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

RE: McDonald's Corporation
c/o R. Joseph O'Rourke, Esq.
Ryan Smith & Carbine, Ltd.
P.O. Box 310
Rutland, Vermont 05701

Findings of Fact,
Conclusions of Law
and Order
Declaratory Ruling #136

On April 15, 1982 Lawrence G. Jensen et al. (the "Petitioners") filed a petition with the Environmental Board (the "Board") for a declaratory ruling as to the applicability of 10 V.S.A., Chapter 151 (Act 250) to the construction of a restaurant by McDonald's Corporation ("McDonalds") on 1.83 acres of land in the City of Rutland, Vermont. Petitioners are all residents of the City of Rutland.

The Chairman of the Board held a pre-hearing conference on this petition on April 28, 1982 in Rutland, Vermont. At that pre-hearing conference McDonalds moved to dismiss the petition. On June 16, 1982 the Board convened a public hearing in South Burlington, Vermont to hear oral argument on the motion to dismiss. The following parties were present at the hearing:

Petitioners, by John D. Hansen, Esq.;
McDonald's Corporation, by R. Joseph O'Rourke, Esq. and Allan R. Keyes, Esq.: and
State of Vermont, Agency of Environmental Conservation, by Dana Cole-Levesque, Esq.

After hearing oral argument on the motion and considering the parties' legal memoranda, the Board decided on July 13, 1982 to deny McDonalds' motion to dismiss. The reasons for said denial are set forth below.

On July 21, 1982 McDonalds filed a motion for permission to appeal to the Vermont Supreme Court pursuant to V.R.A.P. 5(b) from the Board's denial of its motion to dismiss. On July 29, 1982 Petitioners filed a memorandum in opposition to this motion. On August 5, 1982 the Board considered said motion and response and decided to deny McDonalds' motion for permission to appeal. The reasons for said denial are set forth below.

The Chairman of the Board held a second pre-hearing conference oh this petition on August 9, 1982 in Rutland, Vermont. The Board then convened a public hearing on the substantive issues raised by this petition on September 8, 1982 in Rutland, Vermont.

The following parties were present at the hearing:

Petitioners, by John D. Hansen, Esq.:
McDonalds Corporation, by R. Joseph O'Rourke, Esq. and Allan R. Keyes, Esq.; and
City of Rutland, by William Bloomer, Esq.

The Board recessed the hearing on September 8, 1982 pending receipt of proposed Findings of Fact and Conclusions of Law, memoranda of law, a review of the record and deliberation. Memoranda of law were received on September-22 and 30, 1982 and October 1, 1982. On October 12, 1982 the Board completed its deliberation, determined the record complete, and adjourned the hearing. The matter is now ready for decision. The Board makes its Findings of Fact and Conclusions of Law based on the record developed at the hearings. To the extent that the Board agreed with and found them necessary, any requests for findings or conclusions filed by the parties have been incorporated herein; otherwise said requests are hereby denied.

Before addressing the substantive issues raised by this petition, the Board will discuss its decisions relative to McDonalds' motion to dismiss and its motion for permission to appeal.

A. MOTION TO DISMISS

On April 28, 1982 McDonalds moved to dismiss the petition for a declaratory ruling. This motion was based on the following grounds:

1. Petitioners' lack of standing because they are not adjoining property'owners;

2. The proposed development does not involve a subdivision;

3. The validity of the City of Rutland's subdivision ordinance is not an issue under Act 250;

4. The Board does not have the requisite authority to declare a municipal ordinance invalid;

5. Even if the City of Rutland's subdivision ordinance is properly at issue, original jurisdiction lies in the District #1 Environmental Commission, not the Board; and

6. The Petition does not comply with Board Rules 3 and 12.

The Board denied McDonalds' motion to dismiss on all six grounds for the following reasons:

1. This petition is a petition for declaratory ruling governed by the Administrative Procedure Act. Under 3 V.S.A. §808 each state agency is required to provide by procedure or rules for declaratory rulings as to the applicability of any statutory provision, rule or order of the agency. Board Rule 3(C) and (D) provide for such declaratory rulings. Board Rule 3(C) provides that "any interested party" may seek a

ruling as to applicability of any statutory provision or of any rule or order of the Board. McDonalds argued that because the Petitioners were not. "adjoining" property owners the petition should be dismissed. "Interested party" has never been defined asadjoining property owners. In fact, the Board has never interpreted "interested party" to preclude individuals who are not adjoining property owners and will not do so now.

McDonalds confuses 'interested" parties for purposes of declaratory rulings with the rights of adjoining property owners and others in the actual Act- 250 application process. Pursuant to 10 V.S.A. §6085(c) parties to Act 250 proceedings include those who have received notice, adjoining property owners who' request a hearing, and such other persons as the Board may allow by rule. Board Rule 14(B) allows the Board or a district commission to grant party status to groups or individuals who can show that a project may affect their interests or that their participation will materially assist the Board or district commission.

Therefore, McDonalds statement that only adjoining property owners may participate in Act 250 proceedings is incorrect. The -Board's determination that Petitioners are 'interested' parties for purposes of this declaratory ruling is a separate and differen-t issue from whether these same Petitioners might be granted party status in an Act 250 proceeding pursuant to Board Rule 14(B).

2. McDonalds argued that because its project does not involve, a subdivision, the City of Rutland's subdivision ordinance is not properly at issue. However, pursuant to 10 V.S.A. §6081(a) Act 250 permits are required for both "development(s)" and "subdivision(s) ." "Development" is defined in 10 V.S.A. §6001(3) to include:

> [t]he construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws. (Emphasis added).

Therefore, even though the proposed project is not a subdivision, whether or not the City of Rutland has adopted permanent subdivision bylaws is of critical importance to a jurisdictional determination that Act 250 does or does not apply to a given development.

3. McDonalds also argues that the City of Rutland's sub-division ordinance is not an issue under Act 250. The Board agrees with McDonalds that Act 250 is not and should not be used as a mechanism for testing the validity of every zoning and

subdivision bylaw in the State of Vermont. With this in mind, the Board asks representatives of each municipality and regional planning commission to identify which municipalities have adopted both permanent zoning and subdivision bylaws. The Board then determines which municipalities are "10-acre "towns" versus "l-acre towns" for purposes of Act 250 jurisdiction.

However, the Board does have the authority and responsibility to determine whether or not Act 250 applies to a certain project., Whether or not a municipality has adopted permanent subdivision bylaws is an issue that, if raised, the Board must review in order to make a proper jurisdictional determination,. The Board recognizes, however, that its review of this issue and ultimate determination is made only for'the purpose of determining Act 250 jurisdiction.

4. McDonalds' next argument that neither the Board nor a district commission has the authority to declare a municipal ordinance invalid has generally been answered in paragraph 3 above. The Board's decision not to dismiss the petition for declaratory ruling does not invalidate the subdivision ordinance. It means only that the Board will hear the issues raised by the petition, which will require the Board to make its determination as to whether the project constitutes "development" under 10 V.S.A. §6001(3) and thereby requires McDonalds to apply for an Act 25 permit.

5. McDonalds next argues that original jurisdiction over the issues raised by this petition is with the district environmental commission, not the Board. The Board notes once again that Board Rule 3(D), adopted in accordance with the Administrative Procedure Act, specifically 3 V.S.A. §808, provides that petitions for declaratory rulings shall be filed with the Board.

McDonalds confuses the original jurisdiction of the district commissions with respect to specific permit applications with the Board's jurisdiction to determine the applicability of Act 250 to a given project. In re Juster Associates, 136 Vt. 577 (1978) cited by McDonalds, held that original jurisdiction over permit applications is with a district corn-' mission. This does not mean that district commissions have jurisdiction to hear declaratory ruling requests. As the Vermant Supreme Court ruled in In re State Aid Highway No. 1, Peru, Vt., 133 Vt. 4 (1974), the Board has the authority to determine, in the first instance, the applicability of certain statutory provisions, rules, and regulations.

Therefore, this petition for a declaratory ruling regarding a project never subject to review by a district commission is properly before the Board. If the Board determines that an Act 250 permit is required, an application must be filed with the District #1 Environmental Commission.

6. Finally, McDonalds argues that the petition should be dismissed because it did not comply, with Board Rules 3 and 12. A-review of Rule 3 indicates that the petition was properly filed with the Board and that due notice pursuant to 10 V.S.A. $6084 was given to various parties. The'petition was received by the Board on April 15, 1982 and notice was mailed to all parties identified in 10 V.S.A. $6084 on April 16, 1982. We have read the notices and conclude that adequate notice was forwarded to the appropriate parties, and notice of the first public hearing was duly published.

Based on this review, the Board concludes that its notice complied with Board Rules 3 and 12 and met the general test of proper notice, that is "reasonably calculated, under all circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present these objections." Committee to Save The Bishop's House v. Medical' Center Hospital of Vermont, Inc., 136 Vt. 213, 216 (1978).

For the foregoing reasons, the Board denied McDonalds' motion to dismiss.

B. MOTIQN FOR PERMISSION TO APPEAL

On July 21, 1982 McDonalds filed a motion for permission to appeal to the Vermont Supreme Court pursuant to V.R.A.P. 5(b). In denying this motion, the Board relied upon the recent decision In re Pyramid Company of Burlington, No. 125-81 (S.Ct.Vt., decided June 8, 1982). In that case. the Court dismissed an interlocutory appeal made under V.R.A.P. 5(b). In its decision the Court explained that an interlocutory appeal is an exception to normal appellate jurisdiction. The Court will accept an interlocutory appeal only if the decision involves the following three criteria:

(1) controlling question 'of law; and

(2) substantial grounds for difference of opinion; and

(3) material advancement of the litigation.

In the case at hand, the Board could not find that all three criteria were met. The Board notes that McDonalds could have but did not file its motion with the Vermont Supreme Court pursuant to V.R.A.P. 5(b).

C. ISSUES RAISED BY THE DECLARATORY RULING REQUEST

Petitioners claim that Act 250 jurisdiction under 10 V.S.A. §§6001(3) and 6081(a) applies to the construction of a McDonalds' restaurant in the City of Rutland. Petitioners base

their claim on the alleged invalidity of the City of Rutland's permanent subdivision bylaws. Under 10 V.S.A. §6081(a), Act 250 jurisdiction applies to development. Development is defined in 10 V.S.A. §6001(3) in pertinent part to be "the construction of, improvements for commercial or industrial purposes on more than ane acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws."

Petitioners' claim raises the following questions:

1. Does the City of Rutland have permanent subdivision bylaws within the purview of 10 V.S.A. §6001(3); and

2. If the answer to question #1 is no, does the McDonalds' restaurant facility at 191-195 Woodstock Avenue involve the "construction of improvements for commercial or industrial purpose-s on more than one acre of land," and therefore, require an Act 250 permit.

D. FINDINGS OF FACT

1. Petitioners are all residents of the City of Rutland residing in the same general neighborhood as the property known as 191-195 Woodstock Avenue.

2. The premises known as 191-195 Woodstock Avenue are located in the City of Rutland.

3. McDonalds is in the process of constructing a restaurant expected to be in commercial operation on or about October 8, 1982 at 191-195 Woodstock Avenue.

4. The lots presently owned and/or leased by McDonalds at 191-195 Woodstock Avenue contain in excess of approximately 748,532 sq. ft. or something in excess of 1.8 acres. Exhibit #8.

5. The actual building area including the building, refuse area, and freezer is 5,671 sq. ft. Paving, walks., curbs, and specific landscaping is 34,995 sq. ft. Storm drains involve another 325 sq. ft. Approximately 6,000 sq. ft. of the site has also been and/or will be graded and seeded, and certain spoil material will be placed on the remainder of the site. Thus almost 47,000 sq. ft., or in excess of one acre of the site, is actually being disturbed.

6. On July 16, 1981 McDonalds obtained an advisory opinion or project-review sheet from a Board employee stating that a proposed restaurant located at 191-195 Woodstock Avenue on 2 acres of land would not trigger Act 250 jurisdiction. Exhibit #9. Notice of this advisory opinion was given only to McDonalds.

7. On March 8, 1982 a second project-review sheet was issued for a restaurant to be located at this site, this time for a project on 1.803 acres. Again this' project-review sheet indicated no Act 250 permit was required and was sent only to McDonalds. Exhibit **#10.**

8. The City of Rutland Zoning Board of Adjustment denied the project as first proposed and referred to on Exhibit #9. The second project-review sheet refers to a re-designed project.

9. McDonalds applied for a state public-building permit on March 8, 1982. Exhibit #10.

10. McDonalds actually purchased a portion of the property on or about April 8, 1982.

11. McDonalds applied for a temporary pollution permit for the project on April 12, 1982. This permit was granted on June 15, 1982.

12. McDonalds commenced construction at the site on or about June 10, 1982.

13. As of September 8, 1982 permits relative to this project were subject to appeals before the Vermont Water Resources Board and the Rutland Superior Court.

14. As of March.23, 1968, the original effective date of 24 V.S.A., Chapter 117, the City of Rutland had an ordinance in effect entitled "Planning and Subdivisions." See Title 32, Zoning and Planning, Chapter 3 for the City of Rutland. Exhibit #2.

15. This Planninq and Subdivision ordinance was amended only once since March 23, 1968.. This amendment occurred on Flay 15, 1972 and related to the naming of streets. Exhibit #3.

16. In February 1973 the City of Rutland amended its zoning ordinance in order "to bring it" into compliance with State enabling legislation. Exhibits **#14** and 15. Hearings were also held in 1973 relative to the adoption of a Municipal Development Plan. Exhibits #5, 6, 13 and 15.

17. The City of Rutland has a current municipal plan adopted in 1980.

18. Section 4401 of Title 24, Vermont Statutes Annotated, authorizes the adoption, amendment, and enforcement of subdivision regulations by any municipality that has a local plan in effect.

19. Section 4491 of Title 24, Vermont Statutes Annotated, provides that "any previously enacted zoning ordinance, subdivision regulation, . . . shall be amended to conform with the provisions of this chapter within a period of seven years following the effective date of this chapter and unless so amended shall expire and be null and void at the end of such period.".

20. The City of Rutland had a duly enacted charter at all times material to this dispute. Section 44, Article XL111 of the 1963 Charter granted the city council the power: "To regulate by ordinance development of real estate subdivision," Similar specific grants are also found in the 1974 Revised Charter (see Chapter 3, Section 3-l (49)) and in the 1980 Charter (see Chapter 3, Section 3-l (49)).

(The Board took official notice of the 1963, 1974, and 1980 City of Rutland charters at the September 8, 1982 hearing.)

21. The 1963, 1974, and 1980 charters for the City of Rutland also provide that any resolutions, bylaws, regulations or ordinances adopted by the City of Rutland "shall not be inconsistent with this act or with the constitution or laws of the United States or of this state . . . ." See Section 45 of 1963 Charter and Section 5-1 of 1974 and 1980 charters.

22. All three City of Rutland charters state that "all provisions of the statutes of this state relating to towns" shall apply to the City of Rutland unless changed or modified by provisions of the charter or city ordinance. See Title VIII, section 3 of 1963 Charter, Section 36-2 of 1974 and 1980 charters.

E. CONCLUSIONS OF LAW

1. Does the City of Rutland have permanent subdivision' bylaws within the purview of 10 V.S.A. §6001(3)?

The Board agrees with McDonalds that, at least since 1963, the City of Rutland has had charter authority to enact and enforce subdivision regulations. However, by their own terms, the City of Rutland charters provide that regulations or ordinances adopted pursuant to the charter shall not be inconsistent with state laws, and that the provisions of state statutes relating to towns apply to the City of Rutland unless specifically changed or modified by provisions of the charter or city ordinance. Findings of Fact #20, 21 and 22.

By its own terms 24 V.S.A., Chapter 117 (relative to Municipal and Regional Planning and Development) apply to "all land in the state." 24 V.S.A. §4302(a). In addition, the term municipality is defined to include a city. 24 V.S.A. §4304(4).

Generally, two statutes dealing with the same subject matter must be read together and harmonized, if possible. In re Crescent Beach Assoc., 125 Vt. 321 (1965). Consequently, the Board concludes that the City of Rutland must comply with 24 V.S.A., Chapter 117 because the express terms of its charters so provide and because the two acts of the legislature (the charter and 24 V.S.A., Chapter 117) can be harmonized. The City of Rutland does have charter authority to enact subdivision regulations, ordinances or bylaws so long as these regulations, ordinances or bylaws are enacted in accordance with 24 V.S.A., Chapter 117.

Section 4491(a), Title 24, Vermont Statues Annotated, requires that a previously adopted subdivision regulation be amended to conform with the provisions of Chapter 117 within seven years of March 23, 1968. Unless this is done the regulation expires and becomes null and void. Id. Section 4413(a), Title 24, Vermont Statutes-&notated, provides that any subdivision regulation shall contain:

(1) Procedures and requirements for the submission and processing of plats.

(2) Standards for the design and layout of streets, curbs, gutters, street lights, fire hydrants, shade trees, water, sewage and drainage facilities, public utilities and other necessary public improvements.

It is clear, as the City itself acknowledges in its answer to the petition, that the City of Rutland's subdivision regulations have not been substantially amended since 1968, and not amended at all since 1972; It is also clear that the City of Rutland's current subdivision ordinance does not'contain the procedures and standards described above. See Exhibits #2 and 3. Therefore, because the subdivision ordinance has not been amended to conform as required, it expired and is" null and void pursuant to 24 V.S.A. §4491(a).

Thus, the Board can only conclude that the City of Rutland does not have permanent subdivision bylaws within the purview of 10 V.S.A. §6001(3), and that the City of Rutland is a dne-acre municipality for purposes of Act 250 jurisdiction..

2. Does the McDonalds' restaurant facility at 191-195 Woodstock Avenue involve the "construction of improvements for commercial or industrial purposes on more than one acre of land," and therefore, require an Act 250 permit?

The jurisdiction of Act 250 applies to the "construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws." 10 V.S.A. §6001(3). Board Rule 2(A), restating this jurisdiction, clearly specifies that "[i]n determining the amount of land, the area of the entire tract or tracts of involved land owned or controlled by a person will be used."

There is no question that McDonalds is constructing a commercial restaurant facility on three parcels of land that total more than one acre and owned by or under lease to McDonalds. Because the entire tract or tracts of land upon which the development occurs must be counted for the purpose of determining jurisdiction, the Board concludes that this project would require a permit pursuant to 10 V.S.A. §6081(a).

McDonalds relies upon Committee to Save the Bishop's House, Inc. v. Medical Center Hospital of Vermont, Inc., 137 Vt. 142, 400 A.2d 1015 (1979) to argue that Act 250 jurisdiction cannot be based upon the size of the tract of land, but that the Board must draw lines around that portion of a tract upon which improvements are actually constructed. The Board notes that even if it were to accept McDonalds' argument, which it does not, the land disturbed by McDonalds for the construction of its project clearly exceeds, one acre and would trigger Act 250 jurisdiction.

In fact, the Board relies upon Bishop's House in reaching its conclusion that the size of the tract is the decisive consideration. The Board has most recently discussed its position in G. S. Blodgett, Declaratory Ruling #122, issued May 18, 1981. (An appeal from this decision to the Vermont Supreme Court was subsequently withdrawn prior to being heard), In G. S. Blodgett the Board explained:

> We believe that the language of the Act is clear -- jurisdiction over commercial and industrial projects is stated in terms of the acreage of each tract of involved land. The tract upon which the construction

of improvements occurs is obviously "involved;" therefore, the acreage of the tract is to be counted for the purpose of determining jurisdiction. The Court's decision in Bishop's House is consistent with this conclusion. In that case, the Court invalidated the Board's practice of automatically including as "involved land" any tract in common ownership within a radius of five miles, whether or not the tract was one upon which the construction of improvements would occur. The Court did not question, however, whether the acreage of the tract upon which the construction of improvements actually would occur should be counted for jurisdictional purposes. See Bishop's House at 150.

There are compelling practical reasons to support this interpretation of the language of the Act as well. To begin with, we believe that the legislature foresaw the enormous practical and administrative difficulties of employing a jurisdictional dividing line that would somehow separate a single tract of land into three categories: land that will literally be built upon; land that is functionally "involved" in the development because of an important relationship comprehended by the criteria of the Act; and remaining land in the same tract that is not at all related to the proposed development. If such a rule were to be implemented, the jurisdictional process itself would overwhelm the administrative process. The Environmental Board and the District Commissions would be forced to convene extensive fact-finding hearings merely to discover whether the jurisdiction of the Act would apply in a given case. These hearings would necessarily explore the merits of the proposed project just to reach the question of how much of the tract of land being built upon is involved in the project. Their findings might well require, and could well turn on the results of detailed, and expensive surveys of the square footage of land affected or utilized by the project.

Having concluded (1) that the City of Rutland is a one-acre municipality for purposes of Act 250 jurisdiction and (2) that McDonalds is constructing a development on more than one acre of land, the Board must still answer the question of whether or not McDonalds is required to obtain an Act 250 permit for this project.

McDonalds argues that even if the City of Rutland's subdivision ordinance became null and void as of March 23, 1975, the principles of fairness and justice require that the Board not require McDonalds to obtain an Act 250 permit, In making its argument, McDonalds relies upon the recent case My Sister's Place v. City of Burlington, 139 Vt. 602 (1981). In that case, the City of Burlington was held to be estopped from taking action against a party when a government agent acts within his authority and that party has in good faith changed his position in reliance upon the agent's representations. In My Sister's Place, a non-profit Vermont corporation relied upon a list of specific improvements necessary to meet fire code requirements given to it by a fire warden, the agent of the City of Burlington entrusted with the duty of enforcing the codes. This list was provided in June, 1975. Improvements were made during the summer, and an inspection made by the warden in September, 1975. In September, My Sister's Place was informed it could not open its restaurant or bar. My Sister's Place sued the fire warden and the City of Burlington, claiming it acted in reliance upon certain negligent statements to its financial detriment.

In the case at hand, Petitioners requested a declaratory ruling from the Board, and McDonalds had notice of said request and grounds in April, 1982 almost two months before actual construction began at the site. Thus, the Board cannot accept McDonalds' argument that it "acted," i.e. commenced construction, in reliance upon a statement that no Act 250 permit was required. In fact, such statements are advisory opinions subject to appeal pursuant to Board Rule 3. Although the second project-review sheet issued March 11, 1982 for the project in question was not appealed pursuant to Board Rule 3, a declaratory ruling request filed April 15, 1982 might be considered timely.

The Board believes that the decision whether or not to require McDonalds to obtain an Act 250 permit must be based upon a determination that McDonalds had a vested right in the project at the time the petition for declaratory ruling was filed.

In a recent case Town of Bennington v. Hansen-Walbridge Funeral Home, 139 Vt. 288, 427 A.2d 365 (1981) cited In My Sister's Place, the Vermont Supreme Court discussed the issue of estoppel and "vested rights" as they relate to questions of zoning. In that case the Court reasserted the general elements of equitable estoppel. The elements are:

> (1) [t]he party to be estopped must know the facts;
>
> (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended:
>
> (3) the latter must be ignorant of the true facts: and
>
> (4) he must rely on the former's conduct to his injury. (Emphasis added).

Town of Bennington, supra, at 293-294.

Even if we assume in the case at hand that the agents of the State knew the facts when issuing certain advisory opinions and that these agents and the State intended such opinions to be relied upon, McDonalds was not ignorant of the possibility that an Act 250 permit would be required at the time they commenced construction. Therefore, it cannot be said that McDonalds relied-upon the advisory opinions to its detriment. Instead, it commenced construction for its own reasons.

The issue of what acts are essential in order for a right in a building permit to vest is also discussed in Preseault v. Wheel, 132 Vt. 247 (1974). In that' case the Court explained that, "[a]ny construction commenced by the developer prior to the issuance of all the necessary permits and prior to a final judicial determination of the validity of the initial issuance of these permits is commenced at his peril." Id. at 254.

Thus, in the case at hand-, actual site preparation and construction were commenced weeks after notice of the issues raised in this petition and before all permits acknowledged as being necessary were obtained. These facts must result in a determination that McDonalds does not have a vested right in proceeding with this project without a permit.

Whether or not other developers of projects in the City of Rutland on land of between one and ten acres have a vested right in their projects as of the date of this decision will have to be determined on a case-by-case basis.

ORDER

For the reasons set forth above, McDonalds must apply to the District #1 Environmental Commission for a permit.

Dated at South Burlington, Vermont this 26th day of October, 1982.

FOR THE BOARD:

Dissenting:

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