

ANNOTATION: Rule 2(C) -
purchase of land is not
commencement of construction.

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 VSA, CHAPTER 151

RE: State of Vermont
Agency of Transportation
State Administration Building
Montpelier, Vermont 05602

DECLARATORY RULING

NO. 107

BACKGROUND AND ISSUES

This is a proceeding to consider a Declaratory Ruling requested pursuant to Environmental Board Rule 4(D) under Vermont's Land Use and Development Law 10 VSA, Chapter 151, generally known as "Act 250". The ruling was requested by the State of Vermont, Agency of Transportation (Agency), for a determination on the issue of whether or not the acquisition of property for highway construction constitutes the commencement of construction on a subdivision or development, or commencement of development without a permit. No party questions the fact that the ultimate construction of the highway will constitute a development subject to Act 250 jurisdiction.

In Advisory Opinion #5-009 issued May 4, 1979, the Environmental Coordinator for District Commission #5 concluded that "pursuit of the 'taking process' of Title 19, Chapter 5 is an activity which may extend, modify, or initiate the use of the land and is not principally for the preparation of plans and specifications." This conclusion was reached based upon the Environmental Board's definition of the commencement of construction in Rule 2(C), and the definition of the construction of improvements in Rule 2(D).

Before deciding the issue in this case, the Board would note that the interpretation of Act 250 should have been made by the District Commission rather than its Coordinator since the case from which this issue arises was before the Commission at the time the Advisory Opinion was issued. Because the Commission subsequently dismissed that case, and since Coordinators otherwise issue Advisory Opinions as part of the performance of their duties, we conclude that it is appropriate for us to issue a Declaratory Ruling.

This is the first time this Board has addressed the question of whether or not the acquisition of land constitutes the commencement of development. Acquisition of land is clearly distinguishable from the sale of 10+ acre parcels addressed in our Ruling on Act 250 jurisdiction over the creation of rights-of-way (see Declaratory Ruling No. 82, Dr. Bernard Barney). We also distinguish this case from the Vermont Attorney General's Opinion No. 990. That opinion dealt with rights-of-way in general, and does not address the specific factual situations in which the Board has concluded that certain rights-of-way involve improvements which constitute the commencement of construction on a development as defined in §6001(3) and Board Rule 2(A)(6).

Parties appearing were the Agency of Transportation by Attorney Robert Schwartz and Attorney Thomas McCormick, the Town of Belvidere by Attorney Richard Sargent, the Lamoille County Development Council by Kathleen Piper, adjoining property owners Kenneth and Mary Tallman by Attorney Douglas Molde, and adjoining property owners Geoffrey W. and Kathleen B. Hobart by Attorney Ellen Mercer Fallon.

CONCLUSIONS OF LAW


The acquisition of property by purchase, gift, inheritance, or condemnation is not the commencement of construction or the construction of improvements as contemplated in Board Rules 2(C) and (D) respectively. Previous Declaratory Rulings of this Board do not provide a basis for jurisdiction because they address conveyance and not acquisition of property, and they rely upon specific factual situations which demonstrate that improvements which meet the prerequisites for Act 250 jurisdiction will be undertaken without a permit. We concur with the order of the Lamoille Superior Court (Re: Hobart et al v Agency of Transportation of State of Vermont et al, Docket No. S71-79 Lc) issued after consideration of a petition for a temporary restraining order relating to the same project for which this Declaratory Ruling is sought: "there is no prohibition against the holding of a compensation hearing by the State Highway Board prior to the obtaining of an environmental permit. The Board may obtain the land, but it may not commence construction prior to the time a permit is obtained. - 10 VSA, Section 6081."

ORDER

ACCORDINGLY, this Board hereby invalidates Advisory Opinion #5-009.

Dated at Montpelier, Vermont this 13th day of September, 1979.

ENVIRONMENTAL BOARD

By 
Margaret P. Garland
Chairman

Members voting in favor
of this decision:
Margaret P. Garland
Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter
Roger N. Miller
Donald B. Sargent

Members not participating
in this decision:
Michael A. Kimack
Daniel C. Lyons
Leonard U. Wilson