

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

RE: State Buildings Division  
8 Baldwin Street  
Montpelier, Vermont 05602

Declaratory Ruling #121

This is a proceeding for a declaratory ruling as to the applicability of Act 250 to the demolition of a structure located at #8 Baldwin Street, Montpelier, Vermont. The petition was filed by the Division of State Buildings on July 30, 1980, following a preliminary administrative ruling on the matter by the Environmental Protection Coordinator for the District #5 Environmental Commission. On August 12, 1980, this matter came before the Environmental Board for a public hearing, with Chairman Leonard U. Wilson, presiding. The following parties were present:

Petitioner, Division of State Buildings, by Louis Peck, Esq. and Irving Bates, Director  
City of Montpelier, by Fred Cleveland, Esq.  
Central Vermont Regional Planning Commission, by Robert Apple, Director  
Division of Historic Preservation and Advisory Council on Historic Preservation by Benson D. Scotch, Esq.  
Montpelier Heritage Group, by Stephen Walke, Esq.

At the outset of the hearing, the petitioner objected to the participation of the Advisory Council on Historic Preservation and the Montpelier Heritage Group. The Board heard oral arguments on these objections, and in deliberative session ruled: (1) that the Advisory Council on Historic Preservation was entitled to party status as a qualified state agency, and (2) that the Montpelier Heritage Group would be granted party status under Board Rule 12(C) as a party whose participation would materially assist the Board in its consideration of the petition.

FINDINGS OF FACT

1. Number 8 Baldwin Street is a residential structure situated on a lot of less than one acre of land near the State Capitol Building in Montpelier, Vermont. This building and lot were acquired by the petitioner through an option contract signed in 1974 and exercised in 1980. The petitioner began to dismantle the building in July, 1980, but halted the demolition while seeking review of the jurisdictional question now before the Board.

2. Number 8 Baldwin Street lies within an area known as the "Capitol Complex," which includes the land and buildings lying within a tract of land in Montpelier comprising approximately 27 acres, of which 23 acres are State-owned, and four acres are privately-owned. The boundaries of the Capitol Complex were established by the legislature and are set forth in 29 V.S.A. §182.
3. The development of the Capitol Complex is governed by the provisions of 29 V.S.A. Chapter 6. This Chapter directs the State Buildings Division to prepare and submit to the legislature a Masterplan for the development of the Capitol Complex:

"In order to provide from time to time the offices and other facilities the state needs in Montpelier for the efficient administration of state government, the board of state buildings shall prepare a long-term plan for using state-owned land, acquiring other land and constructing office and other buildings and facilities near the state house. In doing so it shall consider modern government management practices and apply appropriate architectural principles in such a manner as to preserve and enhance aesthetic values and provide for the orderly development of those lands, buildings and facilities, including streets and parking areas. From time to time it shall review the plan and prepare proposed revisions of it. It shall submit the plan and proposed revisions to the general assembly for approval before beginning construction or reconstruction of any building." 29 V.S.A. §158.

A plan for the development of the Capitol Complex, entitled "State of Vermont Capital Complex Masterplan" was developed and submitted to the General Assembly in 1966. The Masterplan was updated in 1968 and 1974 to reflect changing conditions and the changing concerns of those responsible for the construction of state facilities. The property at #8 Baldwin Street is shown within the boundaries of the Capitol Complex and as a site for future state office development on all of those plans.

4. Although the Capitol Complex Masterplan has not been adopted, formally by the General Assembly, we find that the plan has been used consistently as a framework and guide for development within the Capitol Complex by relevant decision-makers, and especially by the petitioner, since its creation.
  - A. The current plan was endorsed by the Montpelier Planning Commission and the Capitol Complex Commission on November 18, 1974, and has been employed by those bodies in their planning and development review activities at least since that date.

- B. The Buildings Division has followed the relevant Masterplan in its acquisition, demolition and development activities since 1966, and has repeatedly stated to the General Assembly that its activities were so guided. See, e.g., Testimony of Buildings Division Director Irving Bates before the Senate Institutions Committee, April 10, 1979 (Exhibit #9). The testimony of Building Division's Director Irving Bates before this Board convinces us that the Buildings Division has proceeded with acquisition and demolition projects in the Baldwin Street area and elsewhere in the Capitol Complex in conformance with and in furtherance of the Capitol Complex Masterplan.
- C. In February, 1979, Governor Richard Snelling presented to the General Assembly a document entitled, "Policy Statement on Capital Debt," including a Proposed Ten Year Capital Program for fiscal years 1980-1989. This document includes proposals for capital outlays that coincide with the proposals of the updated Capitol Complex Masterplan. Included within the category, "Capitol Complex phased construction" are proposals for construction of Stage IIA and Stage IIB of the office building that is shown on the Masterplan as occupying the #8 Baldwin Street site.
- D. The Introduction to the current Capitol Complex Masterplan states:

"Since 1965, the Vermont Legislature has implemented a number of specific projects contained in the Masterplan:

1. The purchase of the Pavilion Hotel property and its reconstruction into office, Historical Society, and auditorium space.
2. Exterior lighting.
3. Renovation of the Statehouse.
4. Extension of Taylor Street to Court as one segment of the loop road system.
5. Purchase of properties adjoining the Green to the west, for future expansion and parking."

The document also states, "This brochure represents an updating of the 1968 Masterplan and is intended to serve as a guide for continuing development of the site." State of Vermont Capitol Complex (December 1974) p. 7. (Exhibit #3) (emphasis added). Read as a whole, the document clearly demonstrates a continuing commitment

to a coordinated, continuing development plan for the Capitol Complex by those who drafted the plan, those who endorsed it, and those who implement it. See, e.g., "Historical Background," "The Plan," and "Implementation," pp 25-26.

E. The petitioner's commitment to the staged implementation of the Capitol Complex Masterplan is apparent upon review of the Division's recent development activities within the Capitol Complex. The following acquisition, demolition and construction projects have occurred within the Capitol Complex in conformance with the Capitol Complex Masterplan:

(1) Since 1966 at least 12 separate properties have been acquired by the state in anticipation of development within the Capitol Complex. The following properties have been acquired since the effective date of Act 250:

A parcel between Taylor Street and the Winooski River

A parcel Northeast of the State Library  
Mos. 1,3,8,9,10,12,12 1/2,13,14, and 16  
Baldwin Street

Nos. 134,135, and 136 State Street.

(2) Since 1971 the petitioner has demolished at least seven buildings or parts thereof within the Capitol Complex in conformance with and in furtherance of the Capitol Complex Masterplan. Among the buildings that have been removed were those at No. 3 and No. 5 Baldwin Street, sites shown on the current Masterplan as the location of development for the Stage II office building. The petitioner has also sought, but has so far been denied, permission to demolish the structures at Mo. 1 and Mo. 9 Baldwin Street. We find that the demolition of Mo. 8 Baldwin Street is part of a coordinated plan for land acquisition and land clearance in furtherance of the development objectives of the Capitol Complex plan.

(3) Since 1966, the State of Vermont has completed a number of significant construction projects in conformance with and in furtherance of the Capitol Complex Masterplan. See, e.g., those listed in Finding 4(D) above.

- F. The Buildings Division states that it does not have any immediate intention to construct new facilities on the #8 Baldwin Street site, if demolition were to be completed. However, the current Capitol Complex Masterplan shows this site to be occupied by the northwest corner of the Stage IIB Administration Building, and a portion of the visitors parking lot to serve the northwest quadrant of the Capitol Complex. The Director of the Buildings Division testified, and we find, that the Division acquired this property for the development of the Capitol Complex in conformance with, and in furtherance of, the Capitol Complex plan.
5. Based upon the foregoing, we find that the executive branch of the Vermont state government has prepared, and is pursuing execution of, a masterplan for the development of an integrated Capitol Complex, to be completed in stages. We find that a number of coordinated acquisition and development activities in furtherance of that plan have already occurred. We find that the acquisition and demolition of No. 8 Baldwin Street is but one step in the execution of that plan. We find that the plan envisions major development activity on most of the 27 acres within the Capitol Complex, and that the integrated development of the plan would directly involve all, or nearly all, of the 27 acres within the Capitol Complex.
6. We find that the #8 Baldwin Street site is planned to be developed as part of a major office complex, one continuous structure including the present Administration Building and approximately 180,000 gross square feet of new office space. We find that this proposed office development involves in excess of ten acres of land.
- A. We have carefully reviewed the State of Vermont Capitol Complex plan, dated December 1974, the plan approved by the City of Montpelier and currently followed by the State Buildings Division. This plan shows the proposed design of the Stage II office complex development (Exhibit #3, p. 25). We have compared this proposed building to the survey entitled "State of Vermont, State Building Complex., Montpelier, Vermont" dated 1969 and updated through 1980 (Exhibit #8). The proposed Stage IIA and Stage IIB office structure shown on the 1974 plan will involve direct and substantial construction on an area in excess of five acres, now owned by the State of Vermont, but formerly in private ownership. This construction area includes the parcels numbered

12,18,27,28,29, and 30, a portion of Baldwin Street, and the length of Western Avenue from State Street to Baldwin Street. We find that substantial development activity in furtherance of the Stage II office structure plan has already occurred on parcels 19 and 24. We have calculated the acreage of those involved parcels from the survey plan submitted as Exhibit #8. Altogether, the parcels subject to actual substantial demolition and/or construction activities in furtherance of the development of the Stage II office building total 5.1 acres.

- B. We find further that the Vermont State House, the area of the State House Green and the state buildings located on the Green are involved with the development of the Stage II office building for the purposes of determining Act 250 jurisdiction. We find that the planning and development of the Stage II office building is based largely upon that building's intended relationship to the State House, the State House Green, and the other buildings on the Green. This relationship is both functional and aesthetic. The Masterplan states:

"The Capitol Complex has grown since 1900 as a series of separate buildings, oriented towards State Street as a principal axis. The program consensus of this study is that the composition should be focused once again, as it was originally, on the Statehouse and the Green. If the traditional concept of the Statehouse on a green had been carried to its logical conclusion, before private construction had taken place adjacent to the site, the statehouse undoubtedly would have been flanked by related State Buildings on each side, and then a series of buildings facing each other across the green. The result would have been the type of composition that can be seen on many college campuses, such as the University of Virginia, where related buildings are grouped around a green, with pedestrian pathways connecting, and with an important building as the focal point at one end. The Statehouse and the green would have been enhanced if buildings had been located according to this traditional concept rather than being oriented away from the Statehouse and toward a principal commercial street.

"The original concept is still perfectly valid From the standpoint of function. Building sites are still available flanking the Statehouse, and not only serve the purpose of completing the composition and of protecting and enhancing the Statehouse setting, but offer more practical convenience than alternate sites across State Street and to the west.

"The Statehouse and its green are of paramount importance to the Capitol Complex. Adjacent properties may appear to be Fixed in their appearance; however, over a long period of time they will be subject to change and other uses. In accordance with the State of Vermont Capitol Complex Masterplan it is essential to devote the First stages of a building program to completing the area north of State Street and immediately adjacent to the core of the Complex." \* \* \*

"Stage II is a building site in the Northwest corner of the Green that would provide office space strategically located between the Statehouse and the present Administration Building. A building sited in this area would also serve two other planning functions: first, it would separate the automobile traffic on the Terrace-Court connector from the Green, which is a landscaped area for pedestrians; second, it begins to define the corners of the Green and strengthen the composition of the Statehouse. Stage III, in the Northeast corner of the Green would serve a similar function to that of Stage II from the standpoint of site composition and would accommodate the expansion of the State Library, provide For an adequate vault free of Flood danger, and other functions."

\* \* \* \*

"It is the recommendation of this report that the next logical location for added space is on the Stage II site. The proposed Stage IIA building, located behind the present Administration Building, is on state owned land, and should be done immediately to relieve the acute space shortages. This site offers the advantage of connecting to the Administration Building,

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reclaiming space in the old boiler house at Baldwin St. and being immediately adjacent to the Statehouse." State of Vermont Capitol Complex (December 1974), pp 24-26. (Exhibit #3) (emphasis added).

We find that the relationship between the Stage II office structure and the State House, State House Green and related buildings is close and significant. We find that the State House Green is incident to the use of the Stage II office structure. We further find that the relationship between the Stage II building, the State House, and the Green (including related state buildings on the Green) is one that directly involves values sought to be protected by Act 250, and that the impact of the Stage II structure on those values is greater because of its close relationship to the State House, the Green, and those structures. We find that the spatial and functional relationship of the Stage II structure to the State House and Green is such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially increased by reason of that relationship.

n  
In particular, we find that the physical relationship of the proposed office structure to the State House and Green increases substantially the impact of the structure on the aesthetics of the project area, on the historic character of the project area, on specific historic sites (10 V.S.A. §6086(a)(8)); and on existing public investments (10 V.S.A. §6086(a)(9)(K)). We also find that the placement of this office structure in this location is in part for the purpose of centralizing governmental offices. (See Exhibit #3, p. 19.) We find that the mutual relationship of proximity among the Stage II building and other major governmental facilities will substantially increase their impact on a number of the values sought to be protected by the Act - e.g., traffic congestion, vehicular safety and ease of access of emergency vehicles during certain periods of the day (10 V.S.A. §6086(a)(5)); air pollution resulting from vehicular congestion (10 V.S.A. §6086(a)(1)).

7. Based upon the foregoing, we find that the State House and State House Green and the state office buildings located on the Green are on "involved lands" for the purposes of determining Act 250 jurisdiction over this project. We have calculated the acreage of those involved parcels from the survey plan admitted as Exhibit #8. The State



House and the Green alone, from Western Avenue to a line extending along the west facade of the State Library, involve 5.5 acres. The remainder of the Green and the state buildings located on the Green involve 2.7 acres. The involved land in this development is therefore, at a minimum, 5.1 acres of land involved in direct construction, and 8.2 acres of other involved land, or a total of 13.3 acres.

CONCLUSIONS OF LAW

1. This case raises for the Board's interpretation the question whether land to be developed in later phases of a segmented, planned project is "involved" for the purpose of determining Act 250 jurisdiction when development commences on an earlier phase of the overall project. We conclude that where a public project is to be completed in stages according to a plan, all of the land actually involved in the entire project must be included for the purpose of determining jurisdiction. In reaching this conclusion we are mindful of the admonition of the Supreme Court that as an administrative agency this Board does not have the authority either to add to or subtract from the jurisdiction granted the District Environmental Commissions in Act 250. Committee to Save the Rishop's House v. Medical Center Hospital, 137 Vt. 142 (1979).

The jurisdictional language of Act 250 states, in pertinent part:

"The word 'development' also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings." 10 V.S.A. §6001(3).

The Board's Rules, interpreting this jurisdictional language, have anticipated the problem presented in this case. Board Rule 2(A)(4) states, in part:

"In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that a project is incidental to or part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction."

We believe that this Rule, and its application in the present case, are necessary in order to effectuate the purposes of the Act. The Act creates a mechanism for state-level review of the impacts of large public projects. These large projects, like large-scale private projects, are often developed and financed in stages according to an overall plan. The purposes of the Act in reviewing and controlling the effects of large-scale projects would be undercut seriously, and perhaps fatally, if each segment of a larger project were to be viewed in isolation from the other segments when computing the acreage of land involved

in the project. For if that were the rule, jurisdiction could be avoided either consciously or as a matter of course by the process of segmentation. We do\* not believe that the legislature intended such an artificial result, whether the project under consideration is a phased industrial park, a major ski area expansion, a highway project, or a government office complex.

We do not conclude, however, that distinct parcels of land are "involved" in an overall plan for a project merely because they are incorporated within the boundaries of the planning area. A tract of land within the planning area of a large-scale phased project is "involved" in the development only where: (a) substantial development activity related to the plan has occurred or will occur on that tract during the period of time subject to Act 250 review, or (b) where the tract bears some relationship to the land actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially increased by reason of that relationship. See Bishop's House, supra, 137 Vt. at 153.<sup>1</sup>

n We have found that the acquisition and demolition of # Baldwin Street is but one component of a large-scale development project for a government office complex in the Capitol Complex area. Far more than 10 acres within the Capitol Complex, including the parcel at # Baldwin Street, will be directly involved in the construction of improvements as part of the plan. (See Exhibit #3, p. 25 and Exhibit #8) Most, if not all, of the remaining land within the 27-acre Capitol Complex will bear an important relationship with the tracts subject to construction activity. We therefore conclude that the Capitol Complex Masterplan "involves" more than 10 acres of land and that any substantial development activity in execution of that plan is subject to the jurisdiction of the Act.

2. Petitioner argues that some construction projects contained within the Capitol Complex Masterplan are too remote or too speculative to be considered "involved land" even though they are integral elements of that plan. We do not accept that argument. The plan is far more than a planning study, a policy statement or a pipedream. The plan in question was prepared at the direction of the General Assembly. The boundaries of the Capitol Complex are established by legislation, and encompass lands in excess of 10 acres. The plan has been endorsed by the Capitol Complex Commission and the Montpelier Planning Commission. A number of direct and significant acquisition, demolition and construction activities in furtherance of the plan have already been undertaken. We do not feel that it is appropriate for this Board to attempt to discern whether or when certain construction proposals contained in the plan will be authorized, funded or completed. For one thing, it is apparent that acquisition and

demolition activity has proceeded in advance of the authorization of funds for building construction.

Moreover, while we agree that the long-range plans for a multi-stage project may be altered over time as the project evolves, we cannot agree that this fact alone is sufficient ground to exempt the early stages of that project from Act 250 review. The statute requires review of large-scale project in advance of the commencement of construction. 10 V.S.A. §6081. This requirement would be made meaningless if the Commission's jurisdiction were dependent upon a finding that the later phases of the project were certain to be accomplished. We can never know for certain in advance whether the later stages of a project will be financed, constructed, sold, altered, or abandoned. But the Act does not require the District Commission to sit powerless until the 10th lot is sold or the 11th acre is disturbed, if those actions are guided by a reasonably well-defined plan that is either disclosed to the Commission or apparent under the circumstances.

We conclude that if the serious intentions of the developer are known, as they are in this case, then the jurisdictional decision must be based on the extent of those intentions. The same logic applies to a large private industrial park, commercial facility, or subdivision - if reasonably well-defined plans exist for the completion of the project in phases, and the project as a whole would be subject to the jurisdiction of the Act, then that jurisdiction is triggered upon the commencement of construction, or the sale of the first lot.

3. While, as stated above, we do not believe that the Capitol Complex plan should be broken into segments for the purpose of determining whether Act 250 jurisdiction exists for review of each phase, we have nevertheless considered the more narrow view of jurisdiction under the circumstances of this case. We have found that the demolition of the structure at #8 Baldwin Street is intended to make land available for the construction of the Stage II office building as set out in the current Capitol Complex plan and the Governor's current Proposed Ten Year Capitol Program. We have found that this stage of development alone involves more than 10 acres of land within the Complex. We therefore conclude that the demolition of #8 Baldwin Street is subject to the jurisdiction of Act 250 based solely on the extent of the land involved in the Stage IIA and Stage ITB office structure, whether or not the land involved in later stages is considered for this purpose.
4. The petitioner contends that even if the Baldwin Street property were subject to Act 250 jurisdiction because of its connection to the Capitol Complex, the demolition of the structure on the site is not an activity that triggers that jurisdiction. For the reasons given below, we find this argument to be without merit.

Act 250 states, in pertinent part, "No person shall . . . commence construction on a subdivision or development, or commence development without a permit." 10 V.S.A. §6081(a). Although the phrases "commence construction" and "commence development" are not defined in the Act, the Environmental Board's Rules address this question. Rule 2(C) states:

"Commencement of construction" means the construction of the first improvement on the land or to any structure or facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right of way or in any way incidental to altering the land according to a plan or intention to improve or to divide land . . .". (emphasis added)

From this definition, it is apparent that the demolition of the structure at #8 Baldwin Street is the 'commencement of construction' on a development subject to the jurisdiction of Act 250, because the demolition of the structure is land clearance preparatory to the construction of the Stage II office structure, a state project involving more than 10 acres of land. While the mere acquisition or maintenance of property is not the commencement of construction, the physical alteration of the land in anticipation of later development clearly is. See State of Vermont, Agency of Transportation Declaratory Ruling #107 (September 13, 1979). If this were not the case, developers could avoid certain protections of the Act by destroying, in the "land clearance" process, certain values the Act seeks to protect - e.g., historic sites, scenic or natural beauty, endangered species, necessary wildlife habitat, shorelines, primary agricultural soils. The developer could then present the District Commission with a fait accompli with respect to those criteria of the Act and those impacts of the project. We do not believe that the legislature intended such an empty result.

Our conclusion on this issue is supported by the logic of the Supreme Court's decision in Bishop's House. Although the Court explicitly did not reach this question, the opinion notes that the alleged cultural, historical, **architectural** and aesthetic impacts of the demolition of the Bishop's House "would be of relevance in any proceeding for a permit before the district environmental commission' if Act 250 jurisdiction existed over the proposed development project. Bishop's House, supra, 137 Vt. at 147. But those questions would be moot if the demolition could occur in advance of the review process itself.

5. Nor can we agree with the petitioner's argument that the legislature has exempted this project, and perhaps the entire Capitol Complex, from the permit requirements normally applicable to municipal and state projects under

Act 250. Petitioner argues generally that the creation of the Capitol Complex Commission (Act No. 269, 1973 Adjourned Session, codified at 29 V.S.A. §§181-185) ousts the jurisdiction of the District Environmental Commission set forth in 10 V.S.A. §6001(3). Our review of the enabling legislation of the Capitol Complex Commission reveals no such exemption. If the General Assembly intended to create an exemption from Act 250 for projects that are subject to the review of the Capitol Complex Commission, it could have expressly so stated, as it has in the case of projects that are subject to the review of the Public Service Board under section 248 of Title 30. See 10 V.S.A. §6001(3); In re Burlington Electric Department, Declaratory Ruling #119 (September 1, 1980). Petitioner's claim of exemption due to the inclusion of the Baldwin Street demolition as a line item in the legislative appropriations act must fail for the same reason. The jurisdiction of Act 250 clearly applies to state development projects. Most state development projects require appropriations or other approvals from the General Assembly. We cannot presume that the legislature intended to exempt all specifically-approved projects from the general regulatory language of the Act.

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1 The definition of "involved land" contained in Board Rule 2, which was invalidated by the decision in Bishop's House, has of course had no part in our review of this petition. We apply the definition contained in that decision.

ORDER

Of the Petitioner's Requests for Findings of Fact and Conclusions of Law, we adopt, in substance, Nos. 1,2,3,4,5,7,15,16, 19,21,22,23,29,30,35,37, and 38. Except to the extent they are incorporated in this decision, all other requests are denied.

The demolition of the structure at #8 Baldwin Street is the commencement of construction for a state or municipal project which involves more than 10 acres of land, and is therefore subject to the jurisdiction of Act 250. The petitioner must apply to the District Environmental Commission for a permit for the demolition of the building. If the physical security of the building or the safety of the public will be impaired due to the time required to complete the permit process, the petitioner may apply to the District Commission and the Protection Division of the Agency of Environmental Conservation for authority to take emergency protective measures.

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

ENVIRONMENTAL BOARD .

By

Leonard U. Wilson  
Leonard U. Wilson  
Chairman

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