

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

Re: Richard W. Kemmer  
Box 144  
Jericho, Vermont 05465

Declaratory Ruling #118

This petition is an appeal from the advisory opinion of the District Coordinator, dated May '13, 1980, stating that a subdivided lot is a "lot" within the meaning of 10 V.S.A. §6001(11) even if it is created **subject** to a Deferral of Permit under the State of Vermont Subdivision Regulations, and that an Act 250 permit is required for any subdivision consisting of 10 or more lots.

On May 19, 1980, Richard W. Kemmer filed a request for a Declaratory Ruling that Act 250 jurisdiction would not be triggered by purchase of a new lot, adjoining purchaser's property, out of an existing subdivision of 9 lots if the new lot is subject to a subdivision deferral permit. At the hearing on this matter, the petitioner also requested a ruling that Act 250 jurisdiction would not be triggered by the purchase of land adjoining his property out of an existing subdivision of 9 lots if that land is merged with his existing property under one deed.

Notice of the hearing date and the intention of the Board to appoint **Margaret P. Garland** as an administrative hearing officer was sent to all parties and to the Burlington Free Press for publication on May 29, 1980. A hearing was held on June 12, 1980 in Burlington, Vermont before Margaret P. Garland, Chairman, sitting as hearing officer, with the agreement of the Board and the parties pursuant to Board Rule 17. Parties participating were:

Richard W. Kemmer, petitioner

Dorothy M. Aldinger and Frank Moran for the Aldinger Subdivision

FINDINGS OF FACT

1. Petitioner owns a **one-acre** residential lot which adjoins Lot 4 of a proposed **9-lot** subdivision owned by Dorothy M. Aldinger. He wishes to enlarge **the** size of his homesite by purchasing 5.1 acres of land out of Lots 4 and 5 of the adjoining subdivision.
2. Mrs. Aldinger will agree to sell the land if the sale would not create a subdivision subject to the jurisdiction of Act 250.

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3. After the proposed sale, the petitioner's land would consist of 6.1 acres, Lot 4 of the subdivision would be 4.78 acres, and Lot 5 would be 4.65 acres.
4. Petitioner has no intention to develop the 5.1 acres involved and intends to use the land for pasture.
5. After purchase the 5.1 acres will have no **further connection** with the subdivision. Petitioner will not require the use of the leachfield that is planned to service the 9 lots proposed in the subdivision.
6. Because no development will occur on the acreage in question, its transfer to Mr. Kemmer would result in no significant impacts on the lot, the surrounding land, or the town pursuant to the criteria of 10 V.S.A. **§6086(a)**.

#### CONCLUSIONS OF LAW

1. The jurisdiction of Act 250 is established by statute independently from the jurisdiction of the Subdivision Regulations. Although a **subdivision** deferral permit may prohibit development on a lot, it does not exempt the lot from the **definition** contained in 10 V.S.A. **§6001(11)**. Act 250 jurisdiction is triggered whenever a subdivision is comprised of 10 or more lots as defined in the Act whether or not those lots are presently improvable. Moreover, even if this Board had the authority to waive jurisdiction when lots were created subject to deferral permits, it would not serve the purposes of the Act to do so. The deferral permit may be replaced by a subdivision permit authorizing development at any time the owner chooses to, and is able to, **satisfy** the requirements of the Subdivision Regulations. Act 250 requires the review of the potential effects of a subdivision at the time the lots are created, not at some later time when construction **on** the lots may actually occur.
2. Without further legal arrangements, the sale of the 5.1 acres, with a subdivision deferral permit, would constitute creation of a new lot, with new boundaries, in the Aldinger Subdivision. The subdivision would then consist of 10 lots available for resale and an Act 250 review would be required.
3. Since the petitioner is an adjoining landowner, the 5.1 acres may be merged with his existing property into one deed. The boundaries of petitioner's land would thereby be enlarged, retaining one entire lot in petitioner's name.

No new lot of 5.1 acres would remain. The subdivision, thereafter, would consist of less total acreage and would remain only nine lots. The subdivision and the Kemmer property would remain unrelated and no additional development would occur because of the **movement of lot lines**. We therefore conclude that **the purchase** of land which is merged into adjoining land, which does not result in the creation of an additional discrete lot, and upon which no development will occur, does not create a new 'lot within the meaning of 10 V.S.A. §6001(11). In the present case, such a transfer would not subject the Aldinger Subdivision to the jurisdiction of Act 250.

ORDER

The developer of the Aldinger Subdivision may transfer 'the 5.1 acres in question to the petitioner without creating a "subdivision" as defined in 10 V.S.A. §6001(19) provided: (1) the land in question is transferred with a deed covenant prohibiting residential or commercial development on the land and restricting its use to agriculture and other uses accessory to the Kemmer homestead; and (2) the petitioner merges that acreage with his existing property under one deed to create one entire lot in his name rather than two discrete parcels. Petitioner will submit evidence of satisfaction of this requirement to the District Coordinator.

Dated at Montpelier, Vermont, ' this 10th day of July, 1980.

ENVIRONMENTAL BOARD

By   
Margaret P. Garland  
Chairman

Members favoring this decision:

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

Member opposed:

Leonard U. Wilson