

State of Vermont



LAND USE PERMIT AMENDMENT

CASE NO: 5W0584-19
Spruce Place, LLC
21 Carmichael Street
Essex Junction, Vermont 05452
and
Berlin Mall, LLC
c/o Heidenberg Properties
234 Closter Dock Road
Closter, New Jersey 07624

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

The District 5 Environmental Commission hereby issues Land Use Permit Amendment 5W0584-19, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 120, Pages 30-38, of the land records of the Town of Berlin, Vermont, as the subject of a deed to Spruce Place, LLC and a lease to Berlin Mall, LLC. This permit specifically authorizes the construction of a four-story, ninety eight (98) unit senior living facility with an underground parking garage, a paved parking lot and 3 access drives to be constructed on a 1.94 acre lot within the Berlin Mall tract. The project is located at 430 Berlin Mall Road in Berlin, Vermont.

Jurisdiction attaches because the project constitutes a material change pursuant to Act 250 Rule 2(C)(6) and, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittees and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 5 Environmental Commission in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with the conditions of this permit, Findings of Fact and Conclusions of Law 5W0584-19 and the permit application, plans, and exhibits on file with the Commission. The approved plans are:
 - Sheet 0 - "Existing Conditions Plan" dated 5-13-19 (Exhibit #018)
 - Sheet PL1 - "Subdivision Plat" dated 1-11-19 (Exhibit #019)
 - Sheet 1 - "100-Scale Overall Site Plan" dated 1-11-19, last revised 7-15-19 (Exhibits #020 and #020a)
 - Sheet 2 - "Site Plan" dated 6-11-19, last revised 8-9-19 and 11-19-19 (Exhibits #021, #021a and #021b)
 - Sheet 3 - "Utility Plan" dated 5-2-19 (Exhibit #022)
 - Sheet 4 - "40-Scale Utility Plan" dated 12-11-18 (Exhibit #023)
 - Sheet 5 - "Lighting Plan" dated 1-22-19 (Exhibit #024)
 - Sheet 6 - "EPSC Plan" dated 12-11-18, last revised 11-19-19 (Exhibits #025 and #025a)
 - Sheet 7 - "Water and Sewer Details" dated 12-11-18 (Exhibit #026)
 - Sheet 8 - "General Details" dated 1-22-19 (Exhibit #027)

Sheet ST1 – “Stormwater Management Plan” dated 5-2-19 (Exhibit #028)

Sheet ST2 – “Underground Stormwater System Details” dated 5-2-19 (Exhibit #029)

Sheet ST3 – “Post Construction Soil Testing and Maintenance Plan” dated 1-22-19 (Exhibit #030)

Sheet S – “Landscape Plan” dated 10-10-18 (Exhibit #031)

Sheet A101 – “Garage Floor Plan” dated 12-6-18 (Exhibit #032)

Sheet A102 – “First Floor Lobby Level Plan” dated 5-30-19 (Exhibit #033)

Sheet A103 – “Second Floor Plan” dated 5-30-19 (Exhibit #034)

Sheet A104 – “Third Floor Plan” dated 5-30-19 (Exhibit #035)

Sheet A105 – “Fourth Floor Plan” dated 5-30-19 (Exhibit #036)

“Three-D Rendering, Building Exteriors”, dated 8/19/19 (Exhibit #037)

Sheet 1A – “150-Scale Overall Parcel Plan” dated 7-15-19 (Exhibit #040)

Sheet C1 – “Line of Sight Cross Section Plan 1” dated 8-8-19 (Exhibit #042)

Sheet C2 – “Line of Sight Cross Section Plan 2” dated 8-8-19 (Exhibit #043)

Sheet A201 – “Exterior Building Elevations; South Elevation and East Elevation” dated 9-6-19 revised 10-18-19 (Exhibit #053)

Sheet A202 – “Exterior Building Elevations; North Elevation A, West Elevation and North Elevation B” dated 9-6-19 revised 10-18-19 (Exhibit #053)

Sheet A020 – “Project Information” dated 4-24-19 revised 10-18-19 (Exhibit #056)

Sheet A501 – “Wall Section ‘A’” dated 10-18-19 (Exhibit #057)

3. All conditions of Land Use Permit 5W0584 and amendments are in full force and effect except as further amended herein.
4. The Permittees shall comply with the conditions of Wastewater System and Potable Water Supply Permit WW-5-1290-3 issued on January 15, 2020 by the ANR Drinking Water and Groundwater Protection Division.
5. The Permittees shall comply with the conditions of Construction General Permit 3761-9020.2 issued on April 17, 2019 by the ANR Watershed Management Division.
6. The Permittees shall comply with the conditions of Stormwater Discharge General Permit 3761-9015.1 issued on July 24, 2019 by the ANR Watershed Management Division.
7. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
8. Prior to commencement of construction, the Permittees shall submit the location and current uses of the deposition site for comments by the parties and Commission approval.
9. A copy of this permit and plans shall be on the site throughout the construction process.

10. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
11. No further subdivision, alteration, and/or development on the Berlin Mall tract shall be permitted without a permit amendment issued by the District Commission. The first permit amendment application for the subdivision and/or development of any of the developable 'outlots' shall be accompanied by a master plan under all ten criteria, consistent with the Findings of Fact herein.
12. Pursuant to 10 V.S.A. § 8005(c), the Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
13. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittees and their successors and assigns.
14. Construction hours shall be limited to Monday through Friday from 7:00AM to 5:00PM, and Saturdays from 8:00AM to 5:00PM.
15. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
16. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
17. The Permittees shall be obligated to implement the Construction Site Waste Reduction Plan approved by the Agency of Natural Resources Solid Waste Management Program and included as Exhibit 50.
18. The Permittees shall comply with the exhibits for erosion prevention and sediment control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. Silt fencing shall be inspected within 24 hours of heavy rains, with any necessary repairs effected immediately. Maintenance of silt fencing shall require removing any sedimentation. The sediment may be placed as fill in low areas, if approved by the project engineer.
19. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
20. All areas of disturbance must have temporary or permanent stabilization within 7 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each workday. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches).
21. All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading.

22. The Commission reserves the right to review erosion prevention and sediment control and to evaluate and impose additional conditions with respect to erosion prevention and sediment control as it deems necessary.
23. In addition to conformance with all erosion prevention and sediment control conditions, the Permittees shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
24. The Permittees shall maintain the area of land within 50 feet of the wetland identified in Exhibit 021a in undisturbed, naturally vegetated condition. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing; and mowing. Prior to site preparation and construction, the Permittees shall permanently mark the boundary of the area within 50 feet of the wetland with signage, boulders, split rail fencing, or other landscaping features.
25. Any extracted stumps shall be disposed of on-site above the seasonal high-water table and not in any wetland, or at a state-certified stump and inert waste disposal facility to prevent groundwater pollution.
26. The Permittees shall construct a curbed sidewalk along the westerly side of Berlin Mall Road to Fisher Road. A proposed plan for the sidewalk shall be filed for review and comment by the parties and for Commission approval. The Permittees shall complete construction of this sidewalk for use prior to project operation.
27. The Permittees and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit 31 by replacing any dead or diseased plantings as soon as seasonably possible.
28. Prior to the operation of the project, the Permittees shall install a 20' tall light pole in the vicinity of the new crosswalk. The fixture shall be installed to provide downlighting so that the new crosswalk is visible in the dark
29. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
30. The Permittees shall not erect additional exterior signage without prior written approval from the District Coordinator or the District Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
31. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards (CBES) and the CBES Stretch Guidelines in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this update can be found at http://publicservice.vermont.gov/energy_efficiency/cbes, <http://nrb.vermont.gov/sites/nrb/files/documents/9fprocedure.pdf> and <http://nrb.vermont.gov/sites/nrb/files/documents/cbesstretch.pdf>).

32. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
33. The Permittees, upon completion of the construction of the commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
34. At the completion of the project, and prior to the occupancy of the building, the Permittees shall certify by affidavit that the project has been constructed in accordance with this permit pursuant to Act 250 Rule 32(A).
35. The Permittees shall provide each prospective purchaser of any interest in this project a copy of this Land Use Permit and the Findings of Fact before entering into any written contract of sale.
36. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittees have not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).
37. All site work and construction shall be completed in accordance with the approved plans by February 26, 2023 unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
38. The Permittees shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittees shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
39. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Montpelier, Vermont, this 28th day of February 2020.

By /s/ Jeremy Reed
Jeremy Reed, Vice Chair
District 5 Environmental Commission

Commissioners participating in this decision:
Joslyn Wilschek
Peter Heitmann

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

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. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **LAND USE PERMIT AND FINDINGS OF FACT CONCLUSIONS OF LAW, AND ORDER 5W0584-19 (SPRUCE PLACE LLC)** by U.S. Mail, postage prepaid, on this 28th day of February 2020, 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 nrb.act250barre@vermont.gov 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.

Spruce Place LLC
c/o Brad Dousevicz
21 Carmichael Street
Essex Junction, VT 05452
dousevicz@gmail.com
jeddousevicz@gmail.com
greg@rabideau-architects.com
scunningham@olearyburke.com
poleary@olearyburke.com
roger@ldengineering.com
chuck@storrowandbuckley.com

Berlin Mall LLC
c/o Heidenberg Properties
234 Closter Dock Road
Closter, NJ 07624
pmedeiros@heidenbergproperties.com

Berlin Select Board
c/o Town Clerk
108 Shed Road
Berlin VT 05602
townclerk@berlinvt.org

Berlin Planning Commission
c/o Town Clerk
108 Shed Road
Berlin VT 05602
townclerk@berlinvt.org

Agency of Transportation
Development Review & Permitting Service Section
One National Life Drive, Drawer 33
Montpelier VT 05633
Christopher.clow@vermont.gov

Central VT Regional Planning Commission
29 Main Street Suite 4
Montpelier VT 05602
rock@cvregion.com
chartrand@cvregion.com

Office of Planning & Legal Affairs
1 National Life Drive, Davis 2
Montpelier VT 05620-3901
elizabeth.lord@vermont.gov
kevin.anderson@vermont.gov
anr.Act250@vermont.gov

FOR INFORMATION ONLY

Rosemary Morse, Town Clerk
108 Shed Road
Berlin VT 05602

District 5 Environmental Commission
5 Perry Street, Suite 60
Barre VT 05641-4267
nrb.Act250Barre@vermont.gov

BY /s/ Lori Grenier
Lori Grenier
Natural Resources Board Technician
802-476-0185

State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 5 ENVIRONMENTAL COMMISSION
10 Baldwin Street, Montpelier, VT 05601-3201

RE: Spruce Place, LLC
21 Carmichael Street
Essex Junction, Vermont 05452
and
Berlin Mall, LLC
c/o Heidenberg Properties
234 Closter Dock Road
Closter, New Jersey 07624

Application 5W0584-19
Findings of Fact
Conclusions of Law, and Order
10 V.S.A. §§ 6001-6093 (Act 250)

I. INTRODUCTION

On June 21, 2019, Spruce Place, LLC and Berlin Mall, LLC filed an amendment application for the construction of a ninety eight (98) unit senior living facility with an underground parking garage, a paved parking lot and 3 access drives. The tract of land consists of 64 acres. The Applicant's legal interest is ownership in fee simple described in a deed recorded in the land records of Berlin, Vermont. The project is located at 430 Berlin Mall Road in Berlin, Vermont.

The District Coordinator deemed the application incomplete pursuant to Act 250 Rule 10(D) for reasons stated in an e-mail to the Applicants dated July 1, 2019. The application was deemed complete on August 23, 2019 upon receipt of the required supplemental information.

A site visit and public hearing were held on October 7, 2019. The Commission recessed the hearing, whereupon a Hearing Recess Order was issued on October 25, 2019 requesting supplemental submittals. The Applicants submitted the final outstanding submittal on January 16, 2020. The Commission adjourned the hearing on February 28, 2020 after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations.

II. JURISDICTION

Jurisdiction attaches because the project constitutes a material change pursuant to Act 250 Rule 2(C)(6) and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. MASTER PLAN

The application revealed future intentions by the Applicant, Town, and Berlin Mall, LLC to develop non-retail projects in the surrounding buildable 'outlots' (A, C, and D) of the Mall, to "contribute to the goal of creating a mixed-use town center environment: which would incorporate a "well defined, mixed-use compact and walkable center' with 'pedestrian-friendly streets defined by sidewalks, street trees, and landscaping" (Exhibit 1, quoting the "Town Center Zoning District", Berlin Zoning Regulations).

Consistent with the provisions of Act 250 Rule 21, in order to avoid piecemeal review, and to avoid potential impacts associated with the incremental, uncoordinated and unplanned use of lands, the District Commission will require the filing of a master plan to accompany any subsequent development proposal of one or more of the Mall 'outlots'.

IV. PARTY STATUS

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) who attended the hearing are:

1. The Applicants by Jed and Brad Dousevicz, Greg Rabideau, Architect; Engineers Shaun Cunningham, Paul O’Leary, Roger Dickinson, and Charles Storrow, Esq.
2. The Agency of Natural Resources through an Entry of Appearance dated October 2, 2019 and by Kevin Anderson, Regulatory Policy Analyst, and Terry Purcell, Stormwater Operational and Construction Permit Reviewer.
3. The Vermont Agency of Transportation by Christopher Clow.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicants have met the burden of proving compliance with the following criteria through submittal of the application:

- | | |
|--|---------------------------------------|
| 1 - Air Pollution | 9(A) - Impact of Growth |
| Water Pollution | 9(B) - Agricultural Soils |
| 1(A) - Headwaters | 9(C) - Productive Forest Soils |
| 1(C) - Water Conservation | 9(D) - Earth Resources |
| 1(D) - Floodways | 9(E) - Extraction of Earth Resources |
| 1(F) - Shorelines | 9(G) - Private Utility Services |
| 6 - Educational Services | 9(H) - Costs of Scattered Development |
| 7 - Municipal Services | 9(J) - Public Utility Services |
| 8 – Natural Areas | 9(L) – Settlement Patterns |
| 8 – Historic Sites | 10 - Local and Regional Plans |
| 8(A) - Wildlife Habitat & Endangered Species | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application and Exhibits 1-62. Findings made in this decision are not limited to the specific criterion in which they appear and may apply to other sections of the decision.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

General Findings:

1. The project is proposed to be constructed on ‘Outlot B’, a 1.94-acre lot in the 64- acre Berlin Mall tract. Exhibits 39 and 40 depict the configuration of the entire Mall tract, which includes existing developed lots; so-called ‘outlots’ A-E; retained acreage comprised of approximately 15.3 acres; the

- .21 acres Fisher Road parcel; and the 6.8 acre “non-buildable area”. The configuration of ‘Outlot B’ is depicted in Exhibit 19. The lot is located at the westerly side of the Mall tract, adjacent to a Class II wetland and a stream. (Exhibit 20)
2. Currently, the lot is partially forested and has a plateau. (Exhibits 1 and 18) The project will require clearing most of the trees and eliminating the plateau. (Testimony of Cunningham)
 3. The development of ‘Outlot B’ consists of a four-story building which would house a proposed 98-unit senior living facility, three paved access drives, paved parking lot, three patio areas and a new sidewalk. Underground parking is proposed at the rear of the building. The project will be served by new municipal water and sewer connections. New stormwater infrastructure will be constructed. (Exhibits 1 and 21a)
 4. The facility will be configured to house 50 independent senior residential apartments, 30 units for assisted living care, and 18 units for memory care. (Testimony of Dousevicz)

Criterion 1(B) - Waste Disposal:

5. Waste generated by the project will include sewage, residential solid waste, stormwater runoff and stumps generated by site clearing. (Exhibit 1)
6. The estimated wastewater from the project will be disposed of through connection to the Montpelier municipal wastewater treatment system via the Town of Berlin system. (Exhibit 61)
7. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit WW-5-1290-3 on January 15, 2020. (Exhibit 61)
8. The project does not include any floor drains. (Exhibit 61)
9. During construction, the project will disturb approximately 2.15 acres. Post construction, approximately 1.06 acres will be permanently impervious. (Exhibit 1) Exhibit 28 depicts the site wide stormwater management plan.
10. Stormwater runoff from the building, patio areas, front parking lot, access driveways and associated walkways and sidewalks via rooftop leader connections, sheet flow and grass swales will be directed to an underground chamber storage system with sand filters and underdrain, which will discharge to a small tributary of the Stevens Branch of the Winooski River, mapped as a Class II Wetland. (Exhibits 45 and 28) Exhibit 29 depicts the underground chamber storage system details. Exhibit 30 includes the maintenance plan for the stormwater system.
11. On July 24, 2019, the ANR Department of Environmental Conservation issued Stormwater Discharge General Permit # 3761-9015.1) for the operational phase of the project. (Exhibit 45)
12. The Applicants shall comply with the Construction Waste Management Plan as approved by the Waste Management & Prevention Division. (Exhibit 50)

Conclusions of Law

Under Criterion 1(B), the Applicant must demonstrate that the development will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. The District Commission concludes that the Applicant has demonstrated that the project complies with Criteria 1(water) and 1(B)

Criterion 1(E) – Streams and Criterion 1(G) - Wetlands:

13. A stream is located within approximately 250 feet of the project site. The stream appears to be contiguous to a Class II wetland, the delineation of which was confirmed by the Agency of Natural Resources' (ANR) District Wetland Ecologist. (Exhibits 45 and 41) The site plan shows no disturbance within the wetland's 50' buffer zone. (Exhibits 28 and 45)
14. Measurement of riparian buffers should occur from the upland edge of delineated wetlands contiguous to streams (Buffer Guidance at 3). Minimum buffer widths vary based on stream characteristics and generally range from 50 to 100 feet (Buffer Guidance at 4). (Exhibit 45)
15. To maintain the natural condition of streams and ensure the project meets Criterion 1(E), ANR recommended the following condition in any land use permit it issues for the project, and the Applicants had no objections:

The Permittee shall maintain the area of land within 50 feet of the wetland identified in Exhibit 021a in undisturbed, naturally vegetated condition. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing; and mowing. Prior to site preparation and construction, the Permittee shall permanently mark the boundary of the area within 50 feet of the wetland with signage, boulders, split rail fencing, or other landscaping features.

Conclusions of Law

Under Criterion 1(E), the Applicant must demonstrate that a development proposed adjacent to or near a stream will, whenever feasible, maintain the natural condition of any streams, and will not endanger the health, safety or welfare of the public or of adjoining landowners. The District Commission will incorporate ANR's recommended permit condition to ensure compliance. Accordingly, the Commission concludes that the project complies with Criterion 1(E).

Under Criterion 1(G), the Applicant must demonstrate that the development will not violate the Vermont Wetland Rules relating to significant wetlands. As the project will not encroach into the wetland or the 50' wetland buffer zone, the Commission concludes that the project will not violate the Vermont Wetland Rules. Therefore, the project complies with Criterion 1(G).

Criteria 2 and 3 – Water Availability and Impact on Existing Water Supply:

16. The project proposes construction of 1,600 liner feet of 10- inch diameter distribution main, two fire hydrants, and associated appurtenances to serve the project's water needs. The distribution main will connect to the Berlin Municipal Water System's existing 10-inch main located on Fisher Road. (Exhibits 10 and 60)
17. ANR issued Public Water System Construction Permit WSID# VT0021202 on December 24, 2019. (Exhibit 60)
18. The ANR Department of Environmental Conservation issued Wastewater System and Potable Water Supply Permit WW-5-1290-3 on January 15, 2020. (Exhibit 61)

Conclusions of Law

Under Criterion 2, it must be demonstrated that there is sufficient water available for the reasonably foreseeable needs of the development.

Under Criterion 3, it must be demonstrated that the project will not cause an unreasonable burden on an existing water supply if one is to be utilized.

Based on the foregoing, the Commission concludes that there is sufficient water available to meet the project's reasonably foreseeable needs. Further, the project will not place an unreasonable burden on an existing supply. Therefore, the Commission concludes that the project complies with both Criteria 2 and 3.

Criterion 4 - Soil Erosion:

19. The mapped soils on the site consist of a combination of Cabot silt loam, 3-8% slopes and Buckland loam, 8-15% slopes. The tract is partially wooded, with a plateau located on the easterly portion of the lot. (Exhibits 1 and 18)
20. The Applicants shall use erosion control measures during construction, which include installation of stabilized construction entrances to prevent soil and debris from leaving the site on vehicle tires. Silt fencing shall be installed manually at the limits of disturbance, and around the base of all stockpiles. Silt fencing shall be continuously maintained to ensure its functionality. and inspected within 24 hours of heavy rains, with any necessary repairs effected immediately, as depicted and stipulated in Exhibit 25a. Maintenance of the silt fencing shall include removing any sedimentation. The sediment may be placed as fill in low areas, if approved by the project engineer. (Exhibits 1 and 25a.)
21. EPSC specifications are depicted in Exhibit 25a. The project will be constructed in compliance with the EPSC plan, except that all areas of disturbance will have temporary or permanent stabilization within 7 days of the initial disturbance, consistent with the ANR Construction General Permit 3761-9020.2 (Exhibit 8)
22. The Post Construction Stormwater System Maintenance Plan (Exhibit 30) states that it will provide a copy of the bi-annual inspection report to the State of Vermont and to the City of South Burlington. The Applicants shall amend that plan to provide notice to the Town of Berlin.

23. Permanent erosion control measures will involve all disturbed areas being covered in topsoil, seeded and mulched. (Exhibits 1 and 25a)
24. The ANR Water Quality Division issued Construction General Permit 3761-9020.2 on April 17, 2019 for the construction phase of the project. (Exhibit 8)
25. Fill will have to be removed from the site prior to the commencement of construction. In response to the Commission's request as to the location and current uses of the deposition site, the Applicants advised that as sitework contractor has yet to be chosen, no deposition site had been determined. The Applicants proposed the imposition of a permit condition that would require the Commission to be notified once a deposition site is chosen. (Exhibit 49)

Conclusions of Law

Under Criterion 4, the Applicant must demonstrate the project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. Based on the record, the Commission concludes that the Applicants have demonstrated that if EPSC plan and ANR Construction General Permit are implemented and complied with as stipulated by the Applicants, the project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Additionally, the Commission will incorporate a permit condition requiring that, prior to construction, the Applicants inform the Commission as to the location and current uses of the deposition site, parties have commented, and the Commission has approved the site. Accordingly, the Commission concludes that the project complies with Criterion 4.

Criterion 5 – Transportation and Criterion 9(K) – Development Affecting Public Investments:

26. The project is not in a Transportation Improvement District (TID). (Exhibit 11)
27. The Berlin Mall tract is adjacent to public highways (Fisher Road and Vermont Route 62) and the Central Vermont Medical Center hospital. (Exhibit 20a)
28. Access to the project will be via the two existing, privately owned roads that currently provide access to the Berlin Mall; one access is off Fisher Road, the other access is off Route 62. (Exhibits 1 and 40)
29. There are 98 parking spaces proposed. (Exhibits 1 and 21a) The parking area at the front of the building, adjacent to Berlin Mall Road, will accommodate 22 vehicles. Access to these parking areas will be via one of the two new 20' wide curb cuts proposed off Berlin Mall Road. Emergency access will also be via the two new curb cuts off Berlin Mall Road The underground parking area at the rear of the building would accommodate 76 vehicles. This parking area will be accessible via a new curb cut opposite the existing parking spaces along the westerly side of the Wal Mart store.) (The Berlin DRB decision, issued on March 22, 2019 states the project has 91 parking spaces. Subsequent plan revisions indicate the addition of three parking spaces in front of the building and an additional four underground spaces.)

30. A 5' wide concrete sidewalk is proposed along the project's frontage adjacent to Berlin Mall Road, as well as along the northerly edge of the proposed exterior parking area. There are crosswalks proposed within each of the 20' wide curb cuts off Berlin Mall Road. Additionally, a new crosswalk is proposed to connect the new senior living facility sidewalk with the existing sidewalk along the frontage of the Wal Mart store. (Exhibit 21b)
31. An unprotected outdoor bike rack is proposed to be located just outside of the porte cochere at the front of the facility. (Exhibits 1 and 21b)
32. A shuttle will be provided for residents. All shuttles, whether private or community (Green Mountain Transit will serve the new senior living facility) will pick up and drop off passengers under the porte cochere located at the front of the project building. (Exhibits 1 and 49)
33. A Traffic Impact Assessment (TIA) was developed for the project, which includes a Technical Memorandum that examined existing and future traffic congestion conditions at the project's two intersections: Fisher Road/ Berlin Mall Road and Route 62/Berlin Mall. Due to the project's location at the southerly end of the Mall, "in close proximity to Route 62", the consultant "focused on this project's impact on the signalized Route 62/Berlin Mall Road intersection." (Exhibits 11 and 12)
34. Based on the foregoing, the TIA calculated that the project would generate a total of 20 AM peak hour trips and 25 PM peak hour trips. The TIA states that the Level of Service in every direction at both intersections will range between LOS A and C. The TIA concluded that on average, drivers would experience a delay of no more than 24 seconds, which is "acceptable levels of service, and that the project will not adversely impact existing or future traffic congestion conditions." (Exhibit 11)
35. Acknowledging the construction of connecting pedestrian sidewalks and the availability of the Green Mountain Transit, the TIA concluded that "the project will not create undue levels of traffic congestion or unsafe conditions on the adjacent roadway network." (Exhibit 11)
36. Regarding internal traffic movements, during the site visit, the District Commission observed a potential issue associated with frequent 18- wheeler right hand turns from the Wal Mart garden center onto Berlin Mall Road. In its October 24, 2019 Hearing Recess Order, the Commission requested the Applicants to model an 18 wheeler's movement through the Berlin Mall Road and Wal Mart Garden Center intersection to demonstrate whether a truck can make that turn without going up onto the curb, even if the truck encroaches into the far lane.
37. The Vermont Agency of Transportation (VTrans) filed a position on November 14, 2019 recommending the elimination of the paved curb mount entirely and setting the curbed radius back to accommodate the right turning truck movement. VTrans acknowledged that by so doing, the crosswalk would be longer, and that generally it is desirable to have crosswalks as short as possible, however, "*this is going to be a four way stop where all movements will be stopped (as opposed to a possible gap shooting left turn against an uninterrupted flow and not seeing a pedestrian using the walk).*" (Exhibit 52)
38. VTrans further noted that the other issue is that "*the paved curb or mountable curb might cause some confusion for elderly or visually disabled pedestrians. The tactile warning pad in the configuration is within the mountable curb and you can see that one of the truck wheels is actually*

going over it while making the turn. It is a much safer option to have the radius pulled back with the tactile warning placed at that edge with no mountable curb. That way elderly or visually impaired know they can safely wait at the tactile warning and not get swiped by a trailer. The crosswalk is longer but overall it would be safer.” VTrans also recommended *“a slightly wider crosswalk for this location, and it may also be beneficial to make sure there is adequate downlighting at night, so the crosswalk is visible in the dark.”* (Exhibit 52)

39. In a November 22, 2019 response to the Hearing Recess Order, the Applicants advised that the site plan had been revised to eliminate the mountable curb and the current plan now depicts a wider turning radius of 30 feet, as well as a wider pedestrian walkway. The plans also include the installation of three stop signs and related pavement markings and pedestrian crossing warning signs. In addition, a new “Speed Limit 30” sign would be installed along Berlin Mall Road, approximately 80’ from the new crosswalk. (Exhibits 49 and 21b).
40. The revised plan does not include downlighting at the crosswalk for night visibility.
41. With respect to pedestrian connectivity on the Berlin Mall tract, there is no sidewalk connecting the Mall to Fisher Road.
42. VTrans observed that *“currently there exists an asphalt walking path along the shoulder of Berlin Mall Road leading from north side of the mall to the intersection of Fisher St. In reviewing previous Land Use Permits for the Berlin Mall development, a sidewalk was required for this segment of the road as one of the permit conditions (Land Use Permit 5W0584-16, Condition 17: “The Permittee shall install a sidewalk within the footprint of the gravel pedestrian path depicted on the plans within one year of the project’s commencement of construction.”). The Land Use Permit was issued in December 2012. The pedestrian path mentioned in this condition can be viewed within the Act 250 database under 5W0584-16 and it is specifically listed as: Mall Site Layout Plan North–5 of 5.pdf. The drawing depicts the gravel pedestrian walkway in dark gray with “add alternative asphalt” in parentheses.”* (Exhibit 44)
43. VTrans noted: *“Berlin Mall did construct the path using asphalt, but this path is not a sidewalk. This is a shoulder walking path with no separation from the travel lane other than a six-inch white line. Based on this previous permit condition along with the fact that a residential facility is now proposed to be part of this overall development, it is highly recommended that a sidewalk be built replacing the path along this segment of Berlin Mall Road to safely link pedestrians to the signalized pedestrian crossing at Fisher Street. It is recommended that the sidewalk have curbing to protect the pedestrians, certainly at the roadway radius of Berlin Mall Road with Fisher Street at the signalized pedestrian crossing.”* (Exhibit 44)
44. VTrans further recommended that (Exhibit 58):
 - *the sidewalk be completely located along the west side (car dealership) side of the road as opposed to swapping back and forth across the east side (Kohl’s side) of the road for three reasons:*

- *It is the natural path the existing pedestrians walk to get from Fisher Road to the mall and back. Observations show that they do not cross the road to the Kohls side and then back again. They tend to remain fully on the west side to get to the mall.*
 - *It adds to the safety of the sidewalk link by mitigating the number of crossings and potential pedestrian/vehicle conflicts along the Berlin Mall access road.*
 - *There is currently existing street lighting along the west side of the Berlin Mall access road. A sidewalk along this side will be illuminated by these lights at night for added pedestrian safety during low visibility conditions.*
 - *A sidewalk at this location is not just a matter of serving potential future users at Spruce Place, it is a matter of safely serving the existing pedestrians that walk along this Berlin Mall road to get from Fisher Road to the mall and back. The picture below was taken on November 18th of this year. This was taken along the west side of the Berlin Mall access road across from Kohls. The footprints in the snow show that multiple pedestrians use the side of this road to access the mall from Fisher Road.” (Exhibit 58)*
45. According to the application submittals, the Applicant, Town, and Berlin Mall LLC are “interested in developing non-retail projects in the surrounding buildable ‘outlots’ of the Mall, and the proposal will contribute to the goal of creating a mixed-use, town center environment. The Town Center Zoning District encourages a ‘well defined, mixed-use compact and walkable center’ with ‘pedestrian-friendly streets defined by sidewalks, street trees, and landscaping.’... The 2018 Berlin Town Plan also highlights the Berlin Mall as being the central part of the New Town Center Map.” (Exhibit 1)
46. The Applicants would request that if a curbed sidewalk is required, that the District Commission grant 18 months after the opening of the project facility to “start construction of the sidewalk...constructing the curbed sidewalk will be costly and represents a new unanticipated cost.” (Exhibit 48)

Conclusions of Law

Criterion 5(A) requires that the project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways.” See 10 V.S.A § 6086(a)(5)(A). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

Criterion 5(B) requires that a project, “as appropriate . . . incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services.” 10 V.S.A § 6086(a)(5)(B). In determining what is appropriate for a particular project, the Commission considers whether measure is reasonable, “given the type, scale and transportation impacts” of the proposed project. *Id.*

The project plan as revised eliminated the mountable curb, and now depicts the installation of a new wider turning radius of 30 feet. A wider pedestrian walkway is also included. As an additional safety measure, the Commission will impose a permit condition requiring downlighting at night so that the crosswalk is visible

in the dark. Based on the foregoing, the Commission concludes that the project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation. Therefore, the Commission concludes that the project complies with Criterion 5(A).

The record in this matter described future development plans for the developable ‘outlots’ on the Mall tract, citing the Town’s stated goal of creating “a mixed-use, town center environment” that “encourages a well-defined, mixed-use compact and walkable center with ‘pedestrian-friendly streets defined by sidewalks, street trees, and landscaping.” Absent a curbed sidewalk, the Commission finds that at present, there is no defined, pedestrian-friendly walkable center, which is of particular concern to the Commission as the current project under review is a senior residential care facility.

Accordingly, the Commission will require the Applicants to construct a curbed sidewalk along the westerly side of the Berlin Mall Road to Fisher Road to allow for safe pedestrian access within the larger mall area and to adjacent lands. Presently, there is no safe pedestrian passage from the project site to Fisher Road as there is no discernible walking area on this side of Berlin Mall Road. The project will bring able-bodied residents to this area that will likely utilize the sidewalk to access the medical facilities located on Fisher Road, take walks in this area for exercise or general pleasure. The construction of a curbed sidewalk will provide for safe passage. The Commission will require the Applicants to propose plans for the sidewalk for review and comment by parties, and Commission approval. The Applicants must complete construction of this sidewalk for use prior to project operation. The Applicants requested to build this sidewalk 18-months after the opening of the project, but the Commission believes that the safe pedestrian travel in this area is of critical importance. Further, requiring the sidewalk to be built before project operation will better ensure it indeed gets built. Whether other Act 250 permit holders, such as the Berlin Mall are in violation of various Act 250 permits regarding this pedestrian area is outside the scope of this Act 250 proceeding. The Commission requires a curbed sidewalk based on the merits of this project.

Therefore, under Criterion 5, the Commission concludes that with the public and private shuttle services proposed, in conjunction with the construction of the curbed sidewalk along the west side of Berlin Mall Road, the project complies with Criterion 5(B).

Criterion 9(K) applies to projects that are adjacent to governmental and public utility facilities, services, or lands. With regard to such projects, the applicant bears the burden of proving that the project will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public’s use or enjoyment of or access to the facility, service or lands. Based on the Findings of Fact and Conclusions herein under criterion 5, the Commission concludes that the project complies with Criterion 9(K).

Criterion 8 - Aesthetics

47. “Outlot B”, comprised of 1.94 acres, is partially wooded and has a plateau. Berlin Mall Road comprises the lot’s southern boundary, to the north and west is a wooded Class II wetland, and the Wal Mart Store is east of the proposed project. (Exhibit 20a)
48. The Applicants will remove most of the existing trees in preparation for construction; the maximum clearing limits are depicted on Exhibit 25a.

49. The project will be landscaped as depicted in Exhibit 31. A permit condition will require that the Applicants continually maintains the landscaping as approved.
50. Exterior lighting will consist of two 20' pole mounted lights in the parking areas (there are 6 existing streetlights), and three building mounted wall packs. All lighting will be LED and "dark sky approved." Lighting will be installed as depicted on Exhibit 24. All fixtures will have concealed light sources. In addition, the Commission will require downlighting as noted herein under the Criteria 5 and 9(K) Conclusions.
51. The exterior of the four-story building will be as depicted in Exhibits 53 and 54. The colors of the building's edifice will be muted greens, browns and grays. The standing seam roof will be a dark color, not white, as originally proposed by the Applicant.
52. The layouts for each of the four floors are depicted in Exhibits 32-36.
53. A representation of the project's proposed sign is found in Exhibit 15. The sign is proposed to be located in front of the project's parking spaces adjacent to Berlin Mall Road. The sign will be externally lit from below.
54. Exhibits 42 and 43 depict five line-of-sight cross sections which seek to demonstrate the potential for the project to be visible to drivers from various adjacent vantage points. Two cross sections were evaluated from Paine Turnpike; two cross sections along Vermont Route 62 were evaluated, and one cross section from Fisher Road was evaluated. In all test instances, the existing tree canopy, which was estimated to be at 50' in height is taller than the 42' tall project.

Conclusions of Law

Under Criterion 8 the District Commission uses a two-part test established by the former Environmental Board in its Quechee Lakes Corporation decision to determine whether a project may result in impacts relating to aesthetics and natural and scenic beauty. First, it determines whether the project will have an adverse effect. If so, the Commission must then apply the second test to determine whether the adverse effect is undue. *Re: Quechee Lakes Corporation, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Env'tl. Bd. Nov. 4, 1985)* The burden of proof under Criterion 8 is on any party opposing the project, 10 V.S.A. § 6088(b), but the Applicant must provide sufficient evidence for the Commission to make affirmative findings. *Id.*

1. Adverse Effect

In order to determine whether a project will have an adverse aesthetic effect, the Commission must determine whether the project will "fit" within the context it is proposed. In making this determination, the Commission examines a number of specific factors, including: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Id.*

The new senior living facility is situated at the westerly side of the Berlin Mall tract, a commercial retail development. The project is set back approximately 600' feet from Vermont Route 62 and over 1000' from

Paine Turnpike North. Between these traveled ways and the project there is a mature, forested wetland that creates an intervening topography and vegetation that will remain and will screen the project from these public locations. As the record demonstrates, the existing tree canopy is taller than the roofline of the four-story project building; therefore, the existing visual buffer will be effective. The project will be adjacent to Berlin Mall Road and readily seen by passersby. The building fits within the character of the area as the building's exterior colors would be muted greens, grays, browns and black and will blend in with the remaining forested backdrop and thus will not visually impact its partially wooded setting. The exterior colors are also compatible with the existing commercial buildings. The project landscaping includes plantings around the entire building with a combination of trees such as pear trees, white spruce, and bur oak to hydrangea bushes, boxwood, dogwood and rhododendron which compliments the wooded setting.

The Commission concludes that the project is compatible with its surroundings and will have no adverse aesthetic impact. As the Commission concluded that the project will not have an adverse impact, the Commission need not reach the second step of the two-part test. Accordingly, the project complies with Criterion 8.

Criterion 9(F) - Energy Conservation:

55. The Applicants will construct and operate any commercial buildings that are part of the project in accordance with the Commercial Building Energy Standards issued by the Vermont Department of Public Service pursuant to 30 V.S.A. § 53 (CBES) and will follow the Natural Resources Board Criterion 9F Procedure and CBES Stretch Guidelines effective at the time of construction. (Exhibit 1 (Revised))
56. The Applicants intend to use solar for the project. A surface mount system combined with utilizing electric mini split systems for AC/heat, combined with electric base board heat will allow for a majority of electrical load powered by the building. The project's planning and design incorporates the following energy conservation measures, which will reduce the project's greenhouse gas emissions from the use of energy: LED lighting will be utilized for all lights. Energy star appliances and windows with insulation exceeding code will also be utilized. The domestic hot water will be supplied with high efficiency boilers, and the commercial kitchen hood will have a VFD. (Exhibit 1 (Revised))
57. Exhibit 55 details the stretch code requirements to be incorporated to demonstrate compliance with Criterion 9(F). Exhibit 56 includes specific prescriptive requirements of Efficiency Vermont to be incorporated. Exhibit 57 includes details specific to proposed foundation and exterior wall insulation.
58. Green Mountain Power issued an "Ability to Serve" letter for the project on October 2, 2019. (Exhibit 51)

Conclusions of Law

Under Criterion 9(F) the Applicant must demonstrate that the planning and design of the project reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An Applicant seeking an affirmative finding under this criterion must provide evidence that the subdivision or development

complies with the applicable building energy standards under 30 V.S.A. §51 (e)(RBES-stretch code) or 53 (CBES).

Based on the record, the Commission concludes that the Applicants will construct and operate the commercial building in accordance with the Commercial Building Energy Standards issued by the Vermont Department of Public Service pursuant to 30 V.S.A. § 53 (CBES) and will follow the Natural Resources Board Criterion 9F Procedure and CBES Stretch Guidelines effective at the time of construction. Therefore, the Commission concludes that the project complies with Criterion 9(F).

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the project, if completed and maintained as represented in the application and other representations of the Applicants, and in accordance with the findings and conclusions of this decision and the conditions of Land Use Permit 5W0584-19 will comply with the Act 250 criteria.

VII. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit 5W0584-19 is hereby issued.

Dated at Montpelier, Vermont, this 28th day of February 2020.

By /s/ Jeremy Reed
Jeremy Reed, Vice Chair
District 5 Environmental Commission

Commissioners participating in this decision:
Joslyn Wilschek
Peter Heitmann

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

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. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

Findings of Fact, Conclusions of Law, and Order 5W0584-19
Page 14

For additional information on filing appeals, see the Court's website at:
<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.