

STATE OF VERMONT
ENVIRONMENTAL BOARD,
10 V.S.A. CHAPTER 151

RE: Richard and Napoleon LaBrecque
Isle LaMotte, Vermont 05463

Land Use Permit,
Findings of Fact,
and Conclusions of
Law - #6G0217-EB

This is an application for a land use permit for a project generally described as the creation of 20 single family residential lots with an access road, located off the Shrine Road in Isle LaMotte, Vermont. This application was denied by the District #6 Environmental Commission on January 30, 1980; a petition for reconsideration was denied on May 19, 1980. The applicants, Richard and Napoleon LaBrecque, brought the present appeal to the Environmental Board on June 13, 1980. The Board held public hearings on this appeal on July 8, July 22 and September 30, 1980, and conducted a site visit on July 8, 1980. On October 28, 1980, after submission of the parties' requests for findings and conclusions, the Board reviewed the record and adjourned the hearing.

The parties to this appeal are:

The applicants, Richard and Napoleon J. LaBrecque, by Vaughn C. Button, Land Surveyor.
The Town of Isle LaMotte by Larry Greene, Chairman of the Board of Selectmen.
The Isle Lallotte Planning Commission by Chester Eromley, Chairman.
The Isle LaMotte School Board by Allen Hall, Chairman and Chester Bromley, member.
The Franklin-Grand Isle Regional Planning & Development Commission by Fred S. Dunnington, Commission Planner.
The Vermont Agency of Environmental Conservation by Stephen B. Sease, Esq., Land Use Administrator.

FINDINGS OF FACT

1. Between 1957 and 1979, the applicants, Richard and Napoleon LaBrecque, purchased in four transactions 147 contiguous acres of open farmland in the Town of Isle LaMotte, Vermont. In 1978, the applicants filed a plat for the creation of five residential lots on a portion of this acreage, totaling 6.35 acres, and received Subdivision Permit #EC-6-0613 under the Vermont Department of Health Subdivision Regulations for that purpose. Two of those lots (#1 and #5 on Exhibit #4) have since been sold; the applicants retain ownership of the other three. The applicants' planner and the plans submitted to the Board refer to the earlier five lots as "Phase I" of the subdivision, and an additional

proposed 15 lots as "Phase II". (See, e.g., Exhibit #1). We find that this project is a 20-lot subdivision.

2. The applicants have presented conflicting arguments as to the acreage involved in this subdivision. At the outset of the hearing, the applicants argued that the subdivided lots presently intended for resale should be considered in isolation from the remainder of the contiguous tract in their ownership. However, in the review of the substantive criteria of the Act, particularly Criterion 9(B), the applicants made it clear that they regarded all the contiguous tract to be linked to the lots for sale. For example, in their Proposed Findings of Fact and Conclusions of Law, the applicants state: "in order to realize a reasonable return on the fair market value of his land, the applicant should devote 14% or about 21 of their 147 acres to non-agricultural use," and conclude that an affirmative finding on Criterion 9 (B) is possible because "any future development proposals for this property will be subject to the scrutiny of the environmental commission." We therefore find that the land subject to this application and our review, and the permit issued herewith, includes the entire contiguous tract in the applicants' ownership. Our findings on the substantive criteria of the Act are expressly contingent upon this finding.
3. Criterion 5: We find that this project will not cause unreasonable congestion or unsafe conditions with respect to the use of highways.
 - (A) The proposed project is to be served by the Shrine Road (Town Highway #2) and by an access road named "North Point Road" which intersects the Shrine Road at a point 225 feet east of the crest of a hill on the Shrine Road. A speed survey, conducted by the State Police, revealed that the 85th percentile speed of east-bound traffic was approximately 31 MPH in the vicinity of this intersection.
 - (B) The parties have presented two standards by which the adequacy of this intersection can be measured: (1) State standards for Stopping Sight Distance (SSD) require 225 feet for a safe SSD from the crest of the hill to the intersection for traffic moving at 35 MPH; 200 feet is considered safe for traffic moving at 30 MPH; (2) Transportation Agency Standard B-71, Corner Sight Distance (CSD), appears to require 330 feet in an unobstructed line of sight from vehicles about to turn onto the Shrine Road, assuming that traffic coming over the crest of the hill is traveling at approximately 30 MPH.

(C) We find that the parties opposing the project as designed have failed to carry their burden of proof with respect to the safety of the project intersection. At 31 MPH, eastbound traffic coming across the crest of the hill would have adequate sight stopping distance, even if the downward slope of the hill is taken into account. Robert Murphy, Design Services Engineer for the Vermont Agency of Transportation, reviewed the plans for this intersection and concluded that the intersection would be "marginally acceptable for 35 MPH conditions." Exhibit #14. In his analysis, he did not apply the CSD standard to the project, and we are unable to conclude on the basis of the evidence submitted that the CSD standard is or should be applicable in this case. The SSD computations, together with our own view of the site, convince us that this intersection does not create an unreasonable impairment to highway safety.

4. Criteria 6, 7 and 9(A)

(A) The parties to this matter have agreed that 'the evidence on these criteria should be considered together. The parties have also stipulated that this project will satisfy these criteria if the future sale of lots is phased so that no more than three lots will be sold, and no more than three house starts will occur, in any given calendar year.

(B) Based upon the evidence submitted, we concur with the stipulation of the parties and find that this project, as conditioned, will not cause any undue burdens on the Town or School District of Isle LaMotte. The 20 residential lots proposed for this project represent a large potential increase in the population of the town, which presently contains only about 100 permanent homes. There are presently only 63 school children in town; the 20 lots proposed by the applicant could increase the school population by a substantial percentage. At the same time, we recognize that many of the homes to be built in this subdivision will not become permanent residences for some period of time, and will supply tax revenue to the town. The elementary school is not presently overcrowded, and school enrollment has actually been declining at a rate of about 5% each year for the past five years. We find that a reasonable phasing plan, as agreed to by the parties, will adequately protect the town and school district from undue burdens from this subdivision.

5. Criterion 8 As presently proposed, this project would have an undue adverse effect upon the scenic and natural beauty of the project area. However, if adequate landscaping and screening were provided for this subdivision, it would not have an undue adverse effect upon those values.

- (A) Although there are- significant historic sites and tourist attractions in the vicinity of this project (chiefly, St. Anne's Shrine and Fort St. Anne), the subdivision is so located and of such a scale that it will not have an undue adverse effect upon those sites.
- (B) Without adequate landscaping, this subdivision would have an undue adverse effect upon the scenic beauty of the area. The houses to be built in this subdivision will be located along Shrine Road and an access road clearly visible from Shrine Road. The site has been used for open farmland: there presently exists no vegetative or topographical screen to soften the view of the development from the Shrine Road. The Shrine Road is heavily traveled by tourists and other visitors to the St. Anne's Shrine and Fort St. Anne. The tax base and economy of the Town of Isle LaMotte are largely based upon tourists and recreation visitors. We find that the construction of a modern subdivision of 20 homes in a meadow of only 18 acres in this highly scenic and highly visible location, would have an undue adverse effect upon the scenic beauty of the area.
- (C) The applicant has not presented the Board with a satisfactory landscaping plan to mitigate the project's adverse scenic effects. We find the applicants' bare proposal to plant fruit trees at the rear of lots 1 - 8 unsatisfactory: similarly, we find that the parties' proposal to plant hybrid poplars at 50-foot intervals along the rear of lots 1 - 8 is insufficient to meet the requirements of the criterion. To meet the visual problems of this site, the design and landscaping plan for this project should involve a variety of species of trees and shrubs; treat visually the lots along the Shrine Road, and where visible from the Shrine Road, the fronts of the houses along the west side of the access road as well as the rear of the structures along the east side of the access road; and should provide for the shading or screening of outdoor light sources.

The landscaping plan must also provide for the continuing maintenance of the landscaping materials, either by the developer or, through covenants, by a homeowner's association or the purchasers of the lots in the subdivision. We will condition the permit to be granted in this application upon the creation and approval of such a landscaping plan by this Board upon the review and recommendation of the landscape architect of the Vermont Department of Forests and Parks.

6. Criterion 9(B) We find that as a part of a larger tract of agricultural land, this project satisfies the requirements of Criterion 9(B) for the creation of subdivisions on primary agricultural soils.

(A) The applicants have stipulated that the 18.1 acres proposed for development in this subdivision consists of primary agricultural soils. These soils have been in active agricultural use for many years. The conversion of these soils to homesites averaging less than one acre will effectively remove their agricultural potential.

(B) We find that the applicants can realize a reasonable rate of return on the fair market value of their land only by devoting those soils to non-agricultural uses. We have reviewed quite carefully the evidence submitted by the parties on this subcriterion, and we observe that the information submitted failed to address the requirements, of the subcriterion in at least the following respects:

1. The applicants submitted information on the purchase prices of the four tracts that make up their farmland holdings, but submitted no information on the actual fair market value of the farm. We do not accept the applicants' estimate that fair market value for farmland in Isle LaMotte has been appreciating at 10% per year since 1957.
2. The applicants' properly reduce their reasonable return requirements by the amount already realized on lot sales already made, but they fail to appreciate that income to its present value when making that adjustment.
3. The estimates of farm use value provided to the Board are insufficiently localized to provide an accurate comparison to development values for the purposes of this subcriterion. The figures provided were derived from averages among farmlands throughout the entire Northeastern United States; the subcriterion focuses on the farm use value of the particular land in question.
4. The estimates for the farm use value of the property do not include the sales value of the buildings on the site as they may be valued for agricultural and farm residential use. The farm as a whole should be assessed for this purpose, not just the raw acreage.

5. Finally, we expressly reject the assertion made by all parties in this appeal that because the land is potentially or immediately more valuable in nonagricultural development than it is in agricultural use, its conversion to a subdivision is sanctioned by the subcriterion. The subcriterion is satisfied only when the applicant is unable to realize a reasonable return on the fair market value of his land in agricultural use. We are not asked to determine what its relative value might be upon conversion if this development plan were to succeed.

Despite the limitations in the evidence discussed above, in the particular circumstances of this case, we are able to find that the applicants can realize a reasonable rate of return on their land only by devoting a portion of it to nonagricultural uses. We look particularly at the applicants' two latest purchases: a purchase of approximately 13 acres in 1976 for \$24,000, or approximately \$1,850 per acre, and a purchase of approximately 8 acres in 1979 for \$25,000 or approximately \$3,125 per acre. We also note that the applicants have realized recently \$36,000 from the sale of two small lots out of this proposed subdivision. From these sales figures, we conclude that the fair market value of the land involved in this subdivision is at least \$2,000 per acre. The evidence indicates that the return on this land in agriculture would be approximately \$50 per acre annually. We find that this is not a reasonable annual rate of return on a fair market value of at least \$2,000 per acre.

- (C) The applicants do not own any nonagricultural or secondary agricultural soils which are reasonably suited to a residential subdivision. The soils throughout the LaBrecque farm are either primary agricultural soils or are soils unsuited to relatively dense residential development.
- (D) This subdivision, when viewed as a part of the entire LaBrecque farm, has been planned to minimize the reduction of agricultural potential by providing for reasonable population densities, reasonable rates of growth, and economies on the cost of roads, utilities and land usage. When viewed as a whole, the LaBrecque farm is a tract of over 140 acres of excellent agricultural soils. The applicants propose to subdivide approximately 18 acres, located in the southwesterly corner of the property adjacent to an existing subdivision. While the houses involved will not be clustered,

they will be located on contiguous lots of less than an acre each, which we find is a reasonable density for this location. As Exhibit #5 indicates, the applicants do not intend to develop the remainder of the property. Consequently, the loss of 18 acres, or 13% of the farm, from agricultural use is a reasonable attempt to minimize the reduction in the agricultural potential of the farm as a whole. We observe, however, that this finding is possible only because we view the entire LaBrecque farm as a whole, and because we find that the conversion of these 18 acres is reasonable when placed in that context. If the 18 acres were viewed in isolation, we would be forced to conclude that the conversion of 100% of that site did not represent a reasonable effort to minimize the reduction of the agricultural potential of the relevant agricultural lands.

- (E) We find that the creation of this subdivision will not significantly interfere with or jeopardize the continuation of agriculture on adjoining lands, or reduce their agricultural potential. The subdivision site lies adjacent to agricultural lands of the LaBrecque farm and across the Shrine Road from an active farm. There are existing shoreline subdivisions in the immediate area. This additional development will not significantly interfere with the continuation of agriculture on the LaBrecque farm or on other adjoining farms.

7. Criterion 10

We find that when the LaBrecque farm is viewed as a whole, this subdivision satisfies the requirements of the Grand Isle County Land Use Sketch Plan. That plan includes a strong policy statement for the retention of primary agricultural lands in agricultural use, and a statement supporting new residential development at densities that are reasonable in view of the agricultural goal and other environmental concerns. We find that this subdivision satisfies those elements of the Land Use Sketch Plan only if the project is linked to the entire LaBrecque farm, and if the remainder of the farm is protected against further conversion by the conditions of the land use permit. Without this linkage, the subdivision would violate the agricultural lands policy by causing the conversion of an entire agricultural tract at relatively high densities.

CONCLUSIONS OF LAW

1. This Board must first consider the scope of the application before us. The applicants have submitted an application under Act 250 for a 15-lot subdivision, and maintain that the five lots previously approved under the Subdivision Regulations alone are not subject to the present application. The other parties argue, however, that the Act requires the Board to exercise jurisdiction over all 20 lots which have been or will be created by the applicant. The Act defines a subdivision as "a tract or tracts of land; owned or controlled by a person, which have been partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, and within any continuous period of 10 years after the effective date of this chapter." 10 V.S.A. §6001(19). The Board's Rules clarify this point by stating clearly that a subdivision includes "all other lots which have been created through subdivision within a five mile radius of any point of subdivided land, within any continuous period of ten years after April 4, 1970." Rule 2(B). We conclude from this language that the five lots which were created by the applicants in 1975 are part of the "subdivision" for which an Act 250 permit is now sought.

While we believe that it is clear that the previously-created lots are to be counted as part of the subdivision for the purpose of determining Act 250 jurisdiction, the question remains whether those lots are subject to the Board's jurisdiction and control as part of the permitting process. We conclude that where lots not initially subject to Act 250 jurisdiction are lawfully sold and are no longer within the ownership or control of the applicants, they are not subject, to the Board's direct control through the permitting process. Any lots remaining within the applicants' ownership or control, however, are subject to the permit requirements and prohibitions contained in 10 V.S.A. §6081(a).

The Board's lack of direct control over those lots previously transferred does not remove those lots from the Board's consideration altogether. The Board's substantive review of the subdivision must extend to the full impacts of all of the lots within the entire subdivision, as that term is defined in the statute and our Rules. For the purpose of making findings as required by 10 V.S.A. §6086(a), we have considered and evaluated all 20 lots within Phases I and II of the LaBrecque subdivision. Moreover, as we have previously held, "if it were critical to our approval of this proposal to accomplish some alteration in the existing lot lines or existing development on these inholdings, we would not be powerless to do so." In Re Peter Guille, Jr. Application #2W0383-EB (March 18, 1980) at 10.

2. Based upon the foregoing Findings of Fact, we conclude that this project, if completed in accordance with the application and the terms and conditions of the land use permit issued herewith, complies with the criteria of 10 V.S.A. §6086(a) and will therefore not be detrimental to the public health, safety and general welfare. We note in particular that this conclusion depends upon our findings that the entire LaBrecque farm is substantially linked with this application. Further conversion of the agricultural soils on the remainder of the farm will be subject to the review of the District Environmental Commission. Without this linkage, on the present state of the evidence, the project would not satisfy the criteria under appeal, and we would be required to deny the permit application.

Dated at Montpelier, Vermont this 17th day of November, 1980.

ENVIRONMENTAL BOARD

BY

Richard H. Cowart

Richard H. Cowart

Executive Officer

Members voting to
issue this decision:
Leonard U. Wilson
Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter
Michael A. Kimack