

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

**RE:** Warplanes, Inc. by Findings of Fact and  
Geoffrey Commons, Esq. Conclusions of Law  
Kelley, Meub, Powers & and Order  
English Land Use Permit #9A0136-1-EB  
Drawer 669  
Middlebury, VT 05753  
and  
Dean Martin  
P.O. Box 41  
East Middlebury, VT 05740  
and  
State of Vermont  
Middlebury State Airport  
c/o John K. Dunleavy, Esq.  
Agency of Transportation  
133 State St.  
Montpelier, VT 05602

This decision pertains to an appeal filed by Warplanes, Inc. and Dean Martin with the Environmental Board on November 23, 1987 from Land Use Permit Amendment #9A0136-1 issued by the District #9 Environmental Commission on November 13, 1987. That decision prohibits the reassembly, repair, maintenance, or sale of jet aircraft at the Warplanes hangar facility at the Middlebury State Airport in Middlebury, Vermont. On December 17, 1987, the Town of Middlebury filed a cross-appeal and Warplanes filed an amendment to its Notice of Appeal.

At the time the appeal was filed, Dean Martin operated a business at the airport which consisted of the repair, restoration, and sale of surplus military aircraft. The aircraft were usually trucked to the hangar in pieces where they were reassembled and repaired as needed, tested, flown, maintained, and ultimately sold. Testing of the aircraft included stationary engine tests, runway taxiing tests lasting up to 15 minutes, and final flight tests. In response to concerns about excessive noise generated by jet aircraft owned by Warplanes, the District Commission held a hearing and imposed the condition pertaining to jet aircraft. Warplanes generally objected to the condition, asserting that it was not supported by the evidence and that the District Commission's authority to regulate its activities is preempted by Federal regulation. In its cross-appeal, the Town contended that the District Commission should have barred all test flights of reconditioned aircraft at the Middlebury Airport.

At a prehearing conference held on December 17, 1987, the parties requested that the Board address the issue of the Board's jurisdiction to regulate airplane restoration activities which generate noise at the state-owned airport before reviewing the merits of the appeal.

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After agreeing to the facts and filing legal memoranda, the parties presented oral argument to the Board on February 4, 1988. On July 22, 1988, the Board issued a Memorandum of Decision in which it determined it is not preempted from regulating the assembly, repair, or maintenance of aircraft when these activities have no connection with the Federal Aviation Administration's need to control air traffic flow. The Board concluded, therefore, that it has jurisdiction to regulate the noise-generating activities of Warplanes at the Middlebury Airport and scheduled an evidentiary hearing on the other issues raised in the appeal for August 30.

In the early part of August, the Board received information that Dean Martin had sold his hangar at the Middlebury Airport and that the purchaser may not be conducting the same activities as those authorized by the permit. Instead of the Board's holding a hearing on the remaining issues raised in the appeal, on August 30 the Chairman of the Board convened a hearing for the purpose of obtaining information on the changes in activities that occurred since Warplanes sold its hangar to Dennis Demers. The following parties participated in the hearing:

Warplanes, Inc. and Dean Martin by Geoffrey Commons,  
Inc.  
Town of Middlebury by James Runcie, Esq.  
Vermont Agency of Transportation by John K. Dunleavy,  
Esq.  
Dennis Demers by Joseph Cahill, Esq.

The issues to be decided are a) whether the activities of the appeal should be dismissed because the activities that were the subject of the permit amendment are no longer being conducted and b) whether Warplanes has standing to pursue the appeal.

## II. FINDINGS OF FACT

1. Dennis Demers purchased the hangar at the Middlebury Airport that was formerly owned and leased by Warplanes, Inc. on or about April 1, 1988.
2. As of August, 1988, Mr. Demers had two jet aircraft at the airport. **One of these he was flying on a regular basis and the other was totally disassembled and he was refurbishing.**

3. Mr. Demers intends to use the hangar for refurbishing and maintaining his own aircraft. He is considering buying used airplanes and fixing them up to sell them. He estimates that jet aircraft would fly in or out of the airport no more frequently than two or three times a week.
4. Mr. Demers does not intend to do the type of reassembling of crated airplanes and engine tests that require extensive and prolonged testing for certification as Dean Martin did. The only testing that will occur will consist of an annual inspection that involves running the engine for approximately five minutes.

## II. CONCLUSIONS OF LAW

Warplanes' operation consisted of regular testing of restored jet aircraft, including statutory engine tests, runway taxiing tests lasting up to 15 minutes, and final flight tests.

Although a land use permit runs with the land and is automatically transferred to a purchaser, "material" or "substantial" changes to a permitted project require an amendment pursuant to Board Rule 34. Mr. Demers apparently is conducting a different operation from Warplanes. Therefore, he needs to contact the District Coordinator for a determination on whether he needs to obtain an amendment to authorize his activities at the airport.

In addition, this appeal concerns a condition in a permit that no longer has any applicability since Warplanes has ceased conducting its operations under this permit. Because neither Warplanes nor Mr. Martin no longer has any legal interest in the permit, Mr. Martin has no legal standing to pursue the appeal. The ceasing of the activities authorized by the permit renders the appeal moot. The Board must therefore dismiss this appeal.

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III. ORDER

1. This appeal is hereby dismissed.
2. Dennis Demers shall contact the District Coordinator within 30 days of this order for a determination of whether he needs to obtain a permit or permit amendment to authorize his activities at the Middlebury Airport.

Dated at Montpelier, Vermont this 1st day of May, 1989.

ENVIRONMENTAL BOARD

  
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Leonard U. Wilson, Chair  
Lawrence H. Bruce, Jr.  
Elizabeth Courtney  
Jan S. Eastman  
Arthur Gibb  
Samuel Lloyd

FF 9A0136-1-EB (APL20)