

Act 250 Rule 34(E): Stowe Club Highlands Analysis

(E) Balancing Flexibility and Finality of Permit Conditions: (Stowe Club Highlands Analysis)

(1) In reviewing any amendment application, the district commission shall first determine whether the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit. This determination shall be made on a case-by-case basis.

- (a) If the applicant does not propose to amend a permit condition that was included to resolve an issue critical to the issuance of the permit, the district commission's inquiry under this rule shall end, and it shall not weigh finality and flexibility pursuant to this rule or prior case precedent.
- (b) An application which seeks to amend project plans, exhibits, representations by the applicant for the applicable permit, findings, or conclusions which have been incorporated into the permit through a specific or general condition, may constitute an application to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.

(2) In reviewing an application seeking to amend a condition that was included to resolve an issue critical to the issuance of the applicable permit, the district commission shall consider whether the permittee is merely seeking to relitigate the permit condition or to undermine its purpose and intent.

(3) If the applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of a permit and is not merely seeking to relitigate the permit condition, the district commission shall apply the balancing test set forth in subsection (4) below. If the district commission finds that the need for finality outweighs the need for flexibility, the district commission shall deny the permit amendment application. In the alternative, the district commission may rule in the favor of flexibility.

(4) In balancing flexibility against finality, the district commission shall consider the following, among other relevant factors:

- (a) changes in facts, law or regulations beyond the permittee's control;
- (b) changes in technology, construction, or operations which necessitate the need for the amendment;
- (c) other factors including innovative or alternative design which provide for a more efficient or effective means to mitigate the impact addressed by the permit condition;
- (d) other important policy considerations, including the proposed amendment's furtherance of the goals and objectives of duly adopted municipal plans;
- (e) manifest error on the part of the district commission, the environmental board, or the environmental court in the issuance of the permit condition; and
- (f) the degree of reliance on prior permit conditions or material representations of the applicant in prior proceeding(s) by the district commission, the environmental board, the environmental court, parties, or any other person who has a particularized interest protected by 10 V.S.A. Ch. 151 that may be affected by the proposed amendment.