

STATE OF VERMONT

Water Resources Board

Appeal of Milton **Adair**  
In re: Proposed retaining wall  
Wallace Pond, Canaan, Vermont

Preliminary Findings of  
Fact

INTRODUCTION

On November 7, 1988, Milton **Adair** filed an appeal with the Water Resources Board from a decision of the Department of Environmental Conservation dated October 28, 1988 to deny his application for a permit to construct a retaining wall below the mean water level of Wallace Pond in the Town of Canaan. This appeal was filed under the provisions of 29 V.S.A. § 406. A public hearing regarding this appeal was conducted at Canaan on November 29, 1988 by a hearing referee appointed by the Vermont Water Resources Board.

The following were given party status in this proceeding:

- (a) Milton **Adair**
- (b) Department of Environmental Conservation
- (c) Town of Canaan

During the course of the hearing the following documents were entered into the record:

Exhibit 1: A copy of all correspondence from the file of the Department of Environmental Conservation concerning the application of Milton **Adair** under appeal in this proceeding.

In addition, the hearing referee, with the agreement of all parties, took judicial notice of the Town of Canaan Municipal Development Plan and the Town of Canaan Zoning Bylaws adopted February 24, 1986.

PRELIMINARY FINDINGS OF FACT

1. Mr. **Adair** owns a lot with 50. feet of shoreline frontage on Wallace Pond in the Town Canaan. The deed to this property describes the lot as extending 95 feet in depth from Wallace Pond to Vermont Route 114.
2. A summer residence is located on the lot. Mr. **Adair** plans to put an 10 foot addition on this residence and make other improvements in order to make it a permanent residence. The only practicable site for the 10 foot addition is on the side of the residence facing Wallace Pond.


3. As an apparent result of the manipulation of the water level on Wallace Pond begun approximately 30 years ago, the shoreline of the **Adair** lot has gradually eroded to the extent that at the nearest point there is only 33 feet between the residence and the shoreline of Wallace Pond at the mean water level. Where no erosion has occurred, the residence is 50 feet from the shoreline.
4. Under the Town of Canaan zoning regulations, the required setback from the shoreline **of** Wallace Pond for any new structure is 35 feet.
5. The encroachment proposed by Mr. **Adair** would involve the placement of approximately five cubic yards of field stone fill extending a distance of approximately 12 feet below the Pond's mean water level. The primary purpose of this project is to reclaim land lost to erosion into order that the planned 10 foot addition would comply with the Town zoning ordinance 35 foot setback requirement. A secondary purpose of this project is to prevent further shoreline erosion.
6. Unless required in order to obtain a local zoning permit, Mr. **Adair** has no interest in placing the field stone any further into Wallace Pond than is necessary to stabilize the existing shoreline.
7. The Department of Environmental Conservation denied Mr. **Adair's** application for the 12 foot encroachment for the following reasons: (a) it would permanently remove fishery habitat; (b) it would replace public waters with privately owned land; and (c) because the creation of "**fastland**" from public waters is not consistent with the natural surroundings.
8. The Department of Environmental Conservation does not oppose the stabilization **of the** existing shoreline on the **Adair** lot with field stone.
9. Mr. **Adair** has not applied to the Town **of** Canaan for a variance from the 35 foot setback requirement as a alternative to the 12 foot encroachment.
10. At the November 29, 1988 hearing, Mr. **Adair**, the Department of Environmental Conservation and the Town of Canaan agreed to the following course of action:
  - a. The Department of Environmental Conservation **will** correspond with Mr. **Adair** and the Town explaining its concerns about the creation of **fastland** and will propose the conditions under which it would agree to the stabilization of the existing shoreline with the placement of field stone.

- b. **Mr. Adair** will apply to the Town of Canaan for a variance under the Town zoning bylaws from the 35 foot setback requirement and will notify the Water Resources Board of the results of that request.
- c. The Water Resources Board will not rule on this matter until it has heard from **Mr. Adair** regarding his request for a zoning variance.

Opportunity for Parties to File Exceptions or Requests

The preliminary findings of facts are issued in accordance with 10 V.S.A. § 905 by the referee appointed by the Vermont Water Resources Board. All parties in interest to this proceeding as identified above, have the opportunity to file exceptions or requests to these findings. In order to be considered by the Water Resources Board any such exceptions or requests must be received at this office on or before December 30, 1988. Any questions and all correspondence regarding this matter should be addressed to the Vermont Water Resources Board, State Office Building P.O., Montpelier, Vermont 05602, telephone 828-2871.

Done this 7th day of December 1988, at Montpelier, Vermont.



William A. Bartlett  
Hearing Referee