

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. §§ 6001-6092

Re: Hiddenwood Subdivision  
Declaratory Ruling Request #324

MEMORANDUM OF DECISION AND DISMISSAL ORDER

This Memorandum of Decision and Dismissal Order denies Karen and John Winchell's ("Petitioners") Petition for Party Status and dismisses their Petition for Declaratory Ruling.

I. BACKGROUND

On November 16, 1972, the District #5 Environmental Commission ("District Commission") issued Land Use Permit #5W0162 ("Permit") to Hiddenwood Associates authorizing a 55 lot subdivision and construction of a road and community services building. The Permit's expiration date was November 20, 1976.

On or about June 10, 1987, the District Commission Coordinator ("District Coordinator") agreed to consider the first 27 lots created (as depicted on a map of Hiddenwood Subdivision prepared by Drown & Marsh, Inc. on March 10, 1974 and recorded in the land records of the Town of Fayston on May 3, 1974 at Book 4, Page H-1) as the first phase of the Hiddewood Subdivision, completed within the life of the Permit.

On October 13, 1987, the District Commission issued Land Use Permit #5W0162-1 ("Amended Permit") to Anneliese Lindner and Shirley Bren ("Respondents") authorizing modification of the road layout and reduction of the size of the fire pond "to serve the 28 lots previously approved as Phase 1 of the so-called Hiddenwood Subdivision."

On November 23, 1988, the District Commission issued Land Use Permit #5W0162-2 authorizing the Respondents to extend the construction completion date from November 1, 1988 to October 15, 1989.

On October 16, 1989, the District Commission issued Land Use Permit #5W0162-2A authorizing changes to the water source for previously approved lot #15 of the Hiddenwood Subdivision.

On March 24, 1992, the District Commission issued Land Use Permit #5W0162-2B authorizing the addition of an individual well for lot #19 of the Hiddenwood Subdivision.

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On May 8, 1992, the District Commission issued Land Use Permit #5W0162-2-C authorizing changes to the water supply for lot #22 and relocation of the waterline for lot #1.

On May 9, 1995, the District Commission issued Land Use Permit #5W0162-3 authorizing subdivision of lot #1 into two lots (lots 1A and 1B), construction of a 3-bedroom residence on lot 1A, and addition of a bedroom to the existing residence on lot 1B.

On April 19, 1996, the District Coordinator issued a Jurisdictional Opinion in the form of a Project Review Sheet ("Jurisdictional Opinion") in which he determined that the conveyance of lot #28 ("Project") in Hiddenwood Subdivision in the Town of Fayston, Vermont does not require an amendment application pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250").

On May 6, 1996, Petitioners filed a Petition for Declaratory Ruling with the Board. The Petitioners appeal the Jurisdictional Opinion and contend that the Project requires an amendment application pursuant to Act 250.

On May 22, 1996, an Act 250 Notice of Prehearing Conference ("Notice") was issued. The Notice stated, in part:

Nonstatutory parties also should file written petitions for party status no later than the date of the prehearing conference if they seek to participate in this proceeding.

On June 3, 1996, Environmental Board ("Board") Chair John T. Ewing convened a prehearing conference in Montpelier, Vermont. The Board did not receive any petitions for party status on or before the date of the prehearing conference. At the prehearing conference, Chair Ewing extended the deadline by which the Petitioners were required to file a petition for party status until June 10, 1996.

On June 11, 1996, the Petitioners filed their Petition for Party Status with the Board. Also on June 11, 1996, Chair Ewing issued the Prehearing Conference Report and Order which is hereby incorporated by reference.

On June 24, 1996, the Respondents filed an Objection to the Petitioners' Petition for Party Status with the Board.

On June 27, 1996, the Petitioners filed an unauthorized response to the Respondents' objection to the Petitioners' Petition for Party Status.

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On July 2, 1996, Chair Ewing issued a Chair's Preliminary Ruling in which he denied the Petitioners' Petition for Party Status and dismissed their Petition for Declaratory Ruling. The Chair's Preliminary Ruling was to become final unless a written objection to it was filed on or before July 9, 1996.

On July 9, 1996, the Petitioners filed an objection to the Chair's Preliminary Ruling.

On July 19, 1996, the Respondents filed a Response to Objection to the Chair's Ruling Denying Party Status.

## II. PRELIMINARY ISSUE

The preliminary issue is whether to grant party status to the Petitioners.

## III. DECISION

Pursuant to 10 V.S.A. § 6007(c), a jurisdictional opinion of a district coordinator may be appealed to the Board by, among others, "individuals or entities who may be affected by the outcome of the opinion." Environmental Board Rule ("EBR") 3(C) (3) states that "[a] jurisdictional opinion of a district coordinator may be appealed to the environmental board by any person who qualifies as a party under Rule 14(A) or who may be affected by the outcome of the opinion."

### A. EBR 14(A)

The Petitioners contend that they are parties pursuant to EBR 14(A) (2). EBR 14(A) (2) states that the landowner is entitled to party status if the applicant is not the landowner.

The Petitioners argue that they are landowners because they own a lot within the Hiddenwood Subdivision and the Hiddenwood Subdivision, rather than lot #28 of the Hiddenwood Subdivision, is at issue in this case. The issue, as stated in the Prehearing Conference Report and Order, is whether the conveyance of lot #28 in Hiddenwood Subdivision is a material or substantial change to Land Use Permit #5W0162, as amended, such that the Respondents are required to obtain an Act 250

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permit amendment prior to the conveyance.<sup>1</sup> Accordingly, lot #28 is at issue in this case.

The Petitioners have not presented any factual or legal information indicating that they have any type of ownership interest in lot #28. In fact, at the prehearing conference, the Petitioners agreed that the Respondents own lot #28.<sup>2</sup> Since the Petitioners do not own lot #28, they are not the landowner under EBR 14(A)(2). Therefore, the Petitioners do not qualify as parties under EBR 14(A)(2).

B. The Wesco Standard and EBR 14(B)(1)

In Re: Wesco. Inc. and Jacob & Harmke Verburg Declaratory Ruling #304, Memorandum of Decision at '3 (June 30, 1995) the Board concluded that the standard by which it will evaluate whether a petitioner has party status in a declaratory ruling is whether such person or entity may be affected by the outcome of a jurisdictional opinion, and that such standard is identical to the standard established by EBR 14(B)(1) that a person seeking party status demonstrate that a proposed development or subdivision may affect his or her interest under any of the ten Act 250 criteria.

The Petitioners have not demonstrated that the Project may affect their interest under any of the ten Act 250 criteria. Their Petition for Party Status does not include any information regarding potential effects of the Project on their interests under the ten criteria.

The Petitioners' July 9, 1996 letter objecting to the Chair's Preliminary Ruling briefly addresses their claims of potential impacts of the Project under criteria 5, 8, and 8(A) but it does not state how such impacts will affect their interests. For example, the Petitioners' July 9, 1996 letter states that their interests may be affected under criterion 5 and that "[s]ince the original application was submitted in 1972, the traffic on German Flats Road has increased substantially. In addition, we believe that additional traffic on the Subdivision Road will be problematic." However, the Petitioners do not state that the Subdivision Road currently has unreasonable congestion or unsafe

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<sup>1</sup>The Petitioners did not file any objections to the Prehearing Conference Report and Order.

<sup>2</sup>See page 6 of the Prehearing Conference Report and Order.

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conditions. Additionally, the Petitioners do not state the amount of traffic that conveyance of Lot #28 will generate, the effect of additional traffic on their interests, or how additional traffic will cause German Flats Road or the Subdivision Road to be more unsafe than they are already.

Similar-y, the Petitioners assert that the Project "may have an undue adverse effect on aesthetics" under criterion 8 but they do not describe how the Project may cause an aesthetic intrusion upon their interests.

Finally, the Petitioners claim that the Project may destroy or significantly imperil necessary wildlife habitat or an endangered species under criterion 8(A) and they list the wildlife that has been seen on lot #28 and the 94 acre parcel adjacent to Hiddenwood Subdivision. However, the Petitioners have not presented the Board with any maps from the Department of Fish and Wildlife or any other entity regarding necessary habitat on lot #28. Additionally, many of the Petitioners' claims regarding wildlife habitat relate to the 94 acre parcel adjacent to Hiddenwood Subdivision. Such parcel is not at issue in this case.<sup>3</sup>

The Board concludes that the Petitioners do not qualify as parties under the Wesco standard and EBR 14(B)(1).<sup>4</sup> Accordingly, the Petitioners are denied party status.

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<sup>3</sup>As previously stated, the issue is whether the conveyance of lot #28 is a material or substantial change to Land Use Permit #5W0162, as amended, such that the Respondents are required to obtain an Act 250 permit amendment prior to the conveyance. The District Coordinator has advised the Respondents that they will be required to file an amendment application pursuant to EBR 34(A) before developing or subdividing their 94 acre parcel adjacent to Hiddenwood Subdivision.

<sup>4</sup>The Board's conclusion that the Petitioners do not have party status in the current proceeding has no bearing on the Petitioners' party status in any future proceeding, including any amendment application relating to the Respondents' 94 acre parcel adjacent to the Hiddenwood Subdivision.

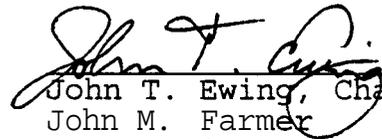
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IV. ORDER

1. Karen and John Winchell are denied party status.
2. The Petition for Declaratory Ruling filed by Karen and John Winchell is dismissed without prejudice.

Dated at Montpelier, Vermont this 29th day of August, 1996.

ENVIRONMENTAL BOARD

  
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