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

RE: Elizabeth Aaronsohn et al. Proposed Findings of Fact
245 Cole Avenue Williamstown, MA 01267
and Conclusions of Law
Land Use Permit #8B0291-1-EB

David and June Mattimore (the "Mattimores") filed an appeal with the Environmental Board (the "Board") on August 6, 1982 from Land Use Permit #8B0291 granted by District #8 Environmental Commission (the "District Commission") on July 12, 1982, and re-issued on July 29, 1982. The land use permit specifically authorizes the improvement of Old Nichols Road so-called for a distance of approximately 3,000 feet from State Highway #8 and the subdivision and conveyance of approximately 90 acres of land in the Town of Stamford, Vermont.

On August 19, 1982 the Board received a letter from Irving H. Call stating his intention to participate in any appeal. On August 20, 1982 Mr. Call was notified of his right to participate in the Board proceedings. On September 1, 1982 the Board received a letter from Arthur Thomas stating his intention to appeal. On September 2, 1982 Mr. Thomas was also notified of his right to participate in the pending Board proceedings. As co-permittees, both Mr. Call and Mr. Thomas were notified by the Board of its proceedings.

On August 18, 1982 the Board received a request on behalf of the Mattimores to postpone the scheduled pre-hearing conference on August 26 and hearing on September 9, 1982. This request included a waiver of the 40-day hearing requirement. No parties challenged the postponement.

The Chairman of the Board held a rescheduled pre-hearing conference on September 9, 1982 in Bennington, Vermont. On September 8, 1982 the Agency of Environmental Conservation notified the Board that it intended to participate in the appeal but could not be present at the pre-hearing. On September 8, 1982 Mrs. Daniel Kirby, a co-permittee, notified the Board of her interest in the proceedings; however, she was unable to attend the pre-hearing conference.

At the pre-hearing conference parties agreed to the use of a hearing officer to hear this appeal pursuant to Board Rule 41. Chairman Wilson, the designated hearing officer, convened a public hearing on this appeal on October 14, 1982. The following parties were present:

Appellant Co-permittee, June Mattimore; and Co-permittees, Elizabeth Aaronsohn, Irving and Mary Call, Paul and Louise Markarian, and Daniel Kirby.
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At the hearing, the hearing officer heard testimony and oral argument on the issues under appeal. On October 12, 1982, the Mattimores filed a Statement of Facts as anticipated in the pre-hearing conference report. No parties objected to the anticipated Statement of Facts. On December 16, 1982 a Proposal for Decision was forwarded to all parties and Board members pursuant to 3 V.S.A. §811 and Board Rule 41. Written exceptions were filed by Mr. Call on January 5, 1983. At a hearing held January 6, 1983, Board members reviewed the Proposal for Decision, the record developed at the hearing, and the written exceptions. To the extent that the Board agreed with the written exceptions, changes have been incorporated in this decision. The hearing in this matter was adjourned on January 6, 1983.

Therefore, based upon the record developed at the hearing and the Statement of Facts submitted by the Mattimores, the Board makes the following Findings of Fact and Conclusions of Law.

A. ISSUES IN THE APPEAL

The Mattimores contend that their eight-acre parcel is not subject to 10 V.S.A., Chapter 151 (Act 250) jurisdiction; therefore, it was improper for the District Commission to attach conditions to their parcel or to bind the Mattimores as co-permittees.

The Calls raise the following issues:

1. Parcel #4 in the Aaronsohn subdivision plan, owned by the Calls and purchased prior to the Act 250 permit application, is not subject to Act 250 jurisdiction; therefore, the Calls should not be bound by the Conditions of Land Use Permit #8B0291. The remaining landowners argue that their parcels are not subject to Act 250 jurisdiction, and that they were improperly bound as co-permittees.

2. In the alternative, the co-permittees' argue that various conditions of Land Use Permit #8B0291 should be modified to accurately reflect the responsibilities of the various co-permittees.

3. Finally, various conditions are challenged on substantive grounds. At the hearing a revised land use permit, included as part of the pre-hearing conference report, was reviewed by the parties.

B. FINDINGS OF FACT

1. Elizabeth Aaronsohn and Arthur Thomas, Jr. subdivided an 88-acre tract of land into eight lots of 10 or more
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acres, off State Highway #8 in the Town of Stamford, Vermont.

2. Sometime between October, 1979 and February, 1982 Aaronsohn and Thomas sold Lots #4, 5, 6, and 7. Parcels #1, 2, 3, and 8 remain unsold.

3. The owners of the sold parcels are: Mr. and Mrs. Irving Call (Parcel #4), Mr. & Mrs. Paul Markarian (Parcel #5), Mr. Daniel Kirby (Parcel #6), and Mr. Larry Luczynski (Parcel #7). Aaronsohn and Thomas retain ownership of Parcels #1, 2, 3, and 8.

4. Old Nichols Road is a private road approximately 3,000 feet in length and 50 feet wide and runs northwesterly through the tract of land from State Highway #8. The road provides access to all numbered parcels except Parcel #8. Parcel #8 is not adjacent to Old Nichols Road, but there is a 20' right-of-way on the southern property line of Parcel #5 that connects Parcel #8 to Old Nichols Road.

5. Improvements were made to Old Nichols Road so that the owner of Parcel #6 could have access to his dwelling. There are no dwellings on any of the parcels except one on Parcel #6. Additionally, substantial improvements to Old Nichols Road are necessary in order to provide access to other parcels when residential use occurs.

6. We find that the improved portion of Old Nichols Road from the western boundary of the Sanford property to the entrance drive on Parcel #6 is in a stabilized condition. This section of the road contains sufficient gravel base and adequate erosion controls.

7. Although a portion of Parcel #8 may be swampy and unsuitable for a dwelling, there may be portions of the 10.4 acreage that are suitable for a dwelling.

8. Roaring Brook adjoins Parcels #1, #2, #3, #4 and the Mattimore parcel.

9. We incorporate Appellants David and June Mattimore's Statement of Facts, received October 12, 1982, to the extent necessary to find the following facts:

   (a) that the Mattimores purchased an eight-acre parcel from Aaronsohn and Thomas on September 17, 1979;
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(b) that the Mattimores did not purchase this eight-acre parcel pursuant to any Aaronsohn and Thomas subdivision plan;

(c) that the Mattimores on September 12, 1979 obtained a Deferral Permit for this property pursuant to 18 V.S.A., Chapter 23; and

(d) that the Mattimore parcel is not adjacent to Old Nichols Road. Nor does the road provide access to the Mattimores' property.

CONCLUSIONS OF LAW

1. Pursuant to 10 V.S.A. §6081(a) a land use permit is required before development can commence. Development is defined in 10 V.S.A. §6001(3) to include in pertinent part "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." According to public information available from the Town of Stamford, the Bennington Regional Planning Commission and the Board's own records, the Town of Stamford has not adopted both permanent zoning and subdivision bylaws. Therefore, the road improvements necessary to provide access to these parcels, if and when used for residential purposes, involve construction on more than one acre of land and thus a land use permit is necessary.

Furthermore, Board Rule 2(A) (6) defines development to include:

The construction of improvements for a road or roads, incidental to the sale or lease of land, to provide access to or within a tract of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. For the purpose of determining jurisdiction, any parcel of land which will be provided access by the road is land involved in the construction of the road. This jurisdiction shall not apply unless the road is to provide access to more than five parcels or is to be more than 800 feet in length. For the purpose of determining the length of a road, the length of all other roads within the tract of land constructed
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within any continuous period of ten years
commencing after the effective date of this
rule shall, be included.

2. Old Nichols Road, which was and must be improved to provide
access to the parcels of land if used for residential
purposes, however, does not serve the Mattimores. We
therefore conclude that the parcel of land owned by the
Mattimores is not subject to Act 250 jurisdiction and they
should not be named as co-permittees to Land Use Permit
Amendment #8B0291-EB.

3. We conclude that all other co-permittees to Land Use Permit
#8B0291 were properly named as such. Under 10 V.S.A.
§6081(a) a land use permit is required before development
can commence. By offering for sale subdivided parcels that
involve improvements to a road 800 feet in length or
longer, Aaronsohn and Thomas commenced development pursuant
to 10 V.S.A. §6001(3) and Board Rule 2(A)(6). However,
Aaronsohn and Thomas did not obtain a land use permit prior
to the sale of the first parcel. The sales of Parcels #4, 5, 6, and 7 occurred prior to the February 1982 Act 250
application. Pursuant to Board Rule 10(A), the record
owners of involved land shall be co-applicants and there-
fore co-permittees. Thus the purchasers of these parcels,
being record owners of the involved land, were properly
bound as co-permittees to the land use permit granted by
the District Commission.

We have amended the Conditions in Land Use Permit #8B0291
to properly reflect our findings and conclusions. These
amendments also include conditions relating to the remain-
ing parcels for sale and future road improvements.

4. The Board concludes that the development as presented and
limited by the terms and conditions of these Findings of
Fact and the permit amendment issued herewith meets the
requirements of the criteria at issue under 10 V.S.A.
§6086(a). The District Commission found the project meets
the requirements of the remaining criteria. Jurisdiction
over this permit shall be returned to District #8
Environmental Commission.
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Dated at South Burlington, Vermont this 26th day of January, 1983.

For the Environmental Board:

Priscilla N. Smith
Lawrence H. Bruce, Jr.
Roger N. Miller
Warren M. Cone
Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter

Members participating in this decision:

(Handwritten signatures)