

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

**Re:** Construction Management, Inc.                      DECLARATORY RULING #117  
Formerly Hitzel-Farnham Corp.  
Chittenden, Vermont 05737

On May 13, 1980, Construction Management, Inc. (CMI) filed a request for a Declaratory Ruling **that neither** a new permit nor an amendment to its existing permit (**#1R0235**) is required for proposed construction of an eight-unit condominium on Lot **#13** of petitioner's lands located in Chittenden, Vermont. This petition is an appeal from the advisory opinion of the District Coordinator, stating that an amendment is required for such construction because the permit restricted the parcel to use as a "residential lot." The Board served notice to all parties and published notice in the **Rutland** Herald on May 19, 1980, of a public hearing and the intent of the Board to appoint Margaret P. Garland, as administrative hearing officer.

On June 4, 1980, a public hearing was convened in Montpelier, Vermont before Margaret P. Garland, Chairman, sitting as a hearing officer with the agreement of the Board and the parties pursuant to Board Rule 17. The parties participating were:

Construction Management, Inc. by Peter Moore and David  
Robinson, Esq.

Town of Chittenden by E. Patrick Burke

FINDINGS OF FACT

1. On October 26, 1976, District #1 Environmental Commission issued Land Use Permit **#1R0235** to Hitzel-Farnham Corporation for construction of a new road and reconstruction of a town highway to provide access to a subdivision of thirteen parcels of land located off Town Highway **#9** in Chittenden, Vermont.
2. The permit was subject to two conditions here relevant:
  - A. The premises were to be used for "residential purposes"
  - B. The premises were not to be further subdivided.
3. By the terms of Land Use Permit **#1R0235** issued by the **Commission**, the two conditions were to run with the land. CMI purchased all the land from Hitzel-Farnham Corporation, **subject to permit #1R0235 and subject to conditions therein.**

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4. Act 250 is concerned with the full scope of the impacts of **proposed** developments. The impacts of a housing **project** - in terms of sewage, water, solid waste disposal, educational services, police and fire protection, and other criteria of Act 250 - are directly related to the number of residents planned for the project. If this petitioner were authorized to construct 8 units on this parcel, the project as a whole would consist of at least 20 residential units (8 on this site and 1 each on the other 12 sites). If we were to **accept** the petitioner's logic, however, the request could result in authorization for construction of up to 116 units in this subdivision (8 on this site, and 9 on each site in the project). The record in this matter before the District Commission does not reveal that the Commission gave any consideration to the potential effects of any more than 13 residential units in this project. Any increase in the originally anticipated number of residents creates additional impacts which would escape evaluation.
5. The Board has received uncontested affidavits from parties in the original permit process stating their assumption that the development was to be limited to single family units. Further, findings such as "adequate sewage disposal" and "sufficient water available" could not have been made without an assumption as to the number of residents planned for the project.
6. The purpose of a prohibition on further subdivision is to control the actual impacts of development in a subdivision, not merely to ensure large land parcels.

#### CONCLUSIONS OF LAW

1. The conditions to the permit run with the land. In purchasing the land from Hitzel-Farnham Corporation, petitioner bound itself to the terms and conditions of the permit.
2. The permit states that the project is authorized and must be built in conformance with the application, conditions, findings of fact and conclusions of law. Therefore, the bare words of the permit are not the only features **controlling** construction.
3. The purpose of the permit process is to evaluate the full anticipated impacts of developments and subdivisions subject to the jurisdiction of Act 250. When the review process involves a subdivision, the Act requires evaluation of the development that is to occur on the land, not just the effects of the legal division of the land into separate **lots**.

Since there is a substantial difference in impacts under the criteria of 10 V.S.A. §6086(a) between 13 units and 20 units or 116 units, the Commission could not properly have authorized construction of more than 13 units in this subdivision without taking evidence and making findings on the criteria of the Act for some other number of units. Petitioner offers no evidence and does not even assert that the applicant put on such evidence or that the Commission made such findings. Petitioner asserts only that the applicant did not **deceive the** Commission and argues that the failure of the permit to limit explicitly the number of units to be built amounts to the approval of construction of up to 9 multifamily units on any lot. This Board refuses to read the permit in such an expansive manner. The Act places the burden on the developer to make application, to specify the full intended use of the development, and to satisfy the Commission as to the full impacts of that development under the criteria: Even if this Board were to agree that the permit were totally silent on the issue of the number of expected units (which it is not), we cannot agree that the Act authorizes the development of **20+** or **100+** units of housing simply because the permit for a subdivision fails to prohibit it.

4. In absence of language in the permit to the contrary, or clear evidence that the Commission has approved more intensive development, a permit granted for a subdivision of land or parcels restricted to residential use is limited to construction of single-family units.
5. The Board concludes that construction of a multifamily condominium on one of thirteen parcels restricted to residential use constitutes a substantial change, addition and expansion of the existing approved subdivision under Rule **2(A)(5)**. An amendment to permit **#1R0235** is, therefore, required.

ORDER

The petition of CMI, filed May 13, 1980, is denied. Jurisdiction over this permit is returned to the District #1 Environmental Commission.

Dated at Montpelier, Vermont, this 11th day of July, 1980.

ENVIRONMENTAL BOARD

Members favoring  
this decision:

By   
Margaret P. Garland  
Chairman

Margaret P. Garland  
Ferdinand Bongartz  
Dwight E. Burnham, Sr.  
Melvin Carter  
Michael A. Kimack  
Daniel C. Lyons  
Roger N. Miller  
Leonard U. Wilson