

From: Kehne, Melanie
Sent: Monday, September 9, 2019 12:42 PM
To: [REDACTED]
Subject: Public Records Act request

Dear Dillon:

Our reply to your recent Public Records Act request is attached. If you have any questions, please let me know.

Melanie

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STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
DOCKET NO. 29-3-16 Vtec**

**In Re: Korrow Real Estate, LLC
Act 250 and Land Use Permit**

**MOTION TO AMEND
APPELLANT'S STATEMENT OF QUESTIONS**

NOW COMES Korrow Real Estate, LLC, Appellant/Applicant in the above-referenced matter, by and through its attorney, L. Brooke Dingedine, Esq. of the firm of Valsangiacomo, Detora & McQuesten, P.C., and pursuant to V.R.E.C.P. Rule 5(f), hereby moves this Honorable Court to allow the Appellant to Dismiss the remaining questions 4, 5 and 6 of the Appellant's Statement of Questions and to add the sole issue of:

7. Whether the Project complies with Criterion 8 – historic sites.

MEMORANDUM OF LAW

VRECP "Rule 5(f) requires each appellant . . . to file a serve a statement of questions. The statement functions like a pleading to limit the issues that are to be heard on the appeal and many not be amended unless ordered by the court. See 10 V.S.A. 8504(h)." VRECP Rule 5, Reporter's Notes. After the initial pleadings in a case have been filed "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." V.R.C.P. 15(a). In general, "trial courts are to be liberal in permitting amendment to the pleadings." *Lillicrap v Martin*, 156 Vt. 165, 170 (1991). "[A]mendments to the pleadings are

freely allowed where there is no prejudice to the parties and when the proposed amendment is not obviously frivolous or dilatory.” *Desrochers v Perrault*, 148 Vt. 491, 493 (1987) (citation omitted).

In the current case, the Appellant, Korrow Real Estate, has been working with the state and its own engineers, endeavoring to narrow and resolve the issues that led to this appeal. The Appellant recently moved to Dismiss Questions 1, 2, and 3. However, while Appellant is willing to compromise its position and dismiss the remaining issues presently on appeal, one additional issue has arisen that is of great concern, and which was not specifically raised in the original statement of questions in this case. Thus, the Appellant now requests that the Court dismiss the remaining questions 4, 5, and 6 but add question 7 as stated above as the sole issue of this appeal.

The Appellant contends that the parties will not be prejudiced by this amendment since there has been no discovery requested or conducted by the state on the remaining questions on appeal; the Court has not yet set the case for trial; and, no resources have yet been expended preparing the remaining issues for trial. Moreover, if the Amendment is granted, there is no need to delay the trial of this matter since the scope of the trial will now be confined to a discrete sub-criterion relating solely to a barn structure that resides on the property but is not part of the project. Furthermore, the proposed amendment is neither frivolous nor dilatory. The new issue regarding Criterion 8 arose just recently while the Appellant attempted to work out the logistics of proceeding under the District Commission’s Decision and Order and has now timely identified the issue as a question for the Court’s review.

WHEREFORE, Appellant respectfully requests that this Honorable Court Grant its Motion To Amend Appellant's Statement of Questions to allow the addition of Question 7 regarding the as-built Project's compliance with Criterion 8 – Historic Sites and Dismiss Questions 4, 5, and 6.

DATED AT Barre, County of Washington, State of Vermont this 14th day of November 2016.

KORROW REAL ESTATE, LLC



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cc: Certificate of Service