of North Kero to provide municipal services if the cost of the road improvements and dust control measures required to satisfy Criteria 1 and 5 were to be borne totally by the Town. However, if those costs are borne largely by the applicant, no unreasonable burden will result. We find that the increased cost of routine maintenance to the Town road will not be an unreasonable burden on the Town, considering the improvements that will be made in the road, and the tax benefits of the project to the Town.

In view of these findings, we will condition the land use permit to be issued for this project as follows:

- a. All capital costs for the improvement of the gravel base of the access roads, for the widening and straightening of the roads, and for the erection of speed control signs shall be the responsibility of the applicant; however, the Town may consent to assume responsibility for some percentage of the cost of improving the Town's portion of the road if it finds that such participation will not be an undue burden on the municipality.
- b. The cost of applying dust palliatives to the private right-of-way shall be borne by the applicant;
- c. The cost of applying dust palliatives to the public portion of Pelot's Point Road and the cost of maintaining that road may be apportioned between the Town and the applicant by agreement between them; however, the applicant retains the ultimate responsibility to assure that palliatives are used as required so long as the marina is open to the public.

10. Criterion 8 (Aesthetics and natural beauty): We find that this project will not have an undue adverse effect upon aesthetics, or the scenic beauty of the project area. We concur with the appellants that this shoreline area is a scenic recreational area, and that the preservation of the natural beauty of Lake Champlain's shorelands is a desirable goal. We find, however, that this project creates no undue adverse effects on the area's aesthetics or scenic beauty. The marina facility is appropriate to the area in which it is located. The area is presently developed for recreational use; the applicant will be improving existing camp buildings along the shoreline, and will not be constructing new structures in the exposed shoreline area. The existing tree line will be retained to screen the upland portions of the project from view from the water. The applicant's landscaping plan will mitigate the visual effects of the development.

11. Criterion 10 (Conformance with town and regional plans):

We find that this project is in conformance with the duly adopted plans of the Town of North Hero (Exhibit #49) and the Land Use Sketch Plan for Grand Isle County (Exhibit #46).

- a. A representative of the North Hero Planning Commission testified that this development is in conformance with the existing town plan, adopted in 1978. That plan encourages the development of commercial uses in the town to improve the tax base, and particularly favors the development of commercial recreational facilities. Because this project has been carefully limited by the applicant and by the permits issued by the Town and this Board, the project satisfies the concerns expressed in the Town plan for development in sensitive shoreland areas.
- b. We cannot agree with appellant's argument that this development violates the terms of the Land Use Sketch Plan for Grand Isle County. The plan recommends restrictions on the type and intensity of development in floodplains, both to protect water quality and to minimize flood damage. But the plan specifically recognizes that outdoor recreational facilities are appropriate to shoreline floodplains. The converted camp buildings used in this marina will not have plumbing fixtures and so will not cause water pollution in times of high water; and they will be elevated as a protection against high water. We find that, as designed and approved, this project is in conformance with the regional land use plan.

Conclusions of Law

1. Appellants Allan and Janet Curtis, admitted as parties by the District Commission pursuant to Board Rule 12C, have appealed the Commission's limitation of their right to participate in the proceedings. The Commission denied the Curtis' request for party status on Criterion 9G. Our own review of the record before the District Commission on this matter led us to the same conclusion. The appeal of Allan and Janet Curtis concerning their party status on Criterion 9G is therefore denied. Because no other party has brought this criterion before the Board in this appeal, the criterion is not in issue, and the Curtis' appeal of that criterion is therefore dismissed.
2. Appellants have urged this Board to rule that the State of Vermont Department of Fish and Game is a "necessary co-applicant" in these proceedings because the Department has a property interest in the private right-of-way which provides access to the marina site. We have received evidence that the Department does have a property interest in that access road. On the basis of the evidence presented to the Board, however, applicant John Roach has made a showing of his right to use the access road for the purposes of the marina project. For the purposes of this Act 250 application, this showing is all that is required. This Board is not the proper forum for the adjudication of conflicts regarding the respective rights of those with shared interests in a private road. We note, however, that the agreement between the Department and the applicant concerning the use of this road (Exhibit #7) refers to the development of additional public facilities on and adjacent to the marina site. The development of these facilities will require an amendment of the permit for the marina project. The Department and the present applicant may well be necessary co-applicants in any such amendment request.
3. Based upon the foregoing Findings of Fact, it is the conclusion of the Environmental Board that the project described in this application, if completed and maintained in conformance with all of the terms and conditions of that application, and of Land Use Permit #6G0220, as amended herewith, will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A. §6086(a). Pursuant to that section, an amended permit #6G0220-EB is therefore issued. Jurisdiction over this matter is returned to the District Environmental Commission.

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

ENVIRONMENTAL BOARD

By Leonard U. Wilson
Leonard U. Wilson
Chairman

Members participating
in this decision:
Dwight E. Eurnham, Sr.
Ferdinand Bongartz
Melvin H. Carter
Leonard U. Wilson