STATE OF VERMONT
Superior Court - Environmental Division

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E N T R Y R E G A R D I N G M O T I O N

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Merchant & Anderson Site Plan Application **Docket No. 205-10-09 Vtec**
(Appeal from Village of Waterbury Planning Commission determination)

Title: Motion to Clarify Admissibility (Filing No. 5)

Filed: October 29, 2010

Filed By: Laruen S. Kolitch, Attorney for Appellees Amy Anderson and Michael Merchant

Response: None (the Court considered Appellant's Nov. 5th motion as a response.)

___ Granted ___ Denied _X_ Other

Pending before the court is Neighbor's motion to clarify the admissibility of evidence at trial, which raises similar evidentiary issues to the motion Applicants recently filed to exclude the evidence and testimony of John Pitrowiski, whom Neighbor plans to call as an expert witness at trial. We addressed the common legal issues in an Entry Order issued today in response to Applicants' motion; that Order provides a more detailed explanation for our reasoning in declining to exclude Mr. Pitrowski's testimony at this time.

To the extent that Applicants seek an order prohibiting John Pitrowiski from offering evidence at trial due to the tardy or allegedly inadequate disclosure by Neighbor, we decline to grant such a severe sanction. Therefore, we conclude that Appellant my offer the testimony of John Pitrowiski at trial. To the extent that new objections are raised to Mr. Pitrowski's testimony or other evidence introduced through him, the Court will address such objections as they arise during the trial.

_____ ___November 18, 2010____
Thomas S. Durkin, Judge Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:

Paul S. Gillies, Attorney for Appellant Valerie Zimmerman

Lauren S. Kolitch, Attorney for Appellee/Applicants Amy Anderson and Michael Merchant

Attorney David W. Rugh for Interested Person Village of Waterbury