

## RULES AND REGULATIONS OF THE ENVIRONMENTAL BOARD

The following are Rules and Regulations of the Environmental Board, effective August 1, 1971.

### Rule 1: Description of Organization

(a) The Environmental Board, hereafter called the Board, is a body of the Agency of Environmental Conservation, and has the power to supervise execution of laws of the State of Vermont relating to environment. The Board has nine members who are appointed by the Governor with the advice and consent of the Senate. The Board has the following areas of responsibility:

(1) The Board has jurisdiction over the construction of improvements for commercial or industrial purposes on a tract or tracts of land owned or controlled by a person, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity involving more than ten acres of land within a radius of five miles of any point on any involved land, or involving more than one acre of land within a municipality which has not adopted permanent zoning and subdivision laws.

(2) The Board has jurisdiction over construction of improvements on a tract of land involving more than ten acres which is to be used for state or municipal purposes; the construction of improvements for commercial, industrial or residential use above the elevation of 2,500 feet; and over a tract or tracts of land which has been partitioned or divided for the purpose of resale into ten or more lots within a radius of five miles of any point on any lot, and within any continuous period of ten years after April 4, 1970.

(3) The Board acts in its judicial capacity upon petitions filed by applicants who wish to develop land.

(4) The Board may institute certain proceedings on its own initiative. The Board maintains in its administrative capacity a continuing surveillance of the development of land within its jurisdiction.

(5) The public may obtain information from and make informal submissions and requests to the Board by communicating with it at its office on Court Street, Montpelier, or at any District Environmental Commission of the Board, the locations of which are as follows: c/o Lamoille County Development Council, Box 577, Morrisville; c/o Northeastern Vermont Development Association, Lyndonville; c/o Chittenden County Regional Planning Commission, Richmond; c/o Addison Regional Planning Commission, 34 Pleasant Street, Middlebury; c/o Agency of Environmental Conservation,

Court Street, Montpelier; c/o Rutland Regional Planning Commission, 12 Wales Street, Rutland; c/o Windham Regional Planning Commission, 139 Main Street, Brattleboro; c/o Bennington Regional Planning Commission, Arlington; c/o Ottauquechee Regional Planning Commission, Woodstock.

Rule 2: Definitions

(a) The Board adopts the following definitions of certain phraseology appearing in the Statute creating the Board:

(1) "Commencement of construction or development" shall occur when the first man-made change on the land or the first man-made addition or demolition of any historic site or architecturally significant structure thereon shall occur after May 31, 1970. Any construction which shall have commenced prior to June 1, 1970, in order to avoid the provisions of the Statute shall be deemed to have commenced after May 31, 1970.

(2) "Commercial or industrial purposes" shall mean any use, for profit or not for profit, except for a family residence.

(3) "Land Capability Plan" in Section 12(9) of the Statute shall mean "interim land capability plan" as defined in Section 18 of the Statute.

(4) "Partition or division" of a subdivision shall occur when the first of any of the following events shall occur:

(a) the filing of a plot plan on town records; (b) the sale or offer to sell of the tenth lot of a tract or tracts, owned or controlled by a person as defined by the Statute in Section 2(8), said lot being within a radius of five miles of any point on any lot previously sold or offered for sale and all lots having been sold or offered for sale within any continuous period of ten years subsequent to April 4, 1970; (c) the development of plans by a person, as defined by Section 2(8) of the Statute, who owns or controls a tract or tracts of land and as a result of said plans, and pursuant thereto, sells or offers to sell any interest in that land, when the consummation of such plan would result in the division of the land into at least ten lots within a radius of five miles of any point on any lot within any continuous ten year period subsequent to April 4, 1970.

(5) "Statute" when used herein refers to the enabling legislation which created the Environmental Board, Act No. 250 of the 1969 session of the General Assembly, 10 V.S.A. Sections 6001 et seq.

(6) "Substantial change" in any subdivision or development exempted from a permit by Section 7 of the Statute shall be construed to refer to the general character and extent of the development or subdivision, and any cases arising under Section 7 will

be decided on a case by case basis, with great although not conclusive weight being given to what effect the change will have on the areas referred to in Section 12(a) of the Statute.

Rule 3: Pleadings and Service Thereof

(a) All applications, notices, petitions, entries of appearance and other pleadings filed with the Board or District Commissions shall be deemed to have been filed when a pleading is received by the Board or District Commissions.

(b) The pleading initiating a case before the District Commissions or Board shall be signed by the petitioner or an officer thereof. In a case initiated before the District Commissions, the original pleading and four copies thereof shall be filed with the appropriate District Commission. See Rule 13(d), *infra*, for Board proceedings. Service of the initial pleading upon each party entitled to be served a copy pursuant to 10 V.S.A. Section 6083 (Section 9 of the Statute) shall be made by personal service or by certified mail, return receipt requested, except in cases where a different manner of service is required by an applicable provision of law. The party initiating a case shall be responsible for obtaining the publication of notice of application in a local newspaper generally circulating in the area where the land is located, said publication to occur not more than seven days after the District Commission has received the pleading. Such published notice shall contain the name of the applicant, his address, the location of the proposed development or subdivision, the character or nature of such development or subdivision, if a subdivision the number of lots proposed, the location of the District Commission where said application was filed and the date of said filing.

(c) In their discretion the Board or District Commissions may treat any written communication to them concerning a matter within their jurisdiction as a pleading initiating a case for determination by them in their judicial capacity.

(d) Every pleading by any party subsequent to the initial pleading in a case shall be filed with the agency before which the case is pending or at the commencement of the hearing of the case.

(e) Every pleading by any party subsequent to the initial pleading in a case shall be served upon the attorneys of record for all other parties and upon all parties who have appeared for themselves. Service within this subsection of the rule shall be made upon an attorney or upon a party by handing a copy to him or by mailing by certified mail, return receipt requested, a copy to him at his last known address.

Rule 4: Petitions for Rulemaking and Declaratory Rulings

(a) Petitions for the adoption, amendment or repeal of any rule will be entertained by the Board. Such petitions shall be

filed with the Board pursuant to Rules 3 and (13) herein. Such petitions either will be denied within 30 days pursuant to 3 V.S.A. Section 806 or will be considered and disposed of pursuant to the procedure specified in 3 V.S.A. Section 803.

(b) Petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the Board or District Commissions will be entertained by the Board. Such petitions shall be filed with the Board pursuant to Rules 3 and (13) herein. Such petitions will be considered and disposed of promptly.

#### Rule 5: Appearances

(a) Upon the filing of a pleading initiating a case before the Board or District Commissions, the name of any attorney who has countersigned such pleading will be entered on the docket of the Board and/or appropriate District Commission. Except for appearances in open court, all other appearances by attorneys or persons appearing for themselves shall be by notice in writing filed with the Board or appropriate District Commission, and served pursuant to Rule 3 herein.

(b) All notice given to or by an attorney of record for a party shall be considered in all respects as notice to or from the party represented by such attorney.

(c) Any party to a case before the Board may appear for himself but may not be represented by anyone not an attorney at law.

#### Rule 6: Permit Application

Five permit applications shall be filed in the office of the District Commission for the county where the land is located. The addresses of said offices are listed herein in Rule 1(a)(5). On each application, the following information shall appear:

(a) The applicant's name, address, the address of each of the applicant's offices in Vermont, the applicant's legal interest in the property, and where the applicant is not an individual, municipality or state agency, the form, date, and place of formation of the applicant.

(b) The estimated total cost of such development, exclusive of land cost, except for a subdivision of land, for which must be listed the total number of lots to be offered for sale.

(c) A certification signed by the applicant in which he affirms under oath that he has notified the parties entitled to notice pursuant to Section 9 of the Statute, that he sent with said notice a copy of his application, and that all the information in the application is true and correct to the best of his information and belief.

(d) Plans and Specifications: A detailed plat of the proposed subdivision or development drawn to scale showing the location and dimensions of the land involved, all lots, streets, water and sewer system, if intended; proposed sites for the individual water and sewage disposal facilities, if intended; parks, playgrounds, parking areas, water courses and other bodies of water, natural or artificial, existing or intended; the contour of the land involved, meaning that portion of a development where man-made change or addition is to take place, drawn to a scale of five foot contour intervals; that portion of a tract of land to be developed but which will not be altered by man-made changes will be shown by a twenty foot contour interval; and a tract or tracts of land upon which a subdivision is proposed will be shown on a map with five foot contour intervals; an Official County Highway Map of the municipality within which said development or subdivision will be. Any subdivision or development which is subject to the Statute and which is also subject to the jurisdiction of the Water Resources Board and/or the Department of Health shall submit a copy of its application to said agency, the decision of said agency on the application, and a copy of the permit, if granted, by said agency. The Board and District Commissions may take action on an application for a permit for development or subdivision which is also subject to the jurisdiction of the Water Resources Board and/or Department of Health, and in such circumstances, may grant a permit conditioned upon obtaining a permit from a certain agency or agencies of government.

(e) Full statement of the purpose of the subdivision or development and the intended use of the land after subdivision or development.

(f) Statement of the type of water system to be provided or intended to be used such as individual system on each lot, community system, or municipal system. Statement shall also specify the location of the nearest municipal water system and whether it is available and feasible to use it.

(g) Statement of the type of sewage disposal system to be provided or intended to be used such as individual rural system on each lot, community system or municipal system. Statement shall also specify the location of the nearest municipal sewerage system and whether it is available and feasible to use it. If a sewage disposal system other than a community or municipal system or individual lot septic tank and leaching fields is proposed, the application shall include engineering evidence of satisfactory performance as may be required by the Board and District Commissions

(h) Statement of existing use of adjacent properties and intended use of adjacent undeveloped lands, if known.

(i) Financial statement indicating what if any financing has been obtained, what if any financing will be needed to complete the project, and what if any performance bonds will be required

of any contractors or subcontractors working on said development or subdivision.

(j) Such additional and supplementary information as the Board and District Commissions may request after initial review of the application, or after a hearing on said application.

Rule 7: Fees

(a) Each application for a permit for a development except a subdivision, shall be accompanied by a ten dollar fee plus a one dollar fee for each \$1,000 of estimated cost of the development in excess of \$10,000 as stated in the application up to a maximum of \$1,000. Each application for a permit for a subdivision shall be accompanied by a fee equal to five dollars per lot for the subdivision as it appears on the recorded plan or if the plan is not recorded, equal to five dollars per lot for the number of lots contemplated by the owner at the time of filing his application. All checks for any fee payable to the Board or District Commissions shall be made payable to "State of Vermont." All governmental agencies shall be exempt from all fees under these rules and regulations.

(b) No fees will be required for the installation of water or air pollution abatement facilities for private enterprise, if said facilities are ordered or approved by the Agency of Environmental Conservation.

(c) No fees will be required for rental housing funded under the provisions of Section 236 of the Federal Housing Act.

(d) Fees for housing projects, backed by municipal effort, such as the so-called "turnkey" projects, will be held in escrow and returned to the applicant if the applicable housing authority accepts the project upon completion.

Rule 8: Evidence at Hearings

(a) The admissibility of evidence in all cases before the Board and District Commissions shall be determined under the criteria set forth in the Administrative Procedure Act, 3 V.S.A. Section 810.

(b) In lieu of presentation of testimony to satisfy some of the criteria set forth in Section 12 of the Statute, the Board and District Commissions shall receive in evidence permits granted by the zoning boards of Burlington, South Burlington, Springfield, Charlotte, Williston, Middlebury, Montpelier, Brattleboro, Barre, Barre Town, Rutland City, Town of Essex, Essex Junction Village, Colchester and the Town and Village of Milton, and by the zoning boards of any other municipalities which adopt permanent zoning and permanent subdivision regulations after April 4, 1970. Such permits shall create a presumption that the application satisfied the criteria set forth in Section 12(a)(2)(3)(4)(10) of the Statute.

(c) The Board and District Commissions will use as a guideline the environmental requirements of the Department of Health adopted by that Department for use in conjunction with its subdivision regulations, copies of which can be obtained from that agency at 115 Colchester Avenue, Burlington. (Special Note: In actual practice subdivision plans are submitted to the Division of Environmental Protection of the Agency of Environmental Conservation in Montpelier, Vt., per Act #246 of the 1970 Legislature.) The Board and District Commissions will also use as a guideline in cases they deem appropriate the Model Subdivision Regulations prepared by the Vermont Planning and Community Services Agency, copies of which are available at all District Commission offices. Reference to these requirements or regulations can be used by an applicant in support of his application, and will be deemed relevant for the purpose of being admitted in evidence as part of the record of a hearing.

Rule 9: Joint Hearings

(a) In order to avoid duplication of testimony and avoid unnecessary expense, the Board and District Commissions may hold a hearing with another affected governmental agency if said agency communicates its agreement to or request for same to the Board and appropriate District Commission at least ten days before the scheduled hearing date. Said communication must be in writing signed by a representative of the affected agency but can be sent through any party to the proceedings or directly from the affected agency.

Rule 10: Subpoenas

(a) Board subpoenas authorized by law shall be issued to a party on request, and, when required, on a statement or showing of general relevance and reasonable scope of the evidence sought.

Rule 11: Conduct of Hearings

(a) A quorum of the Board to conduct business, including holding a hearing, shall consist of more than half of its members, but in no event less than four members. A quorum of a District Commission to conduct business, including holding a hearing, shall consist of two members. In the event that a tie vote results during the conduct of any business, conduct of said business will have to be adjourned until an uneven number of members can meet and break said tie. A qualified stenographer or an electronic sound recording device shall be used to record all hearings where an even number of Board or District Commission members are conducting the hearing. In the event of a hearing decision over which a deadlock exists, said hearing will either have to be held again or decided on the transcript or recording thereof, said decision to rehear to be made by a majority of those members of the Board or District Commission who convene to break the deadlock.

(b) At any hearing, the members convened therefor will

designate a Chairman to conduct the hearings, and he or someone designated by him, shall have the power to administer oaths to witnesses, rule on questions of evidence and offers of proof, take depositions or order such to be taken, rule on the validity of service of subpoenas and other notices, and do anything necessary and proper to conduct the hearing in a judicious and fair manner.

(c) Upon request in writing from a party ten days before a hearing, a hearing will be transcribed by a qualified stenographer designated by the Board or District Commission before which the hearing is held or will be recorded on an electronic sound recording device, said choice between a stenographer and an electronic sound recording device to be made by the Board or District Commission before which the hearing is held. All requests for a stenographer shall be accompanied by a fee of one hundred dollars which will be applied toward the costs of said stenographer, if used. The Board or District Commission, after review of an application and/or during the course of a hearing, can require an additional fee as security for stenographic costs. Any fees received in excess of final stenographic costs will be refunded. Copies of any transcript will be available to anyone at a reasonable cost to be set by the stenographer with the advice and consent of the Board.

(d) Cross-examination of any witness shall be done only by an attorney who has entered his appearance as required by Rules 3 and 5 herein, or by a party to the proceeding who is not represented by counsel.

#### Rule 12: Consideration of Applications and Appeals to Board

The Board and District Commissions shall consider each application in the order presented and may require any applicant to submit supplementary data to them for use by them in determining whether or not to issue a permit. In addition, they may conduct such investigations, examinations, tests and site evaluations as they deem necessary to verify information contained in the application.

#### Rule 13: Approval or Denial and Appeal of Application

(a) If the Board or District Commission approves an application, it shall issue a permit to the applicant enabling him to proceed with the development or subdivision in accordance with the terms of the application as approved.

(b) If the District Commission or Board does not approve an application, it shall give written notice to the applicant that the application for a permit has been denied and specify the reasons therefor.

(c) The Board or District Commission may issue a permit to the applicant subject to such conditions or restrictions as it



may impose, consistent with the intent of these regulations, and the Statute.

(d) Any party aggrieved by an adverse determination by the District Commission may appeal to the Board and will be given a de novo hearing on all findings requested by the party. Said appeal shall be filed within 30 days after receipt of the decision of the District Commission. It shall consist of ten copies of the decision of the District Commission, the reasons assigned why appellant believes the District Commission was in error, and an affidavit that appellant has notified, by certified mail return receipt requested or by personal service, all parties specified in §9 of the Statute and all other parties who appeared before the District Commission of his appeal and delivered to them with said notice of a copy of his appeal. Such certification shall include the names and addresses of all such parties notified. All appeals shall be accompanied by a filing fee of \$25.00 and shall be filed with the Board at its office on Court Street, Montpelier.

(e) Any party aggrieved by an adverse determination of the Board may appeal to the Vermont Supreme Court under the provisions of Chapter 102 of Title 12 V.S.A.

Rule 14: Enlargement of Rules

The Board or the District Commissions may take a case out of these rules when, in their opinion, the interest of the public so requires.

