

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

RE: Ronald Carpenter
Land Use Permit #8B0124-6-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to an appeal of a permit issued pursuant to 10 V.S.A. Chapter 151 (Act 250) to Ronald Carpenter for the construction of an automobile dealership and related buildings. As explained below, the Environmental Board orders that the project be issued an amended land use permit.

I. SUMMARY OF PROCEEDINGS

On April 18, 1995, the District #8 Environmental Commission (the District, Commission) issued Land Use Permit #8B0124-6 and Supporting Findings of Fact, Conclusions of Law, and Order (the Permit) to Ronald Carpenter.

The Permit authorizes the construction of a new automobile dealership consisting of an 11,750 square foot single-story structure for sales, repairs, bodyshop, and offices; renovation of a previously permitted restaurant building for use as a parts department and apartment; and on-site septic and off-site water supply (the Project). The Project is located on 6.4 acres on Route 7A in East Dorset Village, Vermont. The Project requires an Act 250 permit because it is a substantial change to a permitted development. See 10 V.S.A. § 6001(3) and Environmental Board Rule (EBR) 2(G) and 34(A).

On May 10, 1995, the Dorset Citizens for Responsible Growth (DCRG) filed an appeal from the Permit.

On June 8, 1995, Board Chair John T. Ewing convened a prehearing conference in Montpelier, Vermont, with only DCRG participating.

On June 20, 1995, Chair Ewing issued a Prehearing Conference Report and Order (the Prehearing Order).

The parties filed prefiled testimony, evidentiary objections, and proposed findings of fact and conclusions of law through August 2, 1995.

On August 9, 1995, the Board convened a hearing with the following parties participating:

Ronald Carpenter by John M. Ruggiero, Esq.
Dorset Citizens for Responsible Growth
by Seth B. Bongartz, Esq.

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The Board deliberated on August 9, September 27, and October 16, 1995. On October 16, 1995, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied. See Petition of Village of Hardwick Electric Department, 143 Vt. 437, 445 (1983).

II. ISSUE

Whether, pursuant to 10 V.S.A. § 6086(a)(10), the Project is in conformance with the Dorset Town Plan and the Bennington Regional Plan.

III. FINDINGS OF FACT

1. The Project is an automobile dealership consisting of an 11,750 square foot single-story structure for showroom sales, repairs, bodyshop, and offices; renovation of a previously permitted restaurant building for use as a parts department and apartment; and on-site septic and off-site water supply.
2. The Project is located on 6.4 acres on the west side of Route 7A in East Dorset Village, Vermont (the Property). Route 7A/7 runs in a north/south direction.
3. The Batten Kill runs along the Property's eastern border. The river is not visible at this point since it is a small stream below the edge of Route 7A, and is screened by scrub growth.
4. There is an open meadow along the eastern portion of the Property. The meadow consists of loosely scattered scotch pine, mixed pine and scrub brush. A pond will be constructed in the meadow area.
5. Looking west from Route 7A across the meadow, the view ends abruptly as the Property's western boundary slopes upward along a hill. There are homes built on top of the hill.
6. The previously Act 250 permitted restaurant/apartment building is located on the northern 1/3 acre portion of the Property. Along the Property's northern boundary is an existing Ford automobile dealership owned by **Mr. Carpenter**.

7. The Property will have a row of pine trees planted around its borders; shrub wetlands plantings and birch trees around the pond; and shrubs and accent trees around the new building upon completion of the Project's construction. The two acre stand of hardwoods on the southern portion of the Property will remain as is.
8. Access to the Project from Route 7A **will** be via the existing curb cut which serves the adjacent Ford dealership and the homes on top of the hill. The existing restaurant sign island will be removed and sight distances will **exceed 500 feet in either direction.**
9. The new building and adjacent parking will be constructed With a **150** foot setback from the edge of the Batten Kill. Parking and vehicular circulation will occur on all sides of the building. The building will be a natural, **earth-toned** color.
10. The Project will be illuminated by pole-mounted, downward directed, 55-watt sodium vapor lamps. The lamps will be faced inward to the parking areas and not outward to either Route 7A or the houses on the hill behind the Property. The lights will be timer controlled, and shall be shut off after **9:00** p.m.
11. The aggregate floor space of the existing building and the new building will be 13,764 square feet. This is approximately 4% of the Property. The aggregate building floor space and paved areas will be approximately 30,000 square feet. This is approximately 10% of the Property.
12. Mr. Carpenter's Ford dealership consists of a 9,200 square foot structure with 83 parking spaces on a 1.8 acre parcel. The Ford dealership received Act 250 Land Use Permit **#8B0392** in 1987.
13. In addition to the Ford dealership, other land uses in the vicinity include the East Dorset General Store; the Marbledge Motel; a sign shop; municipal service buildings housing the fire department and the town garage; and a state highway garage.
14. The East Dorset General Store, the Marbledge Motel, and the sign shop are patronized by motorists traveling on Route **7A/7.**
15. The only Town of Dorset service impacted by the Project is the fire department. Police protection is provided by

local constables. Rescue services are provided by a volunteer squad. The fire department has indicated that it has the ability to serve the Project.

16. The Project calls for a maximum of 20 employees. The additional employment opportunities provided by the Project will draw primarily from the existing work force of the area. The Project will not result in a sizable influx of personnel and their families from out of the area.
17. Mr. Carpenter has not conducted any analysis regarding to what extent his customer base at the Project will be from Dorset. Mr. Carpenter's Ford dealership has local customers, Bennington and **Rutland** county regional customers, and out-of-state customers.
18. The Project is not located in the rural and residential areas that predominate outside of the Village of East Dorset to the north and south of the Project.
19. The Dorset Town Plan was adopted on June 16, 1992 (the Town Plan). The Town Plan provides:

2.4 Economic Development

Dorset is now largely a residential community, serving both year-round and seasonal residents. Its economic activity includes primary industries - e.g. agriculture, forestry, and mineral extraction, secondary industries - e.g. wood processing; and a range of tertiary services - e.g. real estate sales, financial services, restaurant and tourist accommodation facilities, etc. Dorset does not have a large retail component, nor a large industrial/manufacturing component. Dorset is envisioned as a nice, clean, quiet place to live, within commuting distance from the larger urban service areas and employment centers of Manchester, **Rutland** and Bennington.

* * *

The Town is seeking to maintain its current economic base, while also encouraging new economic development in certain sectors by designation and promoting appropriate

commercial/industrial activity in selected designated locations.

2.5 Dorset's Relationship with the Region and with Adjacent Municipalities.

Dorset residents would like to maintain their town as a clean quiet place to live, recognizing the importance of nearby larger neighbors as retail and employment centers. Dorset aims to maintain its agricultural and forestry activities, and to encourage clean secondary industries and service uses compatible with its rural environs. It does not wish to encourage large scale retail growth, nor large scale tourist development, **but** it does seek to:

maintain agriculture and forestry as viable activities;

maintain and enhance the existing villages as places of economic and community activity;

encourage appropriate new commercial and industrial activity in selected areas of the Town to increase local employment opportunities for its residents and those of nearby towns, and to increase the local tax base.

* * *

3.1 Land Use and Economy (State Goals 1 & 2: Sec. 4 of This Plan).

1. Provide for a variety of land uses which will not detract from the rural, residential, scenic, agricultural and forested character of the Town.
2. Encourage a pattern of development which can reasonably be provided with needed public facilities and services.

* * *

4. Recognize the importance of the existing village centers as traditional foci for residential development and community activity, and limited commercial development. Strengthen the importance of the villages by permitting and encouraging controlled growth within the village areas.
5. Provide appropriate locations and sufficient acreage for the limited expansion of commercial and industrial activities. Provide strong controls on uses and site design within the areas designated for commercial and industrial uses.
6. Limit development to areas along or near existing roads, thus avoiding unnecessary new road mileage and costly servicing.

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3.3 Transportation (State Goal 4; Sec. 7 of this Plan)

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2. Control development along Route 7/7A, so that the highway will maintain a high sufficiency rating, with the aim being to maintain the present alignment, avoiding duplication of this road through the Town by extension of limited access Route 7.

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4.1 Existing Land Use.

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Within the valleys are the built-up areas, with concentrations of development within the villages. Dorset Village and East Dorset are the larger of the villages, and each of these contains a collection of residential uses together with non-residential uses such as small scale commercial uses, churches, post

offices, and similar uses. Smaller settlements at South Village, South Dorset, and North Dorset also represent significant residential groupings, with some associated non-residential uses.

* * *

The Route 7/7A corridor has attracted a variety of uses serving tourists - including restaurants, tourist accommodation facilities, and campground, - and commercial/industrial operation which benefit from the excellent accessibility afforded by Route 7 - e.g. a U.P.S. facility.

* * *

4.2 Land Use Plan and Policies

The proposed Land Use Plan reflects and builds upon the pattern of existing development.

The Land Use Plan provides six different land use designations three "urban" and three "rural") each of which serves as a policy area, and the land use policies for each of these designations are provided in this Section.

In addition, there are in Dorset a number of "overlay" policies related to specific issues or land types which are described elsewhere in this Plan. In reading this Plan, therefore, for any specific location, the land use policies will be found in this Section, but reference must be made to other sections of the Plan to determine additional relevant policies of the Town.

* * *

4.2.1.2 Village Commercial

a) Location:

Village Commercial areas are designated within the settlement areas of Dorset Village, East Dorset, South Dorset, and South Village. The designated areas approximately represent

the areas of existing concentrations of village commercial uses, but with some room for adding and infilling within these areas.

b) Purpose:

The Village Commercial areas are designated to provide areas for suitable business and service establishments in order to provide employment opportunities for local residents, and to provide such commercial and service facilities as are needed by residents, and are in keeping with the character of the existing village clusters and with the rural and residential character of the remainder of the Town.

c) Uses:

Predominant uses in the Village Commercial areas shall be small scale retail and service commercial uses compatible with the village surrounding. In addition, residential uses, small scale offices, tourist accommodation facilities, restaurants, and home occupations shall be permitted and encouraged, in accordance with the uses identified and regulated through the Zoning By-law.

d) Policies:

1. Encourage Village Commercial uses within the designated areas.

2. Support uses, building types and styles, and scale of development compatible with existing development.

3. Define the limits of the Village Commercial areas, and provide detailed performance standards through an amendment to the zoning by-law. (Such amendment is presently under consideration.)

4. Permit and encourage the combination of commercial and residential uses in the Village Commercial areas, permitting both residential and commercial business and

professional uses of a service nature
compatible with residential use.

20. The Town Plan was in effect when Mr. Carpenter applied for the Permit. The Project is located in the area designated by Section 4.2.1.2 of the Town Plan.
21. The Town of Dorset has adopted a zoning by-law pursuant to 24 V.S.A. Chapter 117 (the By-law). The By-law divides the Town of Dorset into classes of districts including the Village Commercial (VC) District. The Project is located in the VC District as described in Section 6.2 of the By-law.
22. The By-law provides, in part:

6.2 Village Commercial (VC) District.

6.20 Purpose

To provide lands for a combination of residential and village-scale commercial uses which provide convenience services and incidental shopping for residents and visitors of the village area while protecting scenic and environmental qualities of those lands and retaining the residential character of the village.

6.21 Approval of Plans

No permit shall be issued for the erection, alteration, enlargement, or relocation of a building, or for alteration, enlargement, or relocation of a use for commercial purposes until a Site Development Plan prepared in accordance with the requirements of Section 3.8 shall have been approved by the Planning Commission. Permits for erection, alteration, enlargement or relocation of a single or ~~two-~~ family dwelling, including accessory buildings, may be granted by the Administrative Officer provided the dimensional requirements in Section 6.26 are conformed to. Review of Site Development Plan by the Planning Commission shall be required, in accordance with Section 3.8, until Town of Dorset subdivision regulations are in effect.

6.22 Public Hearing

The Planning Commission shall hold a public hearing on any Site Development Plan submitted with an application for a permit within the Village Commercial Districts as required in Section 6.21 above.

6.23 Permitted Uses in VC Districts

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2. Stores, sales and showrooms for the conduct of retail business.

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6.24 Conditional Uses Permitted in VC Districts.

The following may be permitted by the Board of Adjustment as conditional uses in conformance with the provisions of Section 3.5 subject to such conditions as the Board may determine, provided such use creates no offensive noise, vibration, smoke, dust, odor, heat or glare noticeable off the premises.

1. An automobile service station or garage.
 2. Any use that the Board of Adjustment finds to qualify as a compatible use under the general purpose (Section **6.20**), in the size (village-scale) of the proposal, its effect upon the character of the vicinity, traffic patterns and flow, and its effect on the value of adjacent property.
23. Section 6.26 of the By-law contains dimensional requirements for development within the VC District. The Project does not exceed any of the dimensional requirements.
24. The Bennington Regional Plan (the Regional Plan) adopted February 20, 1992 presently in effect was in effect when Mr. Carpenter applied for the Act 250 Permit for the Project. The Regional Plan provides, in part:

The Bennington region consists of a number of well-defined village and town centers of varying sizes separated by agricultural valleys and forested mountains. A recurring theme among municipal plans in the region, and in past regional plans, is that this special rural character should be preserved. The most effective way to realize this objective is to direct new growth to village and urban centers, while utilizing appropriate regulatory and non-regulatory tools to maintain open countryside between these growth centers.

New development should benefit residents of the region by providing a range of housing and employment opportunities. Commercial uses should provide needed goods and services for residents, with accommodations for the **travelling** and vacationing public available in appropriate locations.

* * *

7.2 Villages

The villages within the Bennington region are particularly important planning areas because they serve as a key element for structuring new growth and development outside of the urban centers. Villages offer many goods and services for local residents, present opportunities for local businesses and employment, and provide rural towns with a sense of place. Many villages are also important historically and contribute to the aesthetic appeal of the entire region. Characteristics of villages include a mass of commercial and moderately dense residential development, community facilities (church, school, post office, town hall, etc.), and perhaps some industrial development. A public water supply and a modest network of paved roads are also present in most villages in the area. Examples of villages in the Bennington region include: Dorset, East Dorset, Arlington/East Arlington, South Shaftsbury, Pownal, and Manchester Village, Old Bennington, and North Bennington (which overlap with elements of adjacent urban centers).

Towns should consider existing villages and surrounding areas as suitable locations for new growth. Development in and around villages reinforces historical settlement patterns, is economically efficient, and reduces the amount of less desirable growth scattered through the countryside. Maintenance and improvement of the infrastructure that serves villages is important so that growth can be accommodated with minimal environmental or financial costs to the community. Planning for these areas should encourage a variety of residential and commercial/industrial uses, but at a smaller scale than in urban centers. Residential development in villages should be permitted, for instance, at densities of one to three units per acre depending upon the availability of adequate infrastructure and soil conditions. Likewise, convenience shopping centers may be appropriate in villages, but community and regional shopping centers should not be sited in villages.

Several difficulties typify planning for growth and development in village areas, however. Although towns may want to encourage growth in and around villages, environmental conditions and limited infrastructure capacity often present severe 'stumbling blocks. Villages may also be concerned that excessive village development will detract from both the character and function of traditional villages. For these reasons, the intensity and extent of development in village areas must be carefully managed. Towns should assess the growth potential of villages, determine whether suitable **areas** for expansion can be found around existing village districts, and evaluate the appropriateness and feasibility of increasing the capacity or geographical extent of public water, sewer, and road systems. In addition to, or as an alternative to, further development of existing villages, some towns may want to consider establishing new village areas! Prior to promoting concentrated village-type development in a rural area, towns should consider such factors as proximity to existing neighborhoods, the adequacy of roadways in the vicinity, soil conditions, and

water supply potential. In some situations it may be appropriate to encourage additional growth around existing small rural villages, or hamlets. Zoning regulations, which may include provisions for site plan review, performance standards, and historic preservation, can help prevent new growth in villages from having deleterious impacts on those areas.

* * *

7.6 Policies and Actions

1. New development should be concentrated in and around established growth centers; scattered development which is remote and has little relationship to existing settlement patterns should be avoided.
25. Under Sub-part 8 of Section 7.6, the Regional Plan specifies policies that apply to new commercial development. In part, they are:

The intensity of commercial development should be consistent with the character of the surrounding area. In the case of shopping centers, small convenience shopping centers are appropriate in villages, and urban centers may contain convenience, community, or regional shopping centers (see definitions in this chapter), but shopping centers are not appropriate in rural areas.

Commercial developments should include an architectural and landscape design plan that complements the surrounding environment.

The amount of noise, glare, and lighting observable from off-site locations should be minimized.

Adequate parking and loading spaces must be provided, and should be located and/or screened so as not to be prominently visible from streets or neighboring residential areas.

Provision should be made for safe and efficient vehicular ingress and egress; access onto roads where steep grades exist or within 400 feet of

a major intersection should be avoided. Adjacent commercial developments should use combined cuts and connect parking lots internally whenever possible.

Safe and convenient facilities for pedestrian circulation should be provided.

Commercial uses which generate large numbers of traffic turning movements should be avoided along sections of highway with low sufficiency ratings.

IV. CONCLUSIONS OF LAW

Under 10 V.S.A. § 6088(a), Mr. Carpenter has the burden of proof under Criterion 10.

Prior to issuing a permit, the Board must find that the Project "[i]s in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24." 10 V.S.A. § 6086(a)(10).

A. Town Plan

The Board's analysis under Criterion 10 is conducted subject to the Vermont Supreme Court's decision In re Frank A. Molaano, Jr., 5 Vt. Law Week 314 (Nov. 10, 1994). The Molaano decision concerns the relationship of municipal plans and zoning by-laws under Criterion 10.

Under Molqano, zoning by-laws are germane to interpreting ambiguous provisions of a town plan. Therefore, the Board first determines whether the town plan provisions at issue are specific polices or ambiguous.

If the town plan provisions are specific policies, then they are applied to the proposed project without any reference to the zoning by-laws. However, if the provisions are ambiguous, then the Board next examines the relevant zoning by-laws for provisions which resolve the ambiguity. This does not mean a general review of the project for its compliance with the zoning ordinance, but rather an examination to see if there are provisions in the zoning ordinance which address the same subject matter at issue under the town plan.

Thus, even after Molaano, the issue remains whether a project is in conformance with the town plan, with the zoning by-law available only as a tool for resolving ambiguities in

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the plan. See Re: Leonard and Rose Lemieux, #3R0717-EB, Findings of Fact, Conclusions of Law, and Order at 11 (March 1, 1995); Re: Howe Center Limited, #1R0770-EB, Findings of Fact, Conclusions of Law, and Order at 35-36, and 36 n.2 (May 4, 1995); Re: Taft Corners Associates, #4C0696-11-EB (Remand), Findings of Fact, Conclusions of Law and Order (Revised) at 54, 59 (May 5, 1995); Re: Lawrence and Diane Brown, #5W1175-1-EB, Findings of Fact, Conclusions of Law, and Order at 18 (June 19, 1995); Re: Charles and Barbara Bickford, #5W1186-EB, Memorandum of Decision at 7 (Sept. 12, 1995); and Re: Manchester Commons Associates, #8B0500-EB, Findings of Fact, Conclusions of Law, and Order at 29 (Sept. 29, 1995).

i. ambiguous

Section 4.2.1.2 is the crucial Town Plan provision that is applicable to the Project. Section 4.2.1.2 of the Town Plan states the location, purpose, uses, and policies of those areas that are designated as being Village Commercial.

With regard to location, the Village Commercial areas include East Dorset. Within East Dorset, the Village Commercial area includes, but is not limited to, the existing settlement area of East Dorset; there is **"some room"** for adding and infilling.

With regard to purpose, the Village Commercial areas are designated as areas for **"suitable"** business and service establishments which provide employment opportunities and services for residents, and are in keeping with the character of the existing village clusters and the rural and residential character of the remainder of Dorset.

With regard to uses, the **"predominant"** uses in the Village Commercial areas are to be **"small scale"** retail and service uses that are compatible with the village surrounding. The only uses identified by category and expressly allowed are residential, small scale offices, tourist accommodation facilities, restaurants, and home occupations.

Finally, the Village Commercial policies are general provisions which encourage development within the Village Commercial areas if consistent with the Village Commercial's purpose and existing development; call for the adoption of "performance standards" in the By-law; and allow for mixed-use development where such business development is compatible with residential uses.

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The Board concludes that Section 4.2.1.2 is an ambiguous provision for the following reasons.

First, with regard to location, **"some room"** for both **"adding and infilling"** is ambiguous as to precisely how much and where room is available for development within the Village Commercial areas. Further, no mention is made as to whether the conversion and expansion of an existing or related development is adding, infilling, or both.

Second, with regard to purpose, there is no objective definition--like a list by category--of what constitutes a **"suitable"** business other than the general references to local employment, consumer needs, and aesthetic appearance. Nor is there any mention of those businesses which may serve both local and non-local consumer needs.

Third, with regard to uses, the word **"predominant"** suggests that there may be exceptions to the **"small scale"** uses allowed within the Village Commercial areas. Moreover, there is no definition of what constitutes **"small scale."** In contrast, a provision which exclusively limits development to enumerated uses which are less than a given square footage, lot coverage, or lot size would be a specific provision entitled to regulatory effect under Criterion 10. See Manchester Commons Associates at 29.

Finally, the Village Commercial policies generally promote certain development without expressly prohibiting or discouraging all other types of development. While the third and fourth policies tend toward the specific, they are insufficient to make Section 4.2.1.2 unambiguous as a whole. Likewise, Sections 2.4, 2.5, 3.1, 3.3, and 4.1 contain general provisions which seek to balance growth without imposing any specific prohibitions or policies and, therefore, do not clarify the Village Commercial policies.

The Board concludes that Section 4.2.1.2 is ambiguous. The Board will review the relevant portions of the By-law in an effort to resolve the ambiguous Town Plan provisions identified above.

ii. By-law

The Project is regulated under the By-law's VC District designation.

Section 6.20 states that the purpose of the VC District is for "**village-scale commercial uses**" that provide "convenience services and incidental shopping" for both residents and visitors provided that "scenic and environmental qualities" and the "residential character of the **village**" is retained. While Sections 6.21 and 6.22 then implement the general language of Section 6.20 by requiring planning commission site plan approval, there are no definitions for the above referenced terms. However, Section 6.23 makes stores, sales and showrooms for the conduct of retail business permitted uses in the VC District. Section 6.24 makes an automobile service station or garage a conditional use within the VC District.

Sections 6.23 and 6.24 resolve, in part, Section 4.2.1.2's ambiguity regarding uses since specific types of development are identified as either permitted or conditional uses. **Sections** 6.23 and 6.24 clarify what are the permissible uses within the Village Commercial areas under Section 4.2.1.2.

Section 6.26 specifies dimensional requirements for development within the VC District. Section 6.26's dimensional requirements clarify "**small scale**" as used in Section 4.2.1.2 such that "**small scale**" within the Village Commercial areas under the Town Plan is a scale that complies with Section 6.26's dimensional requirements.

The Project involves the sale of automobiles; includes a showroom; and will offer automobile repair and servicing. These uses are allowed in the Village Commercial areas as either permitted or conditional uses. The Project's dimensions satisfy Section 6.26 such that the Project is small scale for purposes of the Village Commercial areas. Based on the preceding, the Board concludes that the Project is in conformance with the Town Plan in general and Section 4.2.1.2 in particular.

B. Regional Plan

The Regional Plan clearly recognizes the unique nature of the well-defined village and town center separated by agricultural valleys and forested mountains. The Regional Plan recommends that the most effective way to preserve this special rural character is to direct new growth to village and urban centers. The Regional Plan specifically identifies East Dorset as a village within this description.

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The Regional Plan identifies a village's characteristics as including a mass of commercial and moderately dense residential development, community facilities (religious institutions, school, post office, town hall, etc.), and perhaps some industrial development. A public water supply and a modest network of paved roads are also present in most villages in the area. Automobile dealerships are neither included or excluded.

The Regional Plan then provides guidance to its member towns on how to preserve a village. Towns must assess the growth potential of villages, determine whether suitable areas for expansion can be found around existing village districts, and evaluate the appropriateness and feasibility of increasing the capacity or geographical extent of public water, sewer, and road systems.

The Regional Plan provides that zoning regulations, which may include provisions for site plan review, performance standards, and historic preservation, can help prevent new growth in villages from having deleterious impacts on those area.

The Project is consistent with the Regional Plan as discussed above. The Project is contiguous to existing development within East Dorset; accessible to Route 7A/7 and public services; will not result in growth in the more open and rural areas of East Dorset; and is subject to review under the site plan review and dimensional standards contained in the By-law. Those specific Regional Plan policies that are applicable to the Project do not prohibit or discourage it. cf. In re Green Peak Estates, 154 Vt. 363, 368 (1990).

Based on the preceding, the Board concludes that the Project is in conformance with the Regional Plan.

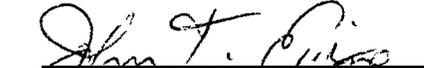
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V. ORDER

Amended Land Use Permit #8B0124-6-EB is hereby issued. Jurisdiction is returned to the District #8 Environmental Commission.

Dated at Montpelier, Vermont, this 17th day of October, 1995.

ENVIRONMENTAL BOARD


John T. Ewing, Chair
John M. Farmer

Art Gibb
Robert Page, M.D.
William Martinez

Members dissenting:

Samuel Lloyd
Robert Opel

Dissenting opinion of Board member Lloyd and alternate Board member Opel:

We dissent with regard to the Board's conclusion that the Project conforms to the Town Plan.

In our view, the Town Plan's clear intent is to exclude vehicle sales from all areas, with one exception: **"Retail** uses shall normally be permitted only as an accessory use to a permitted use, except that in the North Dorset area, the zoning by-law may permit certain types of retail uses such as lumberyards and vehicle **sales."** See Sub-part C of Town Plan Section 4.2.1.3., Planned Commercial/Industrial.

Following immediately, under Sub-part D of Section 4.2.1.3., the first listed policy is:

1. Refine and amend the Town's zoning by-law with respect to the types of uses and the performance criteria within the Planned Commercial/Industrial areas. This is in progress.

We believe this language clearly establishes the intent of the Plan, beyond the realm of ambiguity as enunciated by the Vermont Supreme Court in **Molcano**.