

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

**RE:** John Kennedy  
P.O. Box 805  
Manchester Ctr., VT 05255  
and  
Jeffrey Kilburn  
P.O. Box 55  
Manchester, VT 05254

Findings of Fact and  
Conclusions of Law  
and Order  
Land Use Permit #8B0370-2-EB

This decision pertains to an appeal filed with the Environmental Board (Board) on February 29, 1988, by William Drunsic (Appellant) through his attorney, William A. Hunter, Esq., from the District #8 Environmental Commission's (Commission) Land Use Permit #8B0370-2 dated January 29, 1988. This permit authorizes John Kennedy and Jeffrey Kilburn (Permittees) to construct Phase III of the Meadow Ridge Condominium Project consisting of 30 three-bedroom cluster housing units in Manchester, Vermont. In the initial appeal William Drunsic and the Barnumville Coalition raised issues with regard to Criteria 5, 7, 8, 9(B) and 10.

On April 6, 1988, Chairman Leonard U. Wilson convened a prehearing conference, and on April 14, 1988, a Prehearing Conference Report was issued. The issues raised at the prehearing conference related to Criteria 1(B), 5, 7, 8 (aesthetics), 9(B), 9 (K), and 10.

At the prehearing conference, the Appellants agreed to file an additional statement of the specific criteria at issue and the basis for the objections to the District Commission's decision. The Appellants also agreed to file a written statement regarding party status in accordance with 10 V.S.A. § 6085(c) and Board Rule 14(A) and (B). On April 19, 1988, the Applicants filed a supplemental statement outlining issues under Criteria 1(B), 5, 7, 8 (aesthetics), 9(H), 9 (K), and 10. No written request for party status was received.

On May 16, 1988 the Board received a Motion for Additional Time from the Appellants and on May 19 the Board received a Motion to Dismiss and an Opposition to Appellants' Request for Additional Time from the Permittees. On May 26, the Environmental Board heard oral argument on the motions in Manchester, Vermont. On June 2, 1988, the Board issued a Memorandum of Decision granting party status to certain persons, denying the Appellants' request for an extension of the deadlines for filing witness lists and prefiled testimony set forth in the April 14 Prehearing Conference Report and Order, and denying the Appellants' Motion to Dismiss. The June 2 **Memorandum of Decision is incorporated herein by reference.**

On June 21, the Board convened a public hearing on the merits of the appeal with regard to Criteria 5 and 8 (aesthetics) in Manchester with the following persons participating:

John Kennedy and Jeffrey Kilburn by Jon S. Readnour,  
Esq.  
William Drunsic by William A. Hunter, Esq.

During the hearing the Board conducted a site visit and recessed the hearing pending the submission of proposed findings by the parties, a review of the record, and preparation of a decision. On July 11, 1988, the parties filed proposed Findings of Fact and Conclusions of Law. On September 14, following a review of the evidence presented in the case and legal memoranda, the Board declared the record complete and adjourned the hearing. The case is now ready for decision. The following findings of fact and conclusions of law are based exclusively upon the record developed at the hearing. To the extent the Board agreed with and found necessary any findings proposed by the parties, they have been incorporated herein; otherwise, said requests to find are hereby denied.

#### I. PARTY STATUS

Pursuant to Rule 14(B) (1), the Board granted adjoining landowner William Drunsic party status under Criteria 5 (traffic) and 8 (aesthetics) because he may be affected by the impacts of this project with respect to these criteria. The Board denied his request for party status on Criterion 10 because he did not demonstrate that he would be directly affected differently from any other member of the public or that he could materially assist the Board in its review.

The Board denied the Barnumville Coalition's request for party status because the Coalition failed to provide the information required by Board Rule 14 regarding the members' interests with regard to the criteria, the location of their properties with respect to the project, or their ability to assist the Board. Pursuant to 10 V.S.A. § 6085(c) and Board Rule 14, the Board cannot allow persons or organizations to participate in proceedings unless they demonstrate that their specific interests or properties will be affected by the project, or that they will provide evidence that will materially assist the Board in its review of the issues.

#### II. ISSUES IN THE APPEAL

With respect to **Criterion 5** (traffic), the Appellant alleges that Barnumville Road is unable to accommodate the traffic which this project will generate. The Appellant

6. This area of Barnumville Road has an accident rate that is below the statewide average and has no identified safety hazards. Traffic from the Project will turn both east and west onto Barnumville Road.
7. Traffic generated by the Project will not reduce the level of service at the intersection of Barnumville Road with Highland Avenue, Beach Street and U.S. Route 7, or at the intersections of Highland Avenue with Vermont Routes 11 and 30.
8. The housing units will be constructed with one to five units in each cluster. The buildings will be one and one-half to two stories high, 25 feet to 28 feet in height (from the first floor ground level to the peak), and one-third of the units will have walk-out basements. The building facades will be diversified by the stepping back and down of each unit from its adjoining unit. The roofs will be dark brown or black.
9. A seven acre area will be cleared and regraded. The vegetation on the remaining acreage will be retained. The area of construction will generally extend to the north, west and south project boundaries and will adjoin residential areas to the north and south.
10. An area 15± feet wide extending from the housing units to Barnumville Road will be cleared for the installation of a sewer line. Natural vegetation will reestablish itself in this area.
11. New landscaping will be installed along the perimeter of the disturbed area and within the housing area. The majority of the new landscaping will consist of ten-foot high pine and spruce trees.
12. An area of existing vegetation will be retained between the project area and the Meese property. Additional screening will consist of eight ten-foot high pines at the southwest corner of Building I and at least 19 evergreens to the west of Buildings J and K.
13. An area of existing vegetation containing 20-foot to 30-foot spruce trees will be retained between the Minugh property and Building I.
14. After clearing for the construction of the road, landscaping will be installed along the Roberts' property line. **Three willow trees will also screen units 1 and 2** from the Roberts' property.
15. The project will not be visible from Routes 11 and 30 and the Route 7 interchange because the intervening ridge that is heavily wooded with evergreen trees will interrupt sight lines.

16. A portion of Building A will be visible from Barnumville Road.
17. The access road will not be a dominant visual landscape element because it will follow the natural topography, it is well removed from Barnumville Road, and the existing and installed landscaping will add visual interest and visual relief.

V. CONCLUSIONS OF LAW

A. Criterion 5 - Traffic Safety

Criterion 5 of Act 250 requires that the Project "will not cause unreasonable congestion or unsafe conditions with respect to the use of the highways. ..." The burden of persuasion under this issue is on any party opposing the Project. 10 V.S.A. § 6088(b). The Project will generate only a small portion of the Barnumville Road traffic. Furthermore, no road safety hazard on Barnumville Road, on the access road, or at the intersection of the two roads has been identified. Based upon the evidence presented, the Board can only conclude that the traffic associated with this project will not cause unsafe traffic conditions or unreasonable traffic congestion.

B. Criterion 8 - Aesthetics

Criterion 8 of Act 250 requires, for purposes of this appeal, that the Project not have an undue adverse effect on the scenic or natural beauty of the area or aesthetics. Again, the burden of persuasion is on any party opposing the Project. In its decision in Re: Quechee Lakes Corporation, Land Use Permit #3W0411-EB and #3W0439-EB (November 5, 1985), the Board prescribed a method to be followed when evaluating projects under Criterion 8 (aesthetics). The first question to be addressed is whether the proposed project will be in harmony with its surroundings. Relevant factors to be considered in connection with this particular application include the nature of the land uses surrounding the project, the visual compatibility of the project with its surroundings, and the visibility of the project.

If the evaluation of these factors indicates that the project would not be in harmony with its surroundings and the aesthetic impact of the project would be adverse, the Board then must answer the question whether the adverse impact is "undue" under the language of the statute. In the Quechee decision, the Board suggested that an adverse impact will be undue if any one of the following three conditions exists:

VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, this Project is approved as conditioned in Land Use Permit #8B0370-2. Jurisdiction in this matter is returned to the District #8 Environmental Commission.

Dated at Montpelier, Vermont this 26th day of September, 1988.

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman

Samuel Lloyd  
Arthur Gibb  
Jan S. Eastman  
Roger Miller

FF 8B0370-2-EB (18)