

**STATE OF VERMONT
ENVIRONMENTAL BOARD
DISTRICT ENVIRONMENTAL COMMISSION # 2**

RE: Zaremba Program Development, LLC
f/k/a Zaremba Group, LLC
14600 Detroit Avenue, #1500
Lakewood, Ohio 44107
and
Theodore Zachary
25 Mountain Brook Drive
Cheshire, CT 06410

Application #2S0699-3
Prehearing Conference Report
and Order
10 V.S.A., §§ 6001 - 6093
(Act 250)

I. Introduction

On September 21, 2012, Zaremba Program Development, LLC, and Theodore Zachary filed an Act 250 application for a project generally described as creating a two-lot subdivision consisting of: Lot 1 with 8.72 +/- acres and the existing, permitted 3,000 square foot restaurant and parking; and Lot 2 with 1.37 +/- acres and the proposed construction of a 9,100 square foot retail store. The project is located at 319 South Main Street (Route 103) in Chester, Vermont.

A prehearing conference pursuant to Act 250 Rule (Rule) 16 was held on October 17, 2012, for the above-referenced application. Chair, Michael Bernhardt, explained the purpose of the prehearing conference. The Chair announced that the site visit for the hearing scheduled for November 9, 2012, will start promptly at 9:00 a.m. (instead of 9:30 a.m. as previously noticed). The hearing will start no later than 10:00 a.m. at the Chester Town Office. No preliminary decisions regarding party status were made at the prehearing. This Prehearing Conference Report includes the Commission's decision regarding party status and identifies the issues under the ten criteria that will be covered at the hearing.

II. Party Status

The following persons are entitled to party status pursuant to 10 V.S.A. § 6085(c)(1):

1. The Applicants, by David Cooper, Esq. and Matthew Casey, who attended the hearing.
2. The Vermont Agency of Agriculture, Food & Markets, by Diane Zamos, Esq. and Kyle Davis, through an Entry of Appearance dated September 28, 2012, and they attended the hearing.
3. The Southern Windsor County Regional Planning Commission (SWCRPC), by Jason Rasmussen, who attended the hearing. The SWCRPC has not formulated any concerns, but requested to reserve the right to address Criteria 1(D) Floodways, 5 Traffic, 9(B) Primary Agricultural Soils, and 10 Town Plan. The Applicant objected except as these criteria are addressed under the Town Plan.

4. The Vermont Agency of Natural Resources, through an Entry of Appearance by Elizabeth Lord, ANR Land Use Attorney, dated October 16, 2012.

The following persons presented written Petitions for Requesting Party Status:

Leonard Lisai and Virginia Lisai submitted a Petition for Party Status at the pre hearing.

Through a submission by James A. Dumont, Esq., the Commission received a Petition for Party Status by Michele Bargfrede, Diane Holme, John Holme and Claudio Veliz, dated October 13, 2012.

At the prehearing conference, the Commission received another Petition for Party Status, through a submission by Mr. Dumont, Esq. for Shawn Cunningham, Dan Cote, Penny Cote, Bill Reed, Bret Rugg, Sharon Baker, Stephanie Whitney Payne, Donald Payne, Lew Watters, Nora Watters, Tom Housten, Janice Housten, Robert Gibbons, Gail Gibbons, Carrie King, Kathy Schoendorf, Richard Farnsworth, Cynthia Farnsworth, Kathy Pellet, Mark Martins, Scott Morgan, and Georgette Thomas.

Following review and deliberation of the submitted written Petitions for Party Status, the Commission grants or denies preliminary party status under the criteria indicated to the following:

5. Leonard Lisai and Virginia Lisai, reside at 121 School Street, Westminster, Vermont and own and operate a grocery store at 526 Depot Street in Chester. They have requested party status under Criterion 8 Aesthetics and 10 Conformance with the Town Plan. The Commission grants preliminary party status under Criteria 8 and 10 (Town Plan). The Applicant objected.
6. Michele Bargfrede resides at 3009 Weston-Andover Road in Andover and she owns and operates a business, Sage Jewelry, located at 295A Main Street in Chester, which is at the end of the Green. She has requested party status under Criteria 5 Traffic, 8 Aesthetics, and 10 Conformance with the Town Plan. The Commission grants preliminary party status under Criteria 5, 8 and 10 (Town Plan). The Applicant objected.
7. Diane and John Holme reside at 244 Putnam Hill Road in Chester. The project is in their line of sight from their residence approximately a quarter mile from the project site. They have requested party status under Criteria 5 Traffic, 8 Aesthetics, and 10 Conformance with the Town Plan. The Commission grants preliminary party status under Criteria 5, 8 and 10 (Town Plan). The Applicant objected.
8. Claudio Veliz lives at 183 VT Route 103 South (Main Street) in Chester and owns and operates an architecture firm at 116 Main Street in Chester. Mr. Veliz experienced damage by the Williams River during the August 2011 Tropical Storm Irene. He has requested party status under Criteria 1(D) Floodways, 5 Traffic, 8 Aesthetics, and 10 Conformance with the Town Plan. The Commission grants

- preliminary party status under Criteria 1(D), 5, 8 and 10 (Town Plan). The Applicant objected.
9. Shawn Cunningham owns and resides at 3008 Popple Dungeon Road, Chester. He and his wife operate a business promoting 100 small businesses and attractions of Chester. He has requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. The Commission grants preliminary party status under Criteria 8 and 10 (Town Plan).
 10. Dan and Penny Cote reside at 321 Main Street, Chester, where they also operate a bed and breakfast, the Inn Victoria. They requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town Plan. The Commission grants preliminary party status under Criteria 8 and 10 (Town Plan).
 11. Bill Reed and his wife own and operate Misty Valley Books, an independent bookstore at 54 The Common in Chester. They also reside in the building. He has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
 12. Brett Rugg and his wife own and operate the Fullerton Inn, a 20-room inn at 40 The Common, on the Green in Chester. Mr. Rugg requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
 13. Sharon Baker has a residence and business, Country on the Common, at 80 The Common in Chester. She requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
 14. Stephanie Whitney Payne and Donald Payne have owned residences in Chester for over 50 years and have resided at 397 River Street in Chester for more than 15 years. They operate two businesses from their home. One is an interior design firm and the other is for conducting employee surveys. They have requested party status under Criteria 5 Traffic, 8 Aesthetics, and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 5, 8 and 10.
 15. Lew Watters and Nora Watters own and have lived at 250 North Street in Chester for 38 years. This is one of the stone buildings in the Stone Village. Ms. Watters runs a doll making business and Mr. Watters is an instructor in computing and digital photography. They have requested party status under Criteria 8 Aesthetics and 10 Conformance with the Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.

16. Tom Houston and Janice Houston are retired and own and reside at 810 Quarry Road in Chester. They have requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
17. Carrie King resides at 408 Depot Street in Chester and has owned this home since 2004. She has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
18. Kathy Schoendorf and her family own and live at 9 Dale Road in Stony Brook, NY and have a second home at 2609 Lovers Lane in Chester. They have owned their Chester home for 8.5 years and plan to retire here. She has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
19. Richard Farnsworth and Cynthia Farnsworth own and live at 256 Depot Street in Chester. They also own property at 193 Talc Mill Road that abuts the project site's property. They have lived at Depot Street for 23 years and Mr. Farnsworth's mother resides at the Talc Mill Road property. The Farnsworths have constructed a barn on the Talc Mill Road property for the use of his business, Custom Colors Painting. The Talc Mill Road property overlooks the rear of the project site. They have requested party status under Criteria 8 Aesthetics including Noise, 8(A) Wildlife Habitat, and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 (including Noise), 8(A) and 10.
20. Robert Gibbons and Gail Gibbons have owned 2475 Popple Dungeon Road for more than 16 years and retired to the property within the past few years. They have requested party status under Criterion 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 10.
21. Kathy Pellet and her husband have lived at 835 Quarry Road in Chester for 14 years with the intention of retiring here. They have requested party status under Criterion 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 10.
22. Mark Martins lives at 397 Peck Road in Chester. He is a principal in The Williams River House at Fox Chair Mountain Farm, a bed and breakfast, and a location for "destination weddings and other events." He has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.
23. Scott Morgan lives at 244 Main Street in Chester. He is a professional artist and operates the WaterMusicArt Gallery. Mr. Morgan is also a landscape architect. He has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.

24. Georgette Thomas lives on Route 103 North between downtown Chester and Gassetts. She has owned and operated the Hugging Bear Inn and toy store since January 1983. She has requested party status under Criteria 8 Aesthetics and 10 Conformance with Town or Regional Plans. The Commission grants preliminary party status under Criteria 8 and 10.

Pursuant to 10 V.S.A. § 6085(c)(6), the Commission will re-examine its party status decisions prior to the close of the hearing and will state its final party status decisions either in the decision it issues on the case or in a separate memorandum.

III. Issues

The following relevant issues have been identified, on which the applicant and all parties (for those criteria on which they have been preliminarily granted party status) should be prepared to provide testimony or submit documentary evidence at the hearing, if necessary:

1. Criterion 1(D), regarding the impact of the project on Floodways;
2. Criterion 5, regarding the impact of the project on traffic safety and congestion;
3. Criterion 8, regarding the impact of the project on scenic and natural beauty, aesthetics (including noise) and historic sites;
4. Criterion 8(A), regarding the impact of the project on necessary wildlife habitat and endangered species;
5. Criterion 9(B), regarding the impact of the project on primary agricultural soils; and
6. Criterion 10, regarding the project's conformance with the local and regional plans.

IV. Order


1. The Applicants should be prepared to argue whether the *Stowe Club Highlands Analysis* [Act 250 Rule 34(E)] with respect to Criterion 9(B) primary agricultural soils should or should not be applied to this application. The Commission will open the November 9, 2012 hearing by addressing this issue.
2. The Applicants and all other parties shall identify all expert and lay witnesses that will present testimony at the Act 250 hearing on the issues identified under Section III, above. Please identify the criterion or criteria that each witness will testify under. All parties shall distribute exhibits, reports and studies to all parties as well as the expert/lay witness list, no later than November 2, 2012. Distribution of this supplemental information must include filing four copies to the District Environmental Commission, a certificate of service indicating the documents went to all parties, and an electronic version of the submission either on a compact disc or

on the FTP site. If you have questions about the FTP site, you may contact the support staff at 885-8840 or 885-8846.

3. The Commission will allow the Applicants until November 2, 2012, to raise objections to the preliminary party status determinations for those persons on Attorney Dumont's Petition for Party Status dated October 16, 2012.
4. At the public hearing scheduled for November 9, 2012, all parties must be prepared to go forward and present all their evidence on the criteria under which they have been admitted. The site visit will start promptly at **9:00 a.m.** This has been changed from the original notice. Following the site visit, the hearing will start no later than 10:00 a.m. at the Town Office. There will be no lunch break.

If there are any questions, please contact Linda Matteson, District Coordinator, at 885-8843.

Dated at Springfield, Vermont, on October 19, 2012.

By 
Michael Bernhardt, Chair
District 2 Environmental Commission
Natural Resources Board

Other Commission members participating: Stephan Morse
 Stanley Borofsky

Any **appeal** of this decision must be filed with the Superior Court, Environmental Division, within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B).

For additional information on filing appeals, see the Court's website at:
<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> Or call (802) 828-1660.
The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.

E-Notification CERTIFICATE OF SERVICE #2S0699-3

I hereby certify that I sent a copy of the foregoing Prehearing Conference Report on October 19, 2012, by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail, to the following with email addresses: **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.** All email replies should be sent to nrb-act250springfield@state.vt.us

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