

**STATE OF VERMONT
NATURAL RESOURCES BOARD
DISTRICT ENVIRONMENTAL COMMISSION #5**

RE: Union Bank
PO Box 667
Morrisville Vermont 05661

Application #5L0468-7
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER**
10 V.S.A., §§ 6001 - 6093

I. INTRODUCTION

On March 25, 2011, Union Bank filed application #5L0468-7 for a project generally described as the construction and operation of a bank facility on a site located at the intersection of Vermont Routes 15 and 108 in the Village of Jeffersonville. The tract of land consists of 2.97 acres with 1.9 acres involved in the project area. The applicant's legal interest is ownership in fee simple described in a deed recorded in the land records of the Town of Cambridge, Vermont.

II. JURISDICTION

Jurisdiction attaches to this project pursuant to the provisions of 10 V.S.A. 6001(3)(A)(ii) and Act 250 Rules 2(A)(6).

III. PARTY STATUS

A. Party Status Determinations

Parties to this application who attended the hearing are:

1. The Applicant by Susan Lassiter, Jeff Coslet, Thomas Walsh, Esq., Sam Ruggiano and Clifford Collins.
2. The Village of Jeffersonville Trustees by Tammy Fenton, Connie Edwards, William Sander, Diann Purvis, Donald Lange and David Rugh, Esq.
3. The Village of Jeffersonville Planning Commission by Jan Sander.
4. The Town of Cambridge Selectboard by David Vaughn, Dana H. Sweet and William Sander.
5. The Town of Cambridge Planning Commission by Michael Moser.

The following persons were either admitted as parties or denied party status, as indicated, pursuant to 10 V.S.A. §6085(c)(1)(E):

6. Jean Jenkauskas, an adjoining property owner to the project tract, was admitted under criteria 4 and 10 (Village Plan).

B. Final Party Status Determinations

Pursuant to 10 V.S.A. §6085(c)(6) and Board Rule 14(E), the District Commission made preliminary determinations concerning party status at the commencement of the hearing on this application. Prior to the completion of deliberations, the District Commission re-examined the preliminary party status determinations and found that party Jenkauskas continues to qualify under the relevant criteria as stated above.

IV. PROCEDURAL HISTORY

Following the filing of the application on March 25, 2011, the application became administratively complete under Rule 10(D) as discussed in the April 18, 2011 letter from the District Coordinator and the District Commission then issued notice on April 26, 2011 that the application was being processed as a "minor" pursuant to Rule 51. A proposed land use permit was circulated for comment and any requests for an evidentiary hearing were due by May 13, 2011. As discussed in more detail in the District Commission's Memorandum of Decision dated June 16, 2011, timely requests for a hearing were made by the Village of Jeffersonville Board of Trustees and adjoining property owner Jean Jenkauskas. The District Commission's June 16 Memorandum of Decision explains in detail the basis upon which the Commission concluded that the standards of Rule 51(D) were adequately met and thus an evidentiary hearing would be convened to review the project proposal under criteria 1(D), 4 and 10 (local plan).

The District Commission convened an evidentiary hearing on June 28, 2011 and also visited the project site and its environs. A status of review memorandum was then issued on July 8, 2011 summarizing outstanding issues that had been identified at the hearing. The District Commission established filing dates for supplemental submittals and replies to the supplemental submittals. The applicant's final submittal (Exhibit 33) was received on August 3, 2011, the municipal parties' (Exhibit 14 - Village) on July 29, 2011 and party Jenkauskas' (Exhibit 7 - Jenkauskas) on August 5, 2011. The District Commission completed deliberations on October 22, 2011.

V. FINDINGS OF FACT

Under Act 250, projects are reviewed based on the 10 criteria of 10 V.S.A., Section 6086(a) (1)-(10). Before granting a permit, the District Commission must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file and the evidence received at a the hearing

Pursuant to Environmental Board Rule 51(F), the Commission need only prepare Findings of Fact and Conclusions of Law on those criteria or subcriteria at issue during the hearing. Therefore, the following Findings of Fact are limited to Criteria 1(D), 4 and 10.

In making the following findings, the Commission has summarized the statutory language of the 10 criteria of 10 V.S.A., Section 6086(a):

GENERAL FINDINGS

1. The project site is located at the intersection of VT Routes 15 and 108 in the Village of Jeffersonville. (Exhibit 1)
2. The project layout is depicted on Exhibit 3. Access will be onto Route 108.
3. The bank facility will be served by connections to the municipal wastewater disposal and water supply systems. (Exhibit 2)
4. Building elevations are provided on Exhibit 10 and exterior light fixture details are shown on Exhibit 11.
5. The project's landscaping plan is depicted on Exhibit 3. Sign specifications are provided on Exhibit 11.

SECTION 6086(a)(1)(D) FLOODWAYS:

6. Exhibit 4 - Village is the Federal Emergency Management Agency (FEMA) flood insurance map for the Village of Jeffersonville. The map depicts the project tract as being within zone A5 and the 100 year floodplain for the Brewster River.
7. Exhibit 26 is an aerial photograph showing the project tract in relation to the Brewster River.
8. Exhibits 6 and 19 - 33 -Village and 2, 4 and 6 - Jenkauskas include photographs of the project site and surrounding area inundated during flood events in 2011.
9. The Floodplain Management Program of the Department of Environmental Conservation concurred that the project site is situated within the Special Flood Hazard Area (SFHA) of the Lamoille River. The Department commented that minimum National Flood Insurance Program (NFIP) standards require that all development in a SFHA "shall be reasonably safe from flooding" and also meet the following requirements:
 - Designed and adequately anchored to prevent flotation, collapse or lateral movement of the structure during the occurrence of the base flood,
 - Constructed with materials resistant to flood damage (see FEMA technical bulletin 2 (8/2008): Flood Damage-Resistant Materials Requirements)
 - Constructed by methods and practices that minimize flood damage, and
 - Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
10. In addition, the Department commented that any new structures must be built so that the lowest floor will be elevated to or above "base flood elevation" and that fuel storage tanks be anchored and elevated or protected from debris during times of flooding. (Exhibit 22)

11. The 100 year flood elevation at the project site is 457.4 feet (Exhibit 3). Existing contours on the site range from 451 to 461. (Exhibit 30)
12. The project design proposes a finish floor elevation of 459 feet, approximately 1.5 feet above the 100 year flood elevation. The footprint of fill to be placed on the site in order to attain the finish floor elevation is depicted on Exhibit 3.
13. The eastern portion of the project site will be excavated to a depth of 452 feet in order to provide a flood storage/stormwater treatment area (Exhibit 30). The intent of this excavation is to offset the fill to be used to elevate the bank building and to store flood waters during large storm events. The excavated area will be approximately equal in volume to the volume of fill introduced to the site. (Testimony of Collins)
14. The Department of Environmental Conservation has approved the design of the stormwater system for the project (Exhibit 19). The Department also concluded that the project design appears to meet NFIP minimum standards. (Exhibit 22)
15. The project site will be developed in such a manner as to prevent the flotation, collapse or movement of any equipment or structures. (Exhibit 3)
16. Exhibit 30 consists of cross section drawings of the project site and surrounding area depicting both existing and proposed fill elevations.
17. Cross section A-A depicts the area directly on the east side of VT Route 108 in front of the project site. The cross section shows virtually no change to the proposed grade level parallel to Route 108. (Exhibit 29)
18. Cross section B-B depicts existing and proposed site conditions in the vicinity of the adjacent distillery building. Very little change will result to grades. This cross section also shows that the property of party Jenkauskas is substantially lower than the existing grades at the project site. (Exhibit 29)
19. Cross section C-C depicts the area south of the distillery building and parallel to VT Route 15. The elevation of Route 108 is approximately 458 at the south end of the project site. The drawing shows the proposed berm that will divert surface runoff from the project site away from the Jenkauskas property. The drawing also depicts the southern portion of the project's flood storage basin as being approximately 2 feet lower than the grade at the Jenkauskas property. A substantial amount of flood storage will be provided on the project site. This storage area for flood water will fill with water before the water reaches an elevation that would enter party Jenkauskas' property post-development. (Exhibit 29)
20. Cross section D-D depicts a section through the proposed bank building. (Exhibit 29)
21. The inundation sequence at the project site is described in Exhibit 29 in response to the District Commission's request for supplemental information concerning the depth, direction of flow and velocity of flood water flows.

22. When assessing the benefits of floodplain excavation, it is prudent to distinguish between flood storage and flood conveyance or flow. In ponded locations, excavation can offset storage that would otherwise be lost due to the fill. In flowing locations, excavation can have little or no benefit unless the excavation is continuous around the fill and in the general direction of flow. For the excavation to offset a loss of flood conveyance, it would need to act as a continuous bypass channel around the fill. (Exhibit 14 - Village)

CONCLUSIONS

Applicants bear the evidentiary burden of proof under criterion 1(D) of Act 250 [10 V.S.A. 6088(a)]

Criterion 1(D) states:

A permit will be granted whenever it is demonstrated by the applicant, that in addition to all other applicable criteria:

(I) the development or subdivision of lands within a floodway will not restrict or divert the flow of flood waters, and endanger the health, safety and welfare of the public or of riparian owners during flooding; and

(ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development and endanger the health, safety, or welfare of the public or riparian owners during flooding.

The provisions of 10 V.S.A. 6001(7) define "floodway fringe" as:

An area of a watercourse which is expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.

The Environmental Board provided guidance in its *Woodford Packers, Inc.* [8B0542-EB (October 5, 2001)] decision for the analysis to be performed under criterion 1(D) in the evaluation of development proposals.

In *Woodford*, the Board placed emphasis on the role of the Secretary of the Agency of Natural Resources in making the determinations of floodways and floodway fringes. In reviewing the record for the present application, the Commission observed that the only exhibit which provided any position on behalf of the Agency was the May 31, 2011 comment letter from the assistant NFIP Coordinator of the River Corridor and Floodplain Management Program of the Department of Environmental Conservation (Exhibit 22). In that letter, the assistant NFIP Coordinator specifically stated that the project tract is located outside of the mapped regulatory floodway but is within zone A5 of the Special Flood Hazard area (SFHA) of the Lamoille river. Absent any other proof, the District Commission concludes that Exhibit 22 represents the governing determination of the floodway fringe by the Secretary of the Agency of Natural

Resources for purposes of the review of this project.*

Criterion 1(D)(ii) establishes the following standards for the assessment of proposed development within a floodway fringe:

- the development will not significantly increase the peak discharge of the river within the area of the development or downstream from the development, and
- the development will not endanger the health, safety, or welfare of the public or riparian owners during flooding.

Having considered the totality of the evidence presented to the Commission by both the applicant and the parties, the Commission concludes that the design of the project will ensure that no significant increase in the peak discharge of the river will result. Similarly, the record before the District Commission supports a conclusion that the design of the project will not endanger the public or riparian owners during flooding.

SECTION 6086 (a)(4) SOIL EROSION AND THE CAPACITY OF THE LAND TO HOLD WATER:

23. The Commission incorporates by reference findings stated above for criterion 1(D).

CONCLUSIONS

The evidentiary burden of proof is upon the applicant under criterion 4 [10 V.S.A. 6088(a)]. Criterion 4 states:

Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Criterion 4 was included by the District Commission for review in this matter because party Jenkauskas contended that the project design might result in physical changes to existing site characteristics such that there could be a "reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result."

Having reviewed the record in this matter, and consistent with the conclusions stated above for criterion 1(D), the Commission concludes that the project design will not cause a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

SECTION 6086(a)(10) CONFORMANCE WITH THE LOCAL OR REGIONAL PLAN:

24. The project site is located within the boundaries of the Village of Jeffersonville, which is a municipal entity within the Town of Cambridge.

* The District Commission takes administrative notice of the February 10, 2003 procedure statement issued by the Commissioner of the Department of Environmental Conservation with respect to floodway and floodway fringe determinations in Act 250 cases. In that procedure statement, the Agency Secretary delegated the "determinations" under criterion 1(D) to the Department Commissioner. The Commission also takes administrative notice of the October 9, 2009 technical guidance document which accompanies the procedure statement.

25. The Village of Jeffersonville duly adopted a municipal plan on October 12, 2009. (Exhibit 1 - Village Planning Commission)
26. The Village Plan includes a discussion of "flood hazard areas" and states that the municipality's determination of such areas relies upon the FEMA flood insurance rate maps. The Village plan notes that "Due to Jeffersonville's history of flooding, the Village has adopted flood hazard area regulations..." (at page 20).*
27. The Village Plan states the following goal with respect to "Flood Hazard Areas" at page 22:
 - To protect the health, safety and welfare of the residents of Jeffersonville by limiting development in flood hazard areas to agriculture, recreation and open space.
28. The Village Plan then states the following policies as to "Flood Hazard Areas" at page 22:
 - No development should occur within a flood hazard area
 - Agriculture, recreation fields, parks and open space are all appropriate uses of flood hazard areas
29. The Village Plan has a chapter in which "Economic Development" is discussed. In relevant part at page 31, this chapter reads:

The old Bell-Gates Lumber site is an excellent area for some type of mixed use redevelopment. Although the loss of this industry was a blow to the local economy, the site now provides a unique opportunity for Jeffersonville to grow and increase the overall vibrancy of the community.
30. The Village Plan discusses "Future Land Use" and states the following at page 55 relative to the "commercial/floodplain" land use area of the Village:
 - Description. The area includes the land on the northwest side of Route 15 from the Lamoille River Bridge to Tatro's and the land on the other side of Route 15 from the Mobile Station to the old Bell-Gates Lumber site.
 - Purpose. The Commercial/Floodplain area is a special area in town. It has historically been developed at a moderate density with commercial and industrial uses, but it is entirely within the floodplain of the Lamoille River. The intent of this land use area is to acknowledge existing uses, but to call attention to the risks of further development in the floodplain.
 - Present Land Uses. The area is currently used for commercial, light industrial and some residential uses. There are also many undeveloped areas.

* The Village of Jeffersonville adopted flood hazard area zoning bylaws on April 11, 1994 (Exhibit 7 - Village). The Village was in the process of adopting revised bylaws during the pendency of this application. (Exhibit 8 - Village)

- Future Land Uses. The commercial/floodplain area contains Route 15, a major arterial that permits unrestricted flow of traffic around the village core. There are businesses along Route 15 in this area that may be continued or changed within existing structures, but further development of the area will increase flood hazards for the Village Core and should be limited.
31. The Village Plan states the following at pages 56 and 57 relative to the "Flood Hazard Overlay" area of the Village:
- Description. The Flood Hazard Area district includes those lands identified by the National Flood Insurance Program maps.
 - Purpose. This district is designed to minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditure and demands on public service that results from flooding.
 - Present Land Uses. While much of the mapped floodplain is undeveloped, there are a startling number of structures located within the hazard area.
 - Future Land Uses. Flood hazard areas offer excellent opportunities to locate recreational, open space, and other uses which do not require the placement of structures or fill. This area is not suited for other uses due to the risks of frequent flooding.
32. The Village Plan includes provisions for implementing the plan. At page 58 the plan has a section entitled "Actions and Recommendations for Implementation" and states the following policy:
- The Flood Hazard district is intended to protect life and property within federally designated flood hazard areas. New construction should not occur within these areas and existing buildings should be flood proofed.
33. The Village Plan also states at page 58:
- The Planning Commission should review all 'Act 250' applications for its compliance with the land use plan. Where the application is determined to not conform to this chapter or any goal or policy, the Planning Commission should participate in the 'Act 250' process in order to ensure the concerns of the Village are addressed.

CONCLUSIONS

Before granting a permit, the District Commission must find that the project "is in conformance with any duly adopted local or regional plan or capital program of Title 24." 10 V.S.A. §6086(a)(10). The burden of proof under criterion 10 is on the applicant. 10 V.S.A. §6088(a).

Consistent with Environmental Board precedents, there are two inquiries that the District Commission must make in its evaluation of whether a project conforms to a town plan. The Board decisions poses two separate questions: Is the language in the town plan mandatory or does it merely provide guidance? And, are the town plan's provisions specific or ambiguous? *Re: John J. Flynn Estate and Keystone Development Corp. #4C0790-2-EB, at 27 (May 4,*

2004); *Re: Dominic A. Cersosimo and Dominic A. Cersosimo Trustee and Cersosimo Industries, Inc.* 2W0813-3(Revised)-EB, Findings at 9 (April 19, 2001). Criterion 10 is clear that, while it can choose to do so, the Board need not consider or be bound by interpretations of a town plan, even when offered by members of the town select board or planning commission. *Re: Fred and Laura Viens*, 5W1410-EB, at 7 (September 3, 2003).

Mandatory or Guidance

The Board has provided the following analysis:

Town Plans (24 V.S.A. Chapter 117) are intended to provide the Town citizens with policy direction and goals for land use development based on an intimate understanding of the Town's natural resources. A Town Plan provides a framework upon which the zoning regulations are built. They do not typically contain words or phrases such as "prohibited" or "shall not be allowed." Thus, while they indicate the direction that a Town wants to take in terms of its development, Town Plans often do not set absolute restrictions or prohibitions on development in a Town. See *John A. Russell Corporation and Crushed Rock, Inc.* 1R0489-6, (August 19, 1999).

But despite the recognition that Town Plans are "abstract and advisory", Act 250 requires that projects comply with a "local or Regional Plan," if one exists. 10 V.S.A. §6086(a)(10). The Board is therefore obligated by the language of the law itself to give regulatory effect to a document which, because its purpose is otherwise, is often not written in regulatory language.

Re: EPE Realty Corporation and Fergessen Management Ltd. at page 38 (November 24, 2004)

In a decision involving a proposed rock quarry, the Board grappled with language:

In the instant case, the Town Plan uses mandatory language in some provisions ("must"), language that is clearly not mandatory in other provisions ("maintain wherever possible") and some language such as "should" where the Board needs to examine the context of the language to determine whether it is mandatory *McLean Enterprises Corporation* 2S1147-1-EB at page 81. (November 24, 2004)

In *McLean* the Board also observed:

Although the Board has in the past interpreted the word "should" to be mandatory (citations omitted), more recently the Board had recognized that "should" is not mandatory unless there is language in the town plan supporting a mandatory interpretation (at page 81).

and

In *Re: Peter S. Tsimortos* 2S1127-EB at 16 (August 29, 2003), there was no disputing the word "shall" was mandatory, especially because the town plan specifically defined it as mandatory. However, the town plan also contained

Land Use Recommendations which used the word "should". The Board held that "regarding the *Recommendations* as only suggestions would be improper in this instance, as the phrase 'shall follow the guidelines' causes the *Recommendations* to be mandatory provisions." *Id.*

and finally

Thus, a provision in a plan is mandatory if it contains specific mandatory language such as "must" or "shall" or other unambiguous words that convey the mandatory nature of the requirements. In addition, as in *Tsimortos*, a provision that does not use mandatory language itself can still be mandatory if the definition section defines that class of provisions as mandatory in unambiguous language. *Id.*

The District Commission concludes that the governing provisions in the Village Plan are those cited above in findings 27, 28, 30, 31 and 32. Is the language in those provisions of the village plan "mandatory" or merely "guidance"? The Commission concludes that the terminology utilized in the village plan conveys goals and policies that are mandatory with respect to how the village prefers land uses to proceed within the designated "flood hazard areas."

As stated in finding 27, the village intends to protect residents "by limiting development" in the flood hazard areas to three categories of land uses - agriculture, recreation and open space. Commercial development is not articulated as an acceptable form of development.

Finding 28 cites the village plan policy statement that "no development should occur within a flood hazard area" (emphasis added) except for the four enunciated land uses stated in the second policy in finding 28. While the first policy employs use of the verb "should", reading the use of that verb in the context of the related subject "development" with the descriptive adjective "no", the Commission concludes that an understanding of a mandatory requirement is conveyed in accord with the holding in *Tsimortos*.

The "future land uses" provisions of the village plan identified in findings 30 and 31 are anchored in the initial sentence of the village plan's section on "Future Land Use" wherein, at the top of page 55, the plan reads: "In order to achieve the goals of this Village plan, the Village of Jeffersonville is divided into five land use areas with two overlay land use areas." (emphasis added)*

Thus, the "future land use" statement for the "commercial/floodplain area" that "... further development of the area will increase flood hazards for the Village core and should be limited", as well as the related statements for the flood hazard overlay area "...uses which do not require the placement of structures or fill" and "this area is not suited for other uses", all connote mandatory provisions when interpreted in the contextual analysis of the *McLean* holding.

* While the plan goes on to remark that the land use area and overlay area designations are "non-regulatory" on the municipal level absent the adoption of zoning or subdivision regulations, the *EPE Realty Corporation* holding is clear in noting the legislative intent that municipal plan language is to be viewed as having regulatory effect in Act 250 proceedings.

Finally, the comprehensive implementation policy statement quoted in finding 32 also has a mandatory meaning when read in light of the preceding village plan provisions: "New construction should not occur....".

Specific or Ambiguous

A town plan provision evinces a specific policy if the provision: (a) pertains to the area or district in which the project is located; (b) is intended to guide or proscribe conduct or land use within the area or district in which the project is located; and (c) is sufficiently clear to guide the conduct of an average person, using common sense and understanding. *Re: John J. Flynn Estate*, supra, at page 28 (citing *See, e.g. Re: the Mirkwood Group and Barry Randall*, 1R0780-EB, (August 19, 1996)

If the provisions are ambiguous, however, the District Commission examines the relevant zoning regulations for provisions which resolve the ambiguity. *Re: Molgano* 163 Vt. 25 (1994) at pages 29-31. This does not mean that a general review of a project is conducted for its compliance with the zoning regulations, but rather it sees of there are provisions in the zoning regulations that address the same subject matter that is at issue under the town plan. *Re: Fair Haven Housing Limited Partnership and McDonald's Corporation*, Docket No. 96-228 (April 23, 1997) (unpublished). In the instant case, the Village of Jeffersonville does have flood hazard area zoning regulations.

Moving to consideration of whether the terms of the Village of Jeffersonville plan are "specific or ambiguous", and in reliance upon the same village plan provisions discussed above in light of the Board's "mandatory or guidance" case law, the Commission concludes that the policy cited in finding 28 is specific to the area of the village within which the project tract is situated, that the policy is intended to proscribe land use within the flood hazard area by unequivocally stating "no development should occur", and that the policy advanced by the Village of Jeffersonville in order to "protect the health, safety and welfare of the residents of Jeffersonville by limiting development in flood hazard areas..." is sufficiently clear to guide the conduct of an average person in determining what type of development may go forward on a tract within the subject land use and overlay areas.

In summary, the District Commission is unable to conclude that the development proposal set out in the present application conforms with the plan for the Village of Jeffersonville.

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, it is the conclusion of this District Environmental Commission that the project described in the application referred to above, if completed and maintained in conformance with all of the terms and conditions of that application, will cause or result in a detriment to public health, safety or general welfare under criterion 10 described in 10 V.S.A., Section 6086(a).

VII.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, application 5L0468-7 is denied.

Dated at Barre, Vermont, this 26th day of October, 2011.

By /s/ Karl Johnson
Karl Johnson, Chair*
District 5 Environmental Commission

Commissioners participating in this decision:

Clifford Johnson

*Former Commission Chair Karl Johnson participated in this final decision pursuant to the provisions of 3 V.S.A. 849.

Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220.

The Notice of Appeal must include all information required by Rule 5(b)(3) of the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the VRECP.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. As of February 14, 2005 the address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660)

A motion to alter may be filed with the district commission within 15 days of this decision, pursuant to Board Rule 31(A). A motion for reconsideration of denial of permit may be filed with the district commission within six months of this decision, pursuant to Board Rule 31(B). If a motion for reconsideration is accepted as complete by the district commission within the six month period, then the applicant may file a motion with the Environmental Court seeking to have the case remanded to the district commission, pursuant to the Vermont Rules for Environmental Court Proceedings.