

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

RE: Middlebury College by
Austin D. Hart, Esq.
Dinse, Erdmann & Clapp
P.O. Box 988
Burlington, VT 05402-0988

Memorandum of
Decision,
Land Use Permit
#9A0177-EB

This decision relates to a motion filed by the State of Vermont Division for Historic Preservation in the above matter. The motion seeks to postpone the hearing set for August 2, 1989 or alternatively to exclude the Applicant's witness Malcolm Holzman from testifying at said hearing.

On June 26, 1989, the Environmental Board issued a prehearing conference report and order setting a hearing date and requiring, among other things, submission of prefiled testimony on or before July 19, 1986. At the request of the Applicant and the State, the Board on July 19 issued a memorandum extending the deadline for submission of prefiled testimony to July 26. This extension was made to allow the parties additional time to prepare such testimony.

On July 26, the Applicant submitted prefiled testimony for two witnesses, including Mr. Holzman. On July 28, the State filed a motion in response to the Holzman testimony, and the Applicant filed an opposition to that motion. The State asserts that the testimony is simply in outline form, does not disclose the true nature of the testimony Mr. Holzman will offer at hearing, and that it is clear Mr. Holzman will expand significantly at the hearing on the outline provided. The State argues that it has been **prejudiced** because it cannot properly prepare a response to the testimony. The State seeks primarily to have the hearing postponed and the Applicant ordered to prepare true prefiled testimony. Alternatively, it asks that, pursuant to the terms of the prehearing conference report and order, Mr. Holzman be excluded from testifying at the hearing. The Applicant asserts that Mr. Holzman's prefiled testimony **is** sufficient to apprise the Board and the State concerning the nature of his testimony, and has offered to limit his testimony to overview, reference to diagrams and exhibits, and rebuttal. The Applicant is concerned that any delay will result in financial loss to it.

On July 31, 1989, the Board determined to postpone the hearing and order the Applicant to file prefiled testimony for Mr. Holzman containing narrative answers which provide complete testimony. The Board bases this conclusion on a determination that Mr. Holzman's prefiled testimony is inadequate to inform the Board or other parties as to the content of his testimony, and that the Applicant's offer is not sufficient to **avoid prejudice caused thereby.**

ORDER

1. The hearing set for August 2, 1989 is postponed. Another date will be set for this hearing which will be announced at a later time.

2. The Applicant is ordered to file prefiled testimony for Malcolm Holzman in accordance with the decision above on or before Friday, August 18, 1989.

3. Parties shall file testimony in rebuttal to prefiled testimony on or before Wednesday, August 30, 1989.

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

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman
Elizabeth Courtney
Jan S. Eastman
Arthur Gibb
Samuel Lloyd

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