

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

RE: Peter Guille, Jr., et al. Declaratory Ruling #129  
Guilford, Vermont

This is a declaratory ruling concerning the applicability of 10 V.S.A., Chapter 151 ("Act 250") to the construction of certain roads. On September 14, 1981, Peter Guille, Jr. petitioned the Environmental Board (the "Board") to determine whether or not sections of road located on the Franklin Farm, so-called, and designated as Lakeridge Road and Old Farm Road in Guilford, Vermont, were exempt from Act 250 and whether conveyances may be made by a corporation or partnership to individual shareholders or partners of remaining bulk acreage with the resulting owner being exempt from Act 250.

A pre-hearing conference was held on September 28, 1981, with Chairman Leonard U. Wilson presiding. A public hearing was convened by the Board on October 13, 1981. Memoranda of Law were filed with the Board on October 13, 1981, October 16, 1981, and February 9, 1982.

The following parties participated in this declaratory ruling:

Petitioner, Peter Guille, Jr., et al. by Timothy J. O'Connor, Jr., Esq.;

Vermont Agency of Environmental Conservation by Dana Cole-Levesque, Esq.;

Town of Guilford by Charles Wilde and Barbara Hunt;

Avis Phillips, adjoining property owner and Rule 12(C) party;

William Halikias, adjoining property owner.

Issues Raised by the Declaratory Ruling

1. Are improvements to so-called Lakeridge and Old Farm Roads, originally logging and farm roads, respectively, subject to the jurisdiction of Act 250?;
2. If the road improvements are subject to Act 250 jurisdiction, has the statute of limitations with respect to the improvements run?; and
3. Does the nature of the ownership interests in parcels contiguous to the Franklin Farm, so-called, prohibit the Board from considering these parcels as "involved land" within the meaning of 10 V.S.A. §6001?

At the hearing held on October 13, 1981, Mrs. Avis Phillips requested party status on the three issues set forth above. As an owner of property which adjoins property described in Issue 3 above, she was granted adjoinee status. With respect to Issues 1 and 2 she was granted party status pursuant to

Rule 12 (C). William Halikias was granted party status as an adjoining property owner on all three issues. He owns and lives on land which was formerly part of the so-called Franklin Farm in Guilford, Vermont.

#### FINDINGS OF FACT

1. On November 1, 1971, Leverage Properties Corporation, a New York corporation with Peter Guille, Jr. as president, Harold Reese, Jr., Ronald Reese, and Christine Reese acquired the Franklin Farm so-called from Wilfred W. Franklin and Shirley J. Franklin. The so-called Franklin Farm consisted of 428 acres, more or less, of land and certain buildings. Three other parcels of land were also purchased at the same general time for a total of approximately 853 acres. The four parcels are designated on Exhibit #1 as "NW", "W", "E", and "N". The Franklin Farm is designated as "NW".
2. The parcel designated as "W", consisting of approximately 140 acres, more or less, and acquired solely by Peter Guille, Jr., was sold to an uninterested person in 1981. Peter Guille, Jr. continues to own a 25% interest in Parcel "E". The remaining 75% interest is owned by three other people, Art Brescia, Mark Morris, and Harold Reese. Peter Guille, Jr. owns a half interest in Parcel "N" with the other half being owned by Harold A. Reese.
3. At the time of acquisition of Parcel "NW", the Franklin Farm so-called, two roads served the property. The roads are known as the Old Farm Road and Lakeridge Road, formerly a logging road. Lakeridge Road had been used as a logging road since about 1945 or 1946. Prior to 1971, Old Farm Road had been used by "up to and including Cadillacs" to drive to a pond used for recreation and located some distance beyond the Franklin farmhouse.
4. When the Franklin Farm or Parcel "NW" was sold to Leverage Properties Corporation, et al. in 1971, Lakeridge Road was primarily a logging road and approximately ten (10) feet wide. The new owners proceeded immediately to make improvements to the road. A balance sheet for the operation dated December 31, 1972 (Exhibit #2), indicates a \$26,813.09 expenditure for road improvements as of that time. Such road improvements were substantially complete in 1972.
5. Construction was also started on the so-called Upper Forty Road located on Parcel "N". Trees were cut and stumped; however, all work stopped in 1973 when the owners of Parcel "N" determined an Act 250 permit might be required for the construction. There are no plans at the present time to complete the construction of the so-called Upper Forty Road.

6. Since January, 1981, the Town of Guilford has owned Lakeridge Road. Old Farm Road continues to be owned by Leverage Properties Corporation, et al. Three lot owners who live along Old Farm Road provide any necessary maintenance. In 1980, additional gravel was added and some minimal widening took place on Lakeridge Road. The road was widened from 18 or 19 feet to 20 feet in a few places, two or three tree stumps and a few dead trees were removed, and stone headers were placed at culverts.
7. Peter Guille, Jr. is president of Leverage Properties Corporation which owns a one-half interest in Parcel "NW". He owns a 25% interest in Parcel "E" and a 50% interest in Parcel "N". Harold Reese also owns an interest in more than one of the parcels of land in question. He and two other people own a one-half interest in Parcel "NW". He also owns a 25% interest in Parcel "E" and a 50% interest in Parcel "N".
8. The Agency argues that the owners of the various parcels of land formed a joint venture in 1978 for the purposes of an Act 250 application. The Board finds that although the parcels of land were considered together for the purposes of a prior Act 250 application, based upon the information before the Board, it cannot find that common ownership and control currently exist. In order to make such a determination, partnership agreements and shareholder interests, rights, and responsibilities should be reviewed.
9. Partnerships are legal entities in Vermont and may purchase, own and sell property. Based upon the evidence presented to the Board, it cannot find that one "person", either an individual, partnership or corporation, owns and controls all of the land in question. See 10 V.S.A. §6001.

#### CONCLUSIONS OF LAW

Based on its Findings of Fact, the Board makes the following Conclusions of Law:

1. 10 V.S.A., Chapter 151 (Act 250) and Board Rule 2(A), effective June 1, 1970, made no specific reference to "roads"; however, "Commencement of construction or development" was defined to occur with the "first man-made change on the land."
2. The Board concludes that the 1971-72 widening and general improvements of Lakeridge and Old Farm Roads, so-called, were substantial "man-made" changes to the land and thus required an Act 250 permit. The Board further concludes that the changes made to Lakeridge Road in 1980 were not substantial and did not trigger Act 250 review at that

time. Each time road changes are proposed however, the changes must be reviewed on a case-by-case basis to determine whether or not the particular circumstances involve a "substantial change" for purposes of Act 250 as required by 10 V.S.A. §6081 and Board Rule 2(G).

- 3. The Board also recognizes that it has the authority to enforce Act 250 violations pursuant to 10 V.S.A. §6004 and/or to request criminal penalties pursuant to 10 V.S.A. §6003. The Board also understands that the success of enforcement actions may turn on the so-called statute of limitations which pertains to any proposed legal action. However, the Board must conclude that the applicability of the statute of limitations is a legal question not properly before the Board and should be raised as a defense in any enforcement proceeding. The Board, therefore, will leave such legal questions to be determined in appropriate enforcement proceedings.
- 4. Finally, parcels "NW", "N", and "E" are not owned or controlled by a person for purposes of 10 V.S.A., Chapter 151. See 10 V.S.A. 56001. Consequently, activities which occur on one of the parcels will not necessarily require that the other parcels be reviewed. However, if any proposed activities "involve" more than one of the parcels in question, such "involved land" will be subject to review. See 10 V.S.A. §6001 and Board Rule 2(F).

Dated at Montpelier, Vermont this 5th day of March, 1982.

ENVIRONMENTAL BOARD

By Jan S. Eastman  
 Jan S. Eastman  
 Executive Officer

Board members participating  
 in this decision:  
 Leonard U. Wilson  
 Ferdinand Bongartz  
 Lawrence H. Bruce, Jr.  
 Melvin H. Carter  
 Warren Cone  
 Roger N. Miller  
 Priscilla Smith