

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

RE: Rutland State Airport Declaratory Ruling #127  
Vermont Agency of Transportation  
c/o Richard M. Finn  
Assistant Attorney General  
State Office Building  
Montpelier, Vermont 05602

This is a declaratory ruling concerning the applicability of 10 V.S.A. Chapter 151 (Act 250) to the leasing, construction and operation of a private hangar on two parcels of publicly-owned land at the Rutland State Airport in Clarendon, Vermont. The Vermont Agency of Transportation, lessor of the parcels, petitioned the Environmental Board on April 23, 1981 for a declaratory ruling after the District Coordinator for District #1 Environmental Commission issued an advisory opinion on the matter on March 23, 1981.

The Environmental Board, Chairman Leonard U. Wilson presiding, convened a public hearing on May 14, 1981 at the Tavern Motor Inn in Montpelier, Vermont.

The following parties were present:

Petitioner, Vermont Agency of Transportation by  
Richard M. Finn, Esq., and Douglas E. Wheeler;  
Vermont Agency of Environmental Conservation by  
Dana Cole-Levesque, Esq.  
Omyaviation, Inc. by Edward V. Schwiebert, Esq.

FINDINGS OF FACT

1. The Vermont Agency of Transportation (the "Agency") owns 437 acres of land in the Town of Clarendon, Vermont, comprising the Rutland State Airport. Of the 437 acres, 332 acres are designated for the aviation use of the Rutland State Airport, including 10 acres designated for development of a terminal complex (Exhibit #4). The Agency leases contiguous parcels of land to private aircraft businesses for the construction and operation of aircraft hangars. On November 7, 1980 the Agency, as lessor, entered into a lease agreement with Omyaviation, Inc. ("Omyaviation"), a private aircraft business. This lease permitted Omyaviation to construct and operate a private storage hangar and taxiway on two parcels of the airport land, totalling 7350 square feet (Exhibit #3). Through the terms of this lease, the Agency owns and controls the use of the land being built upon by Omyaviation.

2. We find that the Agency is developing the Rutland State Airport for a public purpose according to an Airport Master Plan (Exhibit #4), controlling the development and use of more than 10 acres of involved land. The Agency initiated the planning process for preparation of the Airport Master Plan in January, 1977. This plan was prepared to provide a sound basis for the Agency's decisions regarding future development of the airport and the surrounding land owned by the Agency. According to the Airport Master Plan, the airport boundaries encompass some 437 acres, divided as follows: airfield area (322 acres), terminal complex (10 acres), and non-aviation land (105 acres). The Airport Master Plan addresses the development and use of all three divisions of acreage (Exhibit #4).
3. We find that the Agency's leasing of two parcels for the construction of improvements, namely, storage hangar and taxiway, to Omyaviation, is in furtherance of the Airport Master Plan. The parcels leased to Omyaviation are located on the Terminal Area Plan, Drawing #3 of the Airport Master Plan, dated November, 1979 (Exhibits #2 and #4). The Terminal Area Plan reserves these and other parcels for storage hangars. The Airport Master Plan recommends that these reserved parcels be leased by the Agency for revenue and airport development purposes. Prior to the Agency's lease with Omyaviation in November, 1980, the Agency leased another parcel in the Terminal Area to Richard Davis for the construction of a storage hangar.
4. We find that according to the lease terms, the Agency owns and controls these leased parcels for a public purpose. The lease between the Agency and Omyaviation (Exhibit #3) states that it is the intent of the lessor "to develop certain aeronautical services for the benefit of the public at such Airport." The Agency, as lessor, "may develop or improve the Airport property as it sees fit" and reserves the right to approve any construction, renovation, sale, assignment, transfer or modification of the improvements. In addition, the Agency can remove any building or structure without the consent of the lessee. Although we agree with the Agency that the improvements on these parcels will be at least in part, for the private use of the lessee, we find that the leasing of the land by the Agency for the construction of improvements is in furtherance of developing a public airport and is guided by the Airport Master Plan.

#### CONCLUSIONS OF LAW

1. This petition raises for the Board's review the same issue addressed in State Buildings Division, D.R. #121 (October 29, 1980). In that ruling, the Board held 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 Act 250 jurisdiction. We apply the same language of Act 250 and the Board's Rules in this petition as we did in State Buildings Division. 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 incidental to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings."  
(10 V.S.A. §6001(3))

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 have found that the development of the Rutland State Airport is a public project, to be completed in stages according to the Airport Plaster Plan. The construction of improvements on smaller portions of the airport property are constituent stages in the Agency's development of the public airport. We have found that the entire airport project involves 332 acres designated under the Airport Master Plan as land to be used for aviation purposes. Therefore, the development of a hangar and taxiway by Omyaviation at the airport is subject to the jurisdiction of Act 250.

As we apply the terms of Board Rule 2(A)(4) to this project, two additional observations about that Rule are in order. First, we note that under the Rule our jurisdiction is based upon the amount of land that actually will be "involved" in the overall project -- a land area that may be less than or may exceed the land area within the perimeter of the planning area for that project. We do not hold, either in State Buildings Division, or in the present decision, that land will be "involved" in a development project simply by being held in the ownership of the developer or by being included within the planning area for the project.

Second, while we hold that all of the land involved in the entire project is to be considered for the purpose of determining jurisdiction, it does not follow that the District Commission must review and approve the entire project in order to grant a permit for any constituent phase of it. The District Commission may consider a master plan for the purpose of reviewing each phase in context, and for considering the impacts -- including the cumulative impacts -- of each phase. However, the scope of the Commission's review is properly limited to the application before it. Absent unusual circumstances, it is not necessary for the Commission to review and approve a master plan or an entire project in order to review and approve a constituent phase of the project,

2. We cannot agree with petitioner's argument that its lease with Omyaviation should insulate this hangar and taxiway construction from consideration as part of the Agency's larger airport development project. We have found that the Agency owns and controls the land in question, and that the lessee's construction is in furtherance of the Agency's Airport Master Plan. The Agency's development of the Rutland State Airport is a project involving more than 10 acres of state-owned land "to be used for municipal or state purposes." 10 V.S.A. §6001(3).

This Board has ruled in other contexts that the legislature's functional approach to jurisdiction in Act 250 cannot be avoided by the legal segmentation of projects otherwise subject to District Commission review. See Dr. Bernard Barney, D.R. 82 (October 11, 1977); Gibou Valley Company, D.R. 67 (September 16, 1975); Warren-Sugarbush Airport, D.R. 43 (January 7, 1974).

As we stated in State Buildings Division,

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.

The logic of this decision also applies in the present case. If construction activity in furtherance of a public, large-scale project could be insulated from Act 250 review simply by leasing the land in question to private parties, the legislature's intention to submit major public projects to the review of District Environmental Commissions could easily be defeated. We do not accept this result.

3. Because we find that the Agency is developing the Rutland State Airport pursuant to an Airport Master Plan that involves more than 10 acres, we conclude that the construction of improvements pursuant to the Airport Master Plan triggers Act 250 jurisdiction. It is unnecessary, therefore, for the Board to make a finding on the number of acres of land within the terminal complex area involved solely with the construction and use of the storage hangar. See Committee to Save the Bishop's House, 137 Vt. 142 (1979).
4. The Agency has requested the Board to find that in the past, with respect to similar leases at other state airports, neither the Agency nor the lessees have been required to apply for Act 250 permits. Although we do not agree with this assertion (See, e.g., Land Use Permit #5L0495, issued to Mansfield Aviation, Inc. and Vermont Agency of Transportation for construction of a hangar on leased land at a state airport), it is not necessary to make a finding on this request in order to reach the jurisdictional question raised in this petition. While the past practice of the Agency, its lessees, and the District Commissions is instructive, our decision is controlled, not **by** that practice, but by the jurisdictional language of the statute and the Board's Rules.
5. As Board Rule 6(A) states, applicants for an Act 250 permit shall be those who have a substantial interest in the tract of involved land by reason of ownership or control. The Agency has leased two parcels of land to Omyaviation. By the terms of the lease the Agency continues to own, control and develop the parcels for the stated purpose of providing aeronautical services to the public. By reason of ownership and control of these parcels and of the acreage involved in the Airport Master Plan, we conclude that the Agency should be joined with Omyaviation as co-applicant for an Act 250 permit. See Karlen Communications, Inc. and Mt. Mansfield Television, Inc. (#5L0437-EB, August 28, 1978);

ORDER

The petitioner must join with Omyaviation, Inc. and apply to the District Environmental Commission for a permit.

Dated at Montpelier, Vermont this 31st day of August, 1981.

ENVIRONMENTAL BOARD

BY Jan S. Eastman  
Jan S. Eastman  
Executive Officer

Members participating  
in this decision:

Leonard U. Wilson  
Ferdinand Bongartz  
Lawrence H. Bruce, Jr.  
Dwight E. Burnham, Sr.  
Melvin H. Carter  
Donald B. Sargent