

STATE OF VERMONT
ENVIRONMENTAL COURT

In re: Appeal of	}	
Barrett M. Singer	}	Docket No. 142-8-99 Vtec
	}	
	}	
	}	

DECISION and ORDER

Appellant Barrett M. Singer appealed from a decision of the Development Review Board (DRB) of the Town of Hyde Park, granting conditional use approval and site plan approval to the State of Vermont Department of Forests, Parks and Recreation to operate the Green River Reservoir as a state park.

Appellant is represented by Richard Johnston King, Esq.; Appellee-Applicant State of Vermont Department of Forests, Parks and Recreation is represented by Ginny McGrath, Esq.; Interested Person William Bartlett appeared and represented himself¹; Interested Person Milford Cushman entered an appearance but did not participate in the hearing. An evidentiary hearing was held in this matter before Merideth Wright, Environmental Judge. The parties were given the opportunity to submit brief written requests for findings and memoranda of law. Upon consideration of the evidence, and the

¹ There was some discussion at the hearing as to whether Mr. Bartlett had entered an appearance on behalf of a group entitled Friends of the Green River Reservoir. Although under certain circumstances a non-attorney may represent an unincorporated association, see Vermont Agency of Natural Resources v. Upper Valley Regional Landfill Corp., 159 Vt. 454 (1992), party status in zoning matters is governed by 24 V.S.A. §4464(b). In the present case, the group's size or whether the members qualified under §4464(b)(4) was never established to grant the group party status.

written memoranda and proposed findings, the Court finds and concludes as follows.

The Green River Reservoir impounds water for the use of the Village of Morrisville Water & Light Department. The reservoir and some surrounding lands have been in use for many years as a de facto park for canoeing, picnicking, swimming and camping, and have deteriorated in recent years due to over use. In 1999, the Village transferred to the State the lands surrounding the Reservoir, at least in part so that the lands would be better managed as a park.

The property is located in the Shoreland and Rural Residential zoning districts. Recreational facilities, including parks, are conditional uses in the Rural Residential district. Question 6 of Appellant's Statement of Questions asks the Court to determine whether a state park is a conditional use in the Shoreland District. That district allows land development as a conditional use if it is not commercial or industrial and if it is not significantly different from the permitted or other conditional uses with regard to appearance, volume of traffic, noise or effect on neighboring properties, such as, among other things, public assembly and community recreation buildings. Appellant appears to argue that the only land development which may be allowed under this section are structures, but no such restriction on the term "land development" may be found in the Zoning Bylaws. The proposal does not change the use of the property from its use prior to the land transfer². The proposed use is not significantly different from agriculture or forestry uses permitted in that district, with respect to the criteria of appearance, traffic, noise or effect on neighboring properties. It may be considered by the DRB, and hence this Court, as a conditional use.

Appellee-Applicant has put in place an interim management plan for initial park use, and has a long-range management planning process in place which provides for input from the public. Under the initial management plan for the park, no changes in the use of the park are proposed, except that all-terrain vehicles and trail bicycles are prohibited. Certain

² The Zoning Bylaws do not appear to have a provision addressing pre-existing uses, only existing structures. §III(C).

of the existing camp sites are being closed, and the trails, access roads and remaining camp sites are managed to begin to address erosion and health hazards from human waste. The application contained a redesign of the access road, worm-assisted composting privies for the camp sites, and erosion control measures at some campsites. The approval of the proposal by the DRB contained fourteen conditions aimed at allowing these improvements while preserving the relatively primitive nature of this park, and provided for periodic review by the Town to determine if further conditions were necessary, as well as noting that any change in use, further development, expansion of the Interim Management Plan and implementation of a Final Management Plan would require future review by the DRB.

By Appellant's amended Statement of Questions, filed November 16, 1999, he raised seven questions for the Court to determine. Question 6 has been addressed above. At the Environmental Court hearing, after all the testimony had been presented, Appellant was satisfied that the questions he had raised in Questions 2, 4, 5, and 7 would be addressed in Appellee-Applicant's long-range management plan or in the conditions of the DRB approval, and withdrew those questions as part of this appeal. Similarly, he was satisfied as to Question 3 as to traffic congestion and safety, and withdrew that portion of Question 3. Accordingly, all that remains for this court to determine is Question 1, relating to bank erosion, and that portion of Question 3 relating to the maintenance of existing private accesses to the Reservoir.

Erosion of the bank of the reservoir occurs under certain wind and storm conditions, especially to north-facing segments of the shoreline. Appellee-Applicant intends to address this issue in the Final Management Plan for the Reservoir, which will undergo a public comment process. Appellant argued at trial that such erosion could affect his land if it were to continue unchecked across the buffer strip which Appellee-Applicant now owns around the Reservoir. Appellant did not propose any specific erosion control measures, he merely seeks assurance that the issue will be addressed. Section VI(A)(3) requires consideration of the environmental limitations of the site or area affected. The tendency of the shoreline to erode naturally under certain conditions will be adequately addressed by the proposal if the Final Management Plan for the park contains provisions for the

detection of such erosion and the implementation of any erosion control measures as may be appropriate in sound lakeshore management. Accordingly, to assure that this issue will be considered, the Court will add a condition requiring its inclusion in the Final Management Plan, as Appellee-Applicant has stated it already intends to do.

Appellant did not discuss the question of maintenance of existing private access to the reservoir in his post-hearing memorandum. Appellee-Applicant may intend to allow existing private access to continue, but that issue is essentially a matter of private property law as between Appellee-Applicant and the various adjoining property owners. Section VI(A)(2) requires consideration of the existing overall pattern of use in the area affected, but does not authorize the Court to adjudicate the parties' respective private property rights. Appellee-Applicant's proposal is a suitable use in light of the existing pattern of use in the surrounding area. It may be appropriate for the parties to address their private property rights in superior court; it is not an issue before this Court in the present case.

Based on the foregoing, it is hereby ORDERED and ADJUDGED that conditional use approval and site plan approval are GRANTED to Appellee-Applicant, as was granted by the DRB in its July 9, 1999 decision, and that the conditions imposed by the DRB are hereby imposed by this Court. As an additional condition 3(a), Appellee-Applicant shall address in the Final Management Plan the tendency of the shoreline to erode, Appellee-Applicant's plan for the timely detection of such erosion, and the criteria by which it will determine whether to implement erosion control measures.

Dated at Barre, Vermont, this 15th day of February, 2000.

Merideth Wright
Environmental Judge