

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

RE: Allen Petrie
Richmond, Vermont

Declaratory Ruling No. 130

This declaratory ruling concerns a petition filed with the Environmental Board (the "Board") by Kenneth R. Freer, individually as an adjoining landowner and for the Richmond Hill Homeowners Association. Petitioners filed this declaratory ruling request on September 18, 1981 following an Advisory Opinion by the Executive Officer of the Board issued on September 8, 1981. Petitioners allege that the construction of roads and driveways on parcels owned by members of the Charles A. Petrie family and located in Richmond, Vermont is subject to 10 V.S.A. Chapter 151 (Act 250) requirements. A pre-hearing conference was held in South Burlington, Vermont on October 26, 1981, Chairman Leonard U. Wilson presiding. The Environmental Board convened a public hearing on this matter on December 8, 1981 in South Burlington, Vermont. Parties to this declaratory ruling are the following:

Petitioners, Kenneth R. Freer and Verne Reynolds, adjoining landowners;
Landowners, Allen Petrie and Kenneth Petrie by Greg Wilson, Esq.; and
Richmond Town Planning Commission.

Richmond Hill Homeowners Association did not request party status at the hearing.

I. ISSUE IN THE DECLARATORY RULING

The issue raised in this Declaratory Ruling request is whether the construction of a road and driveways constitutes "development" within the meaning of 10 V.S.A. §6001(3) and pursuant to Environmental Board Rule 2(A)(6).

In order to constitute "development", the petitioners must show:

- (1) that the road or roads provides access to more than five parcels or is more than 800 feet in length; and
- (2) that the road or roads provides access to or within a tract incidental to the sale or lease of land.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. The tract of land in question is located in the Town of Richmond, Vermont and contains 43± acres divided into three parcels, Parcel "A" (10.8 acres), "B" (16.76 acres), and "C" (15.65 acres). (Exhibit #1). Parcels A and B were deeded to Kenneth Petrie and Parcel C to Allen Petrie by their father, Charles A. Petrie.
2. Access to these parcels is via the Richmond-Huntington Road also known as State Aid Highway No. 2. A common right-of-way runs between parcels B and C and is owned by Kenneth and Allen Petrie. A road, less than 400 feet in length, was constructed upon a portion of the common right-of-way in 1979 and intersects a driveway that leads to Kenneth Petrie's house located on Parcel B. Allen Petrie plans to construct approximately 900 feet of driveway from the intersection of the existing road and Kenneth Petrie's driveway to a proposed house site on Parcel C.
3. The site plan for this three-parcel tract also shows a 50 foot right-of-way on Parcel A which extends a distance of approximately 419 feet from Town Road #24 to Parcel B. This right-of-way has been improved for most of its length (about 400 feet) and serves as a driveway for a leased mobile home located on Parcel A.
4. Other than the activities described in paragraphs #2 and #3, above, there are no plans by the Petries for additional development of any of these parcels. The 900± foot driveway serving Allen Petrie's proposed residence and the 400± foot driveway serving the mobile home will remain private driveways and will not serve any other dwellings, lots, or parcels. The three driveways provide access to three single residential dwellings.

III. CONCLUSIONS OF LAW

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

1. The present construction of the common right-of-way to Kenneth Petrie's driveway is not a road 800 feet in length or longer. The proposed construction of Allen Petrie's driveway does not constitute a road but a driveway serving a single residential dwelling. Nor does the 400 foot improved driveway leading from Parcel A to Parcel B constitute a road since its use is limited to a single residential dwelling. Ordinarily, a driveway is a private way leading from a house to a street and is incidental to the residential purpose. In contrast, a road is a street, highway, etc. used by the public. Austin v. Durbin, 310 N.E.2nd 893(1974).

The "roads" in question do not total 800 feet in length or more nor do the "roads" serve more than five parcels; therefore, Title 10, Chapter 151 (Act 250) jurisdiction does not apply and no land use ✓

permit is required.

2. Because this construction of "road" improvements is less than 800 feet and does not serve more than five parcels, we need not reach the question of whether the road in question is incidental to a sale as required by Environmental Board Rule 2(A)(6).

IV. ORDER

The landowners are not required to apply for a land use permit pursuant to 10 V.S.A. Chapter 151.

ENVIRONMENTAL BOARD

By Jan S. Eastman
Jan S. Eastman
Executive Officer

Members participating
in this decision:

Burnham, E. S. r .
Melvin H. Carter