

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

RE: Mr. & Mrs. Ronald Iverson
Underhill, Vermont 05489

Findings of Fact,
Conclusions of Law
and Order
Declaratory Ruling
No. 133

Mr. and Mrs. Ronald Iverson filed a **declaratory** ruling request with the Environmental Board (the "Board") on February 22, 1982, following an Advisory Opinion issued February 8, 1982, by the Executive Officer of the Environmental Board. The petitioners requested the Board to determine whether or not the approximately 2500' Iverson driveway serving as a common roadway for previously subdivided parcels of their land constitutes "development" as defined in 10 V.S.A. §6001(3) and, therefore, requires a Land Use Permit.

A pre-hearing conference was held on March 12, 1982, at the South Burlington City Hall in South Burlington, Vermont. A public hearing on the declaratory ruling request was convened on March 24, 1982, and immediately recessed at the request of the parties. The Board reconvened the public hearing on April 14, 1982, at City Hall, Winooski, Vermont. Memoranda of Law were also filed by the Agency of Environmental Conservation on April 22, 1982, and by the petitioners on April 26, 1982. The hearing was adjourned on May 12, 1982.

Parties present at the public hearing were the following:

Petitioners by Carl H. Lisman, Esq. ;
Town of **Underhill** by Stephen R. Crampton, Esq. ; and
Agency of Environmental Conservation by Dana Cole-
Levesque, Esq.

At the pre-hearing conference, the parties anticipated a factual stipulation that would eliminate the need for witnesses. The parties did not reach such stipulation; and, therefore, they presented testimony at the hearing. The Board makes its following Findings of Fact and Conclusions of Law based on the record developed at the hearing.

I. ISSUES RAISED BY THE DECLARATORY RULING REQUEST

The declaratory ruling raises the following issue:

Whether or not the construction of the driveway or roadway in question is a road that constitutes "development" as defined in §6001(3) of 10 V.S.A., Chapter 151 (Act 250) and Board Rule 2(A)(6).

II. FINDINGS OF FACT

1. In October, 1974, Petitioners, Ronald and Rae Iverson, acquired approximately 134 acres of land in the Town of Underhill, Vermont, from Rob and Della

- Kelley. The 134 acres of land is located on the westerly side of Route 15 approximately 2 miles north of Underhill village.
2. Access to the 134 acres is from a public town road known as Kelley Road, running westerly from Route 15 to the Petitioners' land. Kelley Road terminates at a point approximately 210 feet west of the easterly boundary of the Petitioners' property line. The distance between Route 15 and the terminus of Kelley Road is approximately 510 feet.
 3. The driveway or roadway in question begins at the terminus of Kelley Road, proceeds westerly through Petitioners' property for a distance of approximately 2500 feet, and terminates at the Iversons' residence located on the northwesterly portion of the land.
 4. The present roadway was a "farm utility road" at the time of Petitioners' purchase. The farm road provided access to a well, woodlot, sugarhouse, and pastures. The roadway could be distinguished as a road but was not passable by automobiles.
 5. In November, 1974, Petitioners filed a plan outlining a subdivision of their property with the Underhill Town Planning Commission (Exhibit #2). The subdivision plan contained nine lots, each more than 10 acres, and a roadway to serve the nine lots. The plan was not filed in the Town of Underhill Land Records.
 6. Sometime in 1975, Mr. Iverson consulted with the District #4 Environmental Coordinator and the Underhill Planning Commission regarding improvements to the farm road. In December, 1977, Mr. Iverson requested approval from the Underhill Planning Commission for a permanent easement over the farm road.
 7. The present roadway location is generally that of the former farm road and as shown on Exhibit #2. Petitioners made improvements to the farm road during the spring of 1978. Petitioners widened the road from approximately 15 feet to 24 feet including shoulders. Trees were cut; gravel was added to create a base of 18 to 20 inches; a culvert was rebuilt, and a second culvert added. The cost of improvements was approximately \$11,000.
 8. The roadway in question begins at or near the farmhouse located on Lot #1, runs south to Lot #2, loops into Lot #2, and continues in a northwesterly direction through Lot #2A, and on to the Iverson home; for a total distance of 2500± feet. The quality of

the roadway is uniform. The distance from the beginning of the roadway to the driveway located on Lot #2A is more than 800 feet (Exhibit #1). Exhibit #2 indicates that a roadway was to continue past the present location of the Iverson home to serve additional lots.

9. Mr. Iverson obtained building permits for Lots #2 and #2A. Lot #2A was sold in August, 1978. Lot #1, including the original farmhouse, and Lot #2 were sold in December, 1978. The deeds to the three lots state that this 2500 foot roadway is a private road to be maintained by the lot owners.
10. The size and boundaries of the lots sold substantially follow those of the lots outlined in the subdivision sketch submitted to the Town Planning Commission in 1974. The improved roadway substantially follows the road contained in the subdivision plan (Exhibits #1 and #2). The Iverson house is located on the northwestern portion of the property.
11. Although Mr. Iverson maintains he has no present intent to sell further lots according to the 1974 subdivision plan, he assumes that he could so subdivide his property. In addition, the Board finds that Petitioners may sell an approximately 30 acre piece, shown as Lots #7, #8, and #9 on the 1974 plan (Exhibit #2).

III. CONCLUSIONS OF LAW

1. We conclude that the construction of the roadway in question constitutes "development" within the meaning of 10 V.S.A. §6001(3) and Board Rule 2(A) (6). Because we find that

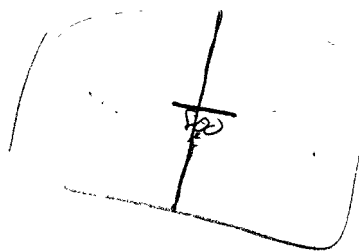
Petitioners: (1) filed a subdivision plan of their land, (2) substantially improved the road pursuant to the subdivision plan, and (3) sold lots pursuant to the plan, we conclude that the construction of the road was for the commercial purpose of the sale of the lots; and, therefore, the road is subject to Act 250 review. See Board Rule 2(A) (6) and Declaratory Ruling #29.

The construction of the road from the terminus of Kelley Road, therefore, to the driveway located on Lot #2A requires a land use permit at this time. The remainder of the road leading to Petitioners' home we consider a driveway and review is not necessary at the present time. However, Petitioners are advised that when and if the "driveway" becomes a road, i.e. is used to gain access to other lots, homes or

portions of property, a land use permit or permit amendment will be required. In addition, a land use permit or permit amendment will be required before additional roads are constructed.

2. Petitioners also questioned the Board's jurisdiction over road improvement as development. The Board, however, concludes that the construction of Petitioners' road is the "construction of improvements" for purposes of Act 250 jurisdiction. Prior to 1975, Board Rule 2(A) did not specifically refer to roads as the "construction of improvements"; however, the "first man-made change on the land" constituted the construction of improvements. The common interpretation of the meaning of "construction of improvements" included a road as an improvement. During this period, applications were received by district commissions for roads less than 800 feet in length, and/or roads serving one house, three lots, etc. See Land Use Permits Nos. 5W0253 (October 25, 1973), 5L0191 (May 15, 1973), 3W0187 (application withdrawn November 26, 1975), and 4C0157 (September 10, 1974).

In 1975 the Board specifically addressed roads in order to restrict, not expand, Act 250 jurisdiction.



ORDER

The construction of Petitioners' roadway constitutes development and is therefore subject to the jurisdiction of Act 250. The Petitioners must apply to the District #4 Environmental Commission for a permit for the Construction of the road from the terminus of Kelley Road to the driveway located on Lot #2A. The Petitioners must also apply for a permit or permit amendment prior to the use of the remainder of the roadway leading to Petitioners' home for road rather than driveway purposes. The Petitioners must also apply for a permit or permit amendment prior to the construction of any additional roads to be used to provide access to other portions of the 134 acres to be used for commercial or industrial purposes including but not limited to the sale or lease of land.

Dated at Montpelier, Vermont this 28th day of May, 1982.

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
Warren M. Cone
Donald B. Sargent
Priscilla N. Smith