

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

RE: Burlington Housing Authority      Declaratory Ruling No.124  
230 St. Paul Street  
Burlington, Vermont 05401

The Burlington Housing Authority has petitioned the Environmental Board for a declaratory ruling concerning the jurisdiction of Act 250 over a number of housing units proposed to be constructed by the petitioner in the City of Burlington, Vermont. The petition was filed on November 6, 1980. The matter was heard on December 4, 1980 before Leonard U. Wilson, Chairman of the Environmental Board, sitting as an administrative hearing officer with the consent of the parties, pursuant to Board Rule 17.

The following parties were present at that hearing:

Burlington Housing Authority by James M. Farrell, Esq.  
Chittenden County Regional Planning Commission by  
Arthur Hogan, Jr., Executive Director

Findings of Fact

1. The Burlington Housing Authority proposes to construct 35 units of subsidized public housing on four sites within the City of Burlington, all within a radius, of five miles. Twenty-six of those units will be built on one site (the Riverside Avenue project); on the other sites petitioner will develop 1, 2, and 6 units, respectively.
2. The Housing Authority is pursuing a policy of supporting "scattered-site" low-income housing, and has developed the present proposal in execution of that policy. The units involved in this petition were originally planned under two separate applications to the federal Department of Housing and Urban Development (HUD). However, they were later consolidated into a single HUD application for a single housing "project", on four sites. Petitioner's project description states, "This project is planned as a scattered site project to eliminate the problems of a concentration of low-income families in one area and to provide the needed additional units."
3. The Housing Authority currently owns and manages 322 units in Burlington in addition to units which it only manages. The Authority will construct, own and manage the 35 units involved in this petition, although some of the units may

eventually be converted to private ownership under HUD "turnkey" or co-op programs. Petitioner states that, there will be no common or central facilities associated with the project, and there will be no significant interaction among the tenants living in the scattered units. However, the 35 units will all be designed and built by the Rousing Authority and will be rented and maintained by the Authority as part of its centralized management of subsidized housing in Burlington.

### Conclusions of Law

1. Based upon the facts stated above, we find that the 35 units proposed to be built by the petitioner constitute a housing project with 10 or more units to be constructed and maintained on four tracts of land owned by the petitioner, all within a radius of five miles. The 35-unit project is therefore subject to the jurisdiction of Act 250 and requires a permit pursuant to 10 V.S.A. §6081(a).

While this Board supports the public policies inherent in developing scattered-site public housing projects, we cannot accept petitioner's argument that scattered-site developments should be exempt from Act 250 jurisdiction even though they would be subject to Act 250 review if they were located on a single site. Section 6001(3) states clearly that a housing project of 10 or more units is a "development" if the units are constructed on a "tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land" (emphasis added).

2. Petitioner argues that our finding that a housing project may exist on scattered sites will subject to Act 250 jurisdiction any developer who builds more than 10 units of any type at any time within a five mile radius, and any person who merely owned 10 or more units within a five mile radius. Neither of these arguments follows from our decision herein.
  - a. We do not hold that any builder who has constructed 10 or more units will automatically trigger Act 250 jurisdiction with each new unit to be constructed within the necessary geographical radius. A developer may, over time, build and sell a number of different housing projects in scattered locations. Several common-sense criteria may be used to determine whether any of these scattered developments would comprise a related housing project. Such indications would include: retained common ownership or management, common funding, shared facilities, and contiguity in time of development. Tested against these factors, the Housing Authority's present project is a scattered-site housing project subject to Act 250 jurisdiction. Most small, speculatively-developed housing developments would not trigger the Act's jurisdiction.

- b. Nor does mere ownership of 10 or more housing units constitute a "development" under §6001(3). The section relates only to 'the construction of new housing units, or in the case of mobile homes, the maintenance of mobile home lots. If the Housing Authority were to purchase, rent, or renovate existing housing units without substantially altering them, it would not create a housing project subject to Act 250 review.

We also reject petitioner's contention that the Supreme Court's decision in Committee to Save the Bishop's House v. Medical Center Hospital, 137 Vt. 142 (1979) exempts scattered site housing projects from Act 250 jurisdiction unless a functional relationship exists among the sites that effects a significant impact under the environmental criteria of the Act. Petitioner relies upon the definition of "involved land" developed by the Court for land that is neither directly involved in construction nor "incident to the use" of the development. This argument might be applicable if the petitioner were planning to utilize existing units in this project, rather than constructing new units on each of the four sites. However, it is clear from the Bishop's Rouse decision that parcels which are actually built upon are "involved" in the development, whatever the interrelationship among such parcels might be. See Bishop's House, 137 Vt. at 150. In the case of housing projects, this analysis makes a great deal of sense, since the legislature expressed its concern over the cumulative environmental and fiscal impacts of 10 or more new housing units in a certain area -- e.g., effects on school enrollment, public utilities and services, water supplies, and prime agricultural soils. These effects exist cumulatively with the development of the housing units, whether on one site or on many, totally apart from the interactive effects of one site on another. We conclude that since the Authority will construct new housing units on each of the four scattered sites, they are all "involved" in the proposed housing project.

ORDER

The petitioner, Burlington Housing Authority, must apply for and receive a permit pursuant to 10 V.S.A. §6081(a) before the commencement of construction on any of the housing units involved in this petition.

Dated at Montpelier, Vermont this 20th day of Kay, 1981.

ENVIRONMENTAL BOARD

Members participating  
in this decision:  
Ferdinand Bongartz  
Dwight E. Rurnham, Sr.  
Melvin FI. Carter  
Leonard U. Wilson

By Richard H. Cowart  
Richard H. Cowart  
Executive Officer