

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

RE: Ernest A. Pomerleau  
Milton, Vermont 05468

Findings of F a c t ,  
Conclusions of Law  
and Order  
Declaratory Ruling #137

On April 30, 1982, Ernest A. Pomerleau petitioned the Environmental Board (the "Board") for a declaratory ruling regarding proposed construction on lands of an Act 250-approved project completed in 1972. Petitioner's Act 250 project is a 23,500 square foot shopping center approved by Land Use Permit #4C0069, located on 8.2 acres in the Town of Milton, Vermont. Petitioner proposes to construct a 21,600 square foot super-market facility on the site.

The Environmental Board convened a public hearing on this petition on May 26, 1982, in Winooski, Vermont. Parties present at the hearing were the following:

Petitioner, Ernest A. Pomerleau by Schuyler Jackson, Esq.;  
Chittenden County Regional Planning Commission by  
Arthur R. Hogan, Jr.; and  
Agency of Environmental Conservation by Dana Cole-Levesque,  
Esq.

The public hearing on this matter was adjourned on June 16, 1982. The Board **makes** its Findings of Fact and Conclusions of Law based on the record developed at the hearing.

I. ISSUE IN THE DECLARATORY RULING

Petitioner argues that his proposed construction of a new commercial facility on a previously permitted parcel of land less than 10 acres in size is new construction that does not constitute "development" within the meaning of 10 V.S.A. §6001(3). Petitioner also asserts that Condition #2 of Land Use Permit #4C0069 requiring an amendment for any expansion of the shopping center is not applicable to his proposed activities.

The issue raised in this declaratory ruling is whether Petitioner's proposed construction is so distinct and separate from his existing permitted shopping center that it is exempt from Act 250 review because the Town of Milton has adopted both permanent zoning and subdivision by-laws.

II. FINDINGS OF FACT

1. Petitioner was granted Land Use Permit #4C0069 by District #4 Environmental Commission in 1972 to construct a 23,500 square foot shopping center on 9.2

acres in the Town of Milton, Vermont. The project is now 8.2 acres due to a subdivision of the parcel which is not at issue here. The project was completed in 1972.

2. Petitioner intends to construct a 21,600 square foot supermarket facility adjacent to an existing building. A fire wall will separate the new facility from the existing building. The new supermarket facility will be occupied by Grand Union Company who currently occupies a 14,000 square foot facility in the shopping center. The 14,000 square foot facility will be renovated for a new tenant.
3. As a result of the construction of the new facility, Petitioner will add approximately 85 parking spaces to the current parking area. One driveway entrance currently serves the shopping center. This driveway entrance will also serve the new facility.
4. The Town of Milton adopted permanent zoning regulations on April 30, 1980 and permanent subdivision regulations in August, 1980 (Exhibit #2).

### III. CONCLUSIONS OF LAW

1. We have previously held that the subsequent adoption by a municipality of permanent zoning and subdivision bylaws does not obviate the jurisdiction of Act 250 over permitted projects of less than 10 acres. See William S. Noyes, d/b/a Willie's Village Auto, D.R. 75, June 10, 1976. The Town of Milton adopted permanent zoning and subdivision bylaws after a land use permit was granted to Petitioner. Petitioner asserts that because the Town is now a so-called 10 acre town and his proposed construction is so separate and distinct, Act 250 jurisdiction does not apply. The Board recognizes that this might be true in some situations; however, jurisdiction must be determined on a case-by-case basis.
2. We cannot conclude from the facts that the proposed supermarket facility is separate and distinct from the permitted project. The new facility will share a fire wall with an existing facility. A current shopping center lessee will occupy the new facility. The existing entrance and expanded parking area will serve the new facility as well as the shopping center. Because the proposed facility is so closely tied to the shopping center, we conclude that it is not separate and distinct but rather a significant expansion of the existing permitted project.

3. As we concluded above, the subsequent adoption by a municipality of permanent zoning and subdivision by-laws does not obviate Act 250 jurisdiction. The terms and conditions of Act 250 permits remain in effect; therefore, a permittee is obligated to comply with the requirements of his Act 250 permit notwithstanding subsequent changes in or additions to local ordinances. See 1 V.S.A. §214(b)(2); In re Application of J. Paul and Patricia A. Preseault, 132 Vt. 471, 474 (1974).

Condition #2 of Land Use Permit #4C0069 requires that "the Applicant shall reapply to the District Environmental Commission #4 for any significant expansion of this shopping center." Therefore, Petitioner must apply to the District #4 Environmental Commission for an amendment to construct the 21,600 square foot facility.

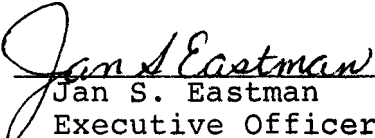
ORDER

Petitioner must apply to the District #4 Environmental Commission and obtain an amendment authorizing the proposed construction.

Dated at Montpelier, Vermont this 18th day of June, 1982.

ENVIRONMENTAL BOARD .

By

  
Jan S. Eastman  
Executive Officer

Board members participating  
in this decision:  
Leonard U. Wilson  
Ferdinand Bongartz  
Dwight E. Burnham, Sr.  
Melvin H. Carter  
Warren M. Cone  
Donald B. Sargent