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

**RE:** J. Graham Goldsmith                      Memorandum of Decision  
Black Willow Farm by                      Declaratory Ruling Request #202  
Michael Furlong, Esq.  
Sheehey, Brue, Gray &  
Furlong  
P.O. Box 66  
Burlington, VT 05402

This decision pertains to a request by Kenyon L. Smith, a party to this matter, to reopen the taking of evidence and to subpoena Paul Ferland of Essex Junction.

On April 4, 1989, an administrative hearing panel of the Environmental Board issued a proposed decision stating that jurisdiction did not appear to exist over Phase I of the Black Willow Farm subdivision. Part of the basis for this decision was the lack of any evidence on the record that Phase I was considered part of a larger project at any time prior to the proposal of subdivision Phase II to the Charlotte Planning Commission on August 12, 1986.

Mr. Smith contacted the Board on or about April 7 and again on April 10. He asserted that Mr. Ferland possesses evidence showing that Phase II was planned at the time Phase I was proposed. He asked that the Board reopen the taking of evidence and subpoena Mr. Ferland. On April 12, at the request of the Assistant Executive Officer, Mr. Smith put his request in writing and the Board received it on April 13.

The Assistant Executive Officer notified Michael G. Furlong, attorney for Mr. Goldsmith, on April 12 of Mr. **Smith's request.** Mr. Goldsmith filed a response to that request on April 18. In the response, Mr. Goldsmith argued that the request was untimely for three reasons: (a) the Board's recess memorandum of August 10, 1988 allegedly required Mr. Smith to submit evidence regarding whether Phase I was referred to as Phase I at the time it was first proposed; (b) the Board's memorandum of April 4, 1989 required submission of written responses to the proposed decision on or before April 12, 1989; and (c) this case has a long history during which Mr. Smith has had ample opportunity to introduce evidence.

The Board concludes that Mr. Smith's request is properly made. The current matter before the Board is a request to reopen. None of Mr. Goldsmith's arguments point to any time limit by which such a request should have been filed. In this regard, the Board notes that the August 10, 1988 memorandum did not require Mr. Smith to submit evidence

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by August 29; instead, it only required that Mr. Smith respond by that date to documents which were to be filed earlier by Mr. Goldsmith. Further, the April 12, 1989 deadline only addressed when Mr. Smith should file a written response to the proposed decision or a request for oral argument. It did not place a time limit on any request to reopen.

The Board concludes additionally that Mr. Smith's request is meritorious. The Board believes that Mr. Ferland may give testimony or provide other evidence showing that Phase I was called "Phase I" from the time of its initial conception and that Phase II was conceived simultaneously with Phase I. Mr. Ferland is allegedly a past employee of Mr. Goldsmith who worked on the subdivision of the Black Willow Farms property prior to implementation of Phase I. Accordingly, the Board will reopen the hearing and issue a subpoena pursuant to 3 V.S.A. § 809 compelling Mr. Ferland to appear, testify and produce those documents relating to Black Willow Farm which are relevant to this proceeding and are in his possession. Because Mr. Ferland appears to have been a past employee of Mr. Goldsmith, the Board will also subpoena from Mr. Goldsmith all of Mr. Ferland's working files and documents which Mr. Goldsmith possesses which relate to this matter.

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ORDER

1. An administrative hearing panel of the Environmental Board will convene a hearing on Tuesday, May 23, 1989, at 1:30 p.m. at the Chittenden Regional Planning Commission, 66 Pearl Street, Essex Junction, Vermont to take the testimony of Paul Ferland.
2. The Board hereby issues an administrative subpoena pursuant to 3 V.S.A. § 809 requiring Ferland to appear and testify at the above hearing and to produce those documents relating to Black Willow Farm which are relevant to this proceeding and are in his possession.
3. The Board hereby issues an administrative subpoena to J. Graham Goldsmith pursuant to 3 V.S.A. § 809 requiring Goldsmith to appear and to produce at the above hearing all working files and documents used by Paul Ferland relating to the Black Willow Farm subdivision which are in Goldsmith's possession or control.
4. Because the Board is reopening the taking of the testimony, it will not yet rule on the proposed decision issued in this matter on April 4.

Dated at Montpelier, Vermont this 3rd day of May, 1989.

ENVIRONMENTAL BOARD

BY:



Leonard U. Wilson, Chairman  
Ferdinand Bongartz  
Lawrence H. Bruce, Jr.  
Elizabeth Courtney  
Jan S. Eastman  
Roger N. Miller  
W. Philip Wagner