

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

Re: Brian Nichols, d/b/a Speedwell Inc.
Application #7C0568-2-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to an appeal of Land Use Permit Amendment **7C0568-2** (Permit), which approves the installation of a self service diesel pump on a six foot cement island (Project) at the previously permitted bulk plant location on Route 5 in Lyndon (Project Tract). The pump will be operated on a card-lock key system and be accessible to delivery trucks and commercial diesel accounts.

As is explained below, the Environmental Board (Board) hereby issues Revised Land Use Permit **7C0568-2-EB** (Revised Permit).

I. PROCEDURAL BACKGROUND

On April 20, 1995, Brian Nichols d/b/a Speedwell Inc. (Applicant) filed the application for the Permit with the District #7 Environmental Commission (Commission).

On September 14, 1995, the Commission issued the Permit and supporting findings of fact, conclusions of law, and order, authorizing the construction of the Project.

On October 9, 1995, the Applicant filed an appeal of the Permit with the Board, relative to Permit condition 14 imposed under criterion **1** (air pollution/noise issues).

On October 17, 1995, Vinny Cartularo (Cartularo), a party before the Commission, filed a cross-appeal of the Permit with the Board, relative to criteria **1** (air pollution/noise issues) and **8** (aesthetics).

On November 21, 1995, Board Chair John Ewing, acting as Hearing Officer, convened a prehearing conference in this appeal. On November 28, 1995, the Chair issued a Prehearing Conference Report and Order, which is incorporated herein by reference.

On December 22, 1995, the Board issued a Memorandum of Decision denying **Cartularo's** Motion for Stay. The Memorandum of Decision is hereby incorporated herein by reference.

On February 2, 1996, the Applicant and Cartularo filed a Stipulated Findings of Fact, Conclusions of Law and Permit **Condition**.

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On February 6, 1996, the Chair convened a status conference. During the status conference, the Chair and the parties discussed additional stipulated facts necessary for the Board to issue a decision.

On February 21, 1996, the Applicants and Cartularo filed the additional Stipulated Findings of Fact, Conclusions of Law and Permit.

On February 28, 1996, the Board deliberated this case, declared the record complete and adjourned the hearing. This matter is now ready for decision.

II. ISSUES

1. Whether, pursuant to 10 V.S.A. § 6086(a)(1), the Project will result in undue air pollution.
2. Whether, pursuant to 10 V.S.A. § 6086(a)(8), the Project will have an undue, adverse effect on aesthetics.

III. FINDINGS OF FACT

1. The Project will consist of a self serve diesel pump located at the bulk plant of Speedwell Inc. on Route 5 in Lyndon. The property is in a commercial area.
2. A motel (Motel) owned by Cartularo is located to the north of the Project.
3. The Project is likely to generate noise from trucks entering, fueling, and leaving the Project Tract. Such noise has the potential for disturbing Motel guests if not properly mitigated.
4. Condition 14 of the Permit states:

The key pump operation approved herein may only be operated between the hours of 7:00 A.M. and 6:00 P.M. and shall not be utilized on Sunday.

5. Potential noise disturbance to Motel guests would be mitigated by limiting the operation of the pump to between the hours of 7:00 a.m. and 10:00 p.m. Monday through Saturday, exclusively.

6. The Applicant and Cartularo have stipulated to altering Condition 14, above. Condition 14 would be altered to limit the **Project's** hours of operation to between 7:00 a.m. and 10:00 p.m. Monday through Saturday.

IV. CONCLUSIONS OF LAW

In relevant part, Criterion 1 requires that, before issuing a permit, the Board or district commission shall find that a proposed project "**will not result in undue ... air pollution.**" 10 V.S.A. § 6086(a)(1). The Board considers noise to be relevant under this criterion. See, e.g., Re: Rowley, #4C0534-1-EB, Findings of Fact, Conclusions of Law, and Order at 6-7 (Dec. 1, 1993); Re: Duckless, #7R0882-EB, Findings of Fact, Conclusions of Law and Order at 7 (June 11, 1993).

Likewise, Criterion 8 requires that, before issuing a permit, the Board find that a proposed project "[w]ill not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics" The Board considers noise relevant to this Criterion. See, e.g., Duckless, Supra at 7-8.

The mitigation of the potential disturbance to motel guests by limiting the hours of operation from 7:00 a.m. to 10:00 p.m. Monday through Saturday would not cause or result in a detriment to public health, safety, or general welfare under Criteria 1 and 8. The Board concludes that the Project Will not result in undue air pollution or create an undue adverse effect on aesthetics and, thus, complies with Criteria 1 (air pollution - noise) and 8 (aesthetics), provided that it is conditioned as set forth in finding 6, above.

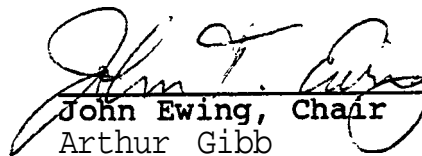
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IV. ORDER

The Board hereby issues the Revised Permit.

Dated at Montpelier, Vermont this 29th day of February,
1996.

ENVIRONMENTAL BOARD



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