

ANNOTATION: Construction of a warehouse for the storage of building materials is a substantial change - R u 2(A)5 and

VERMONT  
ENVIRONMENTAL BOARD  
10 V.S.A. CHAPTER 151

RE: Ray Carbonoll  
Guilford, Vermont

DECLARATORY RULING  
NO. 114

On February 19, 1980 Ray Carbonell filed a request for a Declaratory Ruling concerning the applicability of Act 250 to the construction of a 28' x 58' addition to his building supply store and the construction of a 40' x 120' storage shed for building materials, both of which are located on his property in Guilford, Vermont. Petitioner Carbonell appealed a ruling by the District Coordinator dated January 17, 1980 **stating that** these improvements constitute a substantial chancre to pre-existing commercial activity and that a land use permit is required. The Board served notice of a public hearing on **all** parties, and published notice of the hearing and the intent of the Board to appoint Margaret P. Garland as a hearing officer in the Brattleboro Reformer on March 13, 1980.

On April 16; 1980, a public hearing was convened in North Springfield, Vermont before Margaret P. Garland, hearing officer, no objections to the use of a hearing officer having been received. The only party participating was the petitioner Ray Carbonell by J. Garvan Murtha, Esq.

FINDINGS OF FACT

1. In 1974 the petitioner purchased a parcel of land in Guilford, Vermont of somewhat more than 1/2 acre (the deed states the parcel is 3/4 ± acre) which had existing improvements of a garage building (formerly used as an automobile, farm equipment and tractor dealership but no longer in use) and a storage shed. At the time of purchase and for a short period thereafter, Mr. Carbonell did not use these buildings for a commercial or industrial purpose.
2. In 1975 the petitioner purchased a second piece of land of **approximately** 1/2 acre (the deed also says this parcel is 3/4 ± acre) adjacent to the first piece and including an old structure in very poor condition that had last been used as a single family residence. The following year Mr. Carbonell renovated the structure and opened a retail hardware store in it.
3. In 1977, having expanded his business to include the sale of lumber and other building materials, Mr. Carbonell constructed a 28' x 58' addition to the back of the store.

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The old garage building, the storage shed and some of the open land on the first piece of property were used for the storage of building materials.

4. After construction of the store addition, Mr. Carbonell purchased an additional parcel of land contiguous to the first two parcels to provide access to the rear of the store addition. This piece of property consists of approximately  $1/10$  acre.
5. In 1977 or 1978 Mr. Carbonell also purchased a house and about  $3/4$  acre of land adjacent to his store to the east, which he now leases as an apartment house. This structure and premises have no relationship to his commercial activities on the adjoining property.
6. In 1979, to provide additional storage space for this building supply business, the petitioner constructed a 40' x 120' enclosed storage shed or warehouse also on the original parcel of land. This building has no plumbing or electricity, has a metal roof and has natural unstained wood siding. Its long axis is almost parallel to the Guilford Center Road.
7. No permits under the Health Department Regulations or Act 250 have ever been applied for relative to any of the commercial activities on this site.
8. There remains a question as to the exact acreage of the first two parcels of land purchased by Mr. Carbonell because of the uncertainty of the size of the rights-of-way of the town roads on two sides of the land in question (see Exhibit #1). If the right-of-way owned by the town is three rods wide, these two parcels would contain just under one acre, while if the right-of-way is only two rods wide, more than one acre would be involved.

#### CONCLUSIONS OF LAW

1. Construction of the large lumber storage warehouse immediately next to the Guilford Center Road may have had a substantial impact under Criterion 8 of §6086(a) of Act 250, and therefore constitutes a substantial change to an existing commercial project that requires a land use permit. This decision is based on the fact that the petitioner definitely owned more than one acre of land that was involved with this commercial activity at the time this warehouse was constructed.
2. The Environmental Board concludes that the establishment of the original hardware business and the subsequent addition to the store triggered Act 250 jurisdiction whether


considered as "development" for commercial purposes on more than an acre of involved land or as a "substantial change" to a pre-existing development of sufficient acreage. In reaching this decision, we must rely on the recitations of acreage contained in the owner's recorded deeds. In the absence of any other firm evidence to the contrary, we are unable to accept the petitioner's assertion that these parcels contain substantially less acreage than the deeds indicate.' As a result, unless proof is offered to the contrary, any application for a land use permit for the new warehouse must also include an application for a permit for the original store building and subsequent addition. With legal proof that the entire tract of involved land in 1977 was less than one acre, no permit for the original store and addition is required and it would be appropriate for the District Environmental Commission to accept an application for only the new warehouse. The Board recommends that such an application should be handled as a minor application under the provision of Environmental Board Rule 21.

ORDER

Accordingly, it is hereby ordered that the petitioner immediately apply to the District Environmental Commission for a land use permit for the entire retail building supply business. If the petitioner can prove to the satisfaction of the District Coordinator that he owned less than one acre of land in 1977 on this site, only an application for the new warehouse must be submitted.

Dated at Montpelier, Vermont this 29th day of April, 1980.

ENVIRONMENTAL BOARD

By   
Margaret P. Garland  
Chairman

Members in favor of  
this decision:  
Margaret P. Garland  
Dwight E. Burnham, Sr.  
Melvin H. Carter  
Michael A. Kimack  
Roger N. Miller  
Leonard U. Wilson