

# Sherman Hollow developers file legal response to action

## *Truax declares findings 'distorted,' facts omitted*

Sherman Hollow developers have filed legal documents claiming the Vermont Environmental Board was wrong to deny a golf course construction permit and asking the board to reverse its decision.

In its Motion to Alter Decision, Sherman Hollow Inc. claims the

permit should be issued "on the basis that the board erred in its conclusions and findings by distorting the evidence, omitting pertinent facts, erroneously shifting the burden of proof, making errors in applying the applicable law, and violating the appellant's due process rights by its actions during and subsequent to public hearings."

The developers also asked the board to seek the advice of an independent legal counsel who "has not exhibited bias in the matter."

If scheduling permits, the board will act on the developers' motion sometime in January, according to board spokesman Aaron Adler.

Following are excerpts from the conclusions of the 92-page motion:

"The board identified three main issues in its conclusion. The first regards the ingredients of the product (Green Life Conditioner). The board does not have the authority to violate the trade secret protection afforded in Vermont. The ingredients were, however, not

requested by the board in its 1989 decision, nor have they been required of other applicants using non-toxic products. The issue is whether the impact of fertilizers or pesticides will cause undue pollution. The appellant has submitted substantial and un rebutted presumptive and independent evidence that it will not.

"The second issue is the alleged failure to provide for an adequate water supply for irrigation. This is simply a problem of error or a dis-

tortion of the evidence. The board selectively culled the evidence, omitting certain components of the water supply equation, in order to deny the permit.

"The third issue is the probable failure to establish turf on the golf course. This is incomprehensible. All the factual evidence submitted by the parties demonstrates that the product will grow grass... most importantly the test plots grown on the site. In fact, grass is growing on the site, on slopes up to 35 percent, naturally, and without any organic or chemical management program. The board observed this on its site visit.

"The board has ignored the technology of the product and instead used a different technology (NPK) to judge the efficacy of the Green Life product. Since the product does not meet the NPK standards for completely different products, the board has rejected the established and scientifically sound technology.

"The most troubling aspect of this decision is in the pervasive distrust of the motives and actions of the appellant by the board. The board raised an issue in this decision which was not properly before the board: 'Whether the board has authority to deny an application because an applicant cannot be relied upon to properly implement the conditions.'

"The board has already ruled to preclude evidence on this matter at the hearings... The statement of this issue can only be to imply that this appellant is untrustworthy and dishonest.

"As the appellant has previously stated, neither the board, nor any other judicial or quasi-judicial body, has the right or authority to pre-judge future acts of any applicant... acts which have not yet occurred, may never occur and deny a permit based upon subjective speculation."

## Mitsubishi pulls out of \$300M project

PORT TOWNSEND, Ore. — Though Mitsubishi Corp. has withdrawn as a managing partner in a 1,900-acre, \$300-million resort venture west of Port Townsend, developers retain an optimistic air.

Peninsula Partners feel new investors will be found for the proposed Cape Discovery Resort on the Strait of Juan de Fuca. They hope to open the facility, which would include two 18-hole golf courses, in 1996.

The destination/golf resort reportedly can not proceed unless developers find a new corporate player willing to buy out Mitsubishi's share in the partnership.

A tight money market was cited as the chief reason for Mitsubishi's pullout.



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