

STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 VSA, Chapter 151

RE: L.J. Aske, Jr. ) DECLARATORY RULING #105  
Shelburne Harbor Ship and )  
Marine Construction Co., Inc. )  
Lake Champlain )  
Shelburne, Vermont )

On June 28, 1979 a Declaratory Ruling was requested by Jerry Aske of Shelburne, Vermont seeking an exemption from Act 250 for improvements he proposes on Shelburne Bay in Shelburne, Vermont. Certification of notice to the parties, by the petitioner, under Board Rule 4(D) was received on July 2, and the Board served notice of a hearing and pre-hearing conference on the parties and arranged for publication in the Burlington Free Press.

Following the pre-hearing conference, a Report and Order was issued. In addressing the issues set forth in the pre-hearing Report and Order, the Board received evidence and oral arguments at a hearing on August 14, 1979. Parties appearing were the petitioner Jerry Aske by Attorney David L. Cleary, the Town of Shelburne and the Shelburne Planning Commission by Attorney Richard A. Spokes, and the Harborwood Shores Association by Attorney Stephen R. Crampton.

At that hearing the Harborwood Shores Homeowners Association renewed its request for party status as adjoining property owners and under Board Rule 12(C). After considering oral arguments and the exhibits on file, the Board determined that the Association is an adjoining property owner because its members own property abutting that which is owned or controlled by Mr. Aske, and that the property of Association members would be directly affected with respect to Criteria (1), (2), (3), and (5).

FINDINGS OF FACT

1. Mr. Aske owns or controls in excess of 4.4 acres of land adjacent to the Shelburne Shipyard in Shelburne Harbor, Shelburne, Vermont. He intends to construct floating docks and finger piers off a pre-existing crib/dock in Shelburne Harbor, Shelburne, Vermont. This will permit the berthing of an additional 30 to 35 vessels.
2. Improvements have already been made to the crib involving refacing it with timbers, grading and grassing the surface area, soil fill and placement of sod. The crib is at an

elevation of 103 feet above sea level. This elevation is above the point at which the jurisdiction of the Corps of Engineers or the Vermont Water Resources Board commences.

3. Shoreline grading, excavation and landfilling has been undertaken to improve the access to the crib. These activities constitute improvements to the land as do:
  - a. the placement and use of a "dumpster" for use as a refuse container;
  - b. the provision of water supply and electrical facilities and the use of the crib and shore as storage areas for the component parts of the finger pier system during the off season.
4. In addition to the improvements already discussed, Mr. Aske intends to permit use of a lawn area for parking of vehicles. In the past approximately six vehicles have used this area. The number of vehicles will be increased to 30 to 35. The permitting system used by Mr. Aske in connection with the parking of vehicles constitutes an activity which extends, modifies, and initiates a use of the land and, therefore, is the construction of an improvement as defined in Board Rule 2(D).
5. Mr. Aske intends to provide facilities and services to others in exchange for payment of a fee.

#### CONCLUSIONS OF LAW

The Town of Shelburne does not have both permanent zoning and subdivision regulations. Improvements, therefore, fall under the definition in 10 VSA, §6001(3) as follows: "Development" shall also mean the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws." The project involves the construction of improvements as set forth in the Findings of Fact above and is for a commercial purpose.

Questions of Law regarding the exclusive jurisdiction of the Water Resources Board or the Corps of Engineers are not relevant to the jurisdiction of Act 250. We reach this conclusion because of the substantial nature of the improvements to be made above the elevation at which the jurisdiction of those two entities occurs. In doing so we are not required to examine the extent to which improvements to be made on the surface of the waters by themselves would trigger Act 250 jurisdiction, because the inter-relationship between improvements on the waters and on the land demonstrate that the entire project is a substantial change as defined in Board Rule 2(G) and 2(A)(5). Sufficient improvements are proposed on the land

for us to reach this conclusion even if we were to disregard the improvements on the water.

ORDER

Accordingly, it is hereby ordered that prior to the commencement of further improvements a permit shall be obtained from the District #4 Environmental Commission for the entire land and water based development pursuant to the provisions of 10 VSA, Chapter 151.

Dated at Montpelier, Vermont this 30th day of August, 1979.

ENVIRONMENTAL BOARD

By   
Margaret P. Garland  
Chairman

Members participating  
in the decision:  
Margaret P. Garland  
Ferdinand Bongartz  
Dwight E. Burnham  
Melvin H. Carter  
Donald B. Sargent  
Michael A. Kimack  
Leonard U. Wilson

Members not participating:  
Daniel C. Lyons  
Roger N. Miller

CERTIFICATE OF SERVICE

I hereby certify that I, Margaret P. Garland, Chairman, Environmental Board, sent a copy of the foregoing Declaratory Ruling #105 by U.S. Mail, postage prepaid, on this 29th day of August, 1979, to the following:

L.J. Aske, Jr.  
by David L. Cleary, Esq.  
Miller, Norton & Cleary  
P.O. Box 567  
Rutland, Vermont 05701

Richard A. Spokes, Esq.  
for Shelburne Board of Selectmen and  
Shelburne Town Planning Commission  
Spokes and Obuchowski  
P.O. Box 2325  
South Burlington, VT 05402


Chittenden County Regional Planning Comm.  
58 Pearl Street  
Essex Junction, VT 05452

Harborwood Shores Homeowners Association  
by Stephen R. Crampton, Esq.  
109 South Winooski Avenue  
Burlington, VT 05401

Stephen B. Sease, Esq.  
Land Use Administrator  
Agency of Environmental Conservation  
State Office Building  
Montpelier, VT 05602

Susan H. Cain, Coordinator  
District #4 Environmental Commission  
111 West Street  
Essex Junction, VT 05452

Dated at Montpelier, Vermont this 30th day of August, 1979.

By   
Margaret P. Garland  
Chairman  
Environmental Board