

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

RE: Snowfall, Inc.
Dorset Hollow Road
Dorset, Vermont 05251

Findings of Fact, Conclu-
sions of Law and Order
Declaratory Ruling No. 138

On September 27, 1982 Judy and John Thorssin petitioned the Environmental Board (the "Board") for a declaratory ruling appealing the Executive Officer's Advisory Opinion, dated August 20, 1982, regarding a duplex housing project in Dorset, Vermont. Petitioners claim that the Snowfall, Inc. ("Snowfall") duplex housing project in Dorset, Vermont is subject to 10 V.S.A., Chapter 151 (Act 250) jurisdiction and requires a land use permit.

Chairman Leonard U. Wilson held a pre-hearing conference on November 12, 1982 in East Dorset, Vermont. The Board convened a -public hearing on this petition on January 6, 1983 at St. Paul's -Church, Manchester Center, Vermont.

Parties present at the hearing were the following:

Petitioners, Judy and John Thorssin and Paul Schwindt by
Harvey D. Carter, Esq.; and
Snowfall, Inc. by Rhys Evans, Esq.

The Board recessed the hearing on January 6, 1983 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 January 24, 1983. On February 23, 1983, the Board determined the record complete and adjourned the hearing. This matter is now ready for decision.

The Board's Findings of Fact and Conclusions of Law are based on the record developed at the hearing. To the extent the Board agrees with the proposed Findings of Fact, they have been included herein.

A. ISSUES IN THE DECLARATORY RULING

This declaratory ruling request raises the issue of whether the construction of four duplex housing units and one **single-**family residence by Snowfall in Dorset, Vermont constitutes a development in accordance with 10 V.S.A. §6081(a), and thus requires an Act 250 permit. Petitioners allege that the proposed activities constitute development as defined in 10 V.S.A. §6001(3) since Snowfall and/or Jack Heaton own or control 10 or more units of housing within a five-mile radius of the proposed construction.

B. FINDINGS OF FACT:

1. Snowfall and Wooden Indian, Inc. are corporations.
Jack E. Heaton of Dorset, Vermont is the **sole**

stockholder of both Snowfall and Wooden Indian.

2. Jack **Heaton** has been engaged in residential construction and land development in the general areas of Manchester and Bennington, Vermont for the last 10 years.
3. Snowfall is a real estate investment corporation. Wooden Indian is a construction company.
4. Sometime during the summer of 1977 Snowfall purchased the so-called Barlow farm of approximately 54 acres, bordering both sides of Dorset Hollow Road in Dorset, Vermont.
5. Snowfall then subdivided the Barlow farm and sold five unimproved parcels: parcels of 14.6 acres, 4.4 acres and 2.9 acres north of Dorset Hollow Road, and parcels of 2 acres and 3.17 acres south of Dorset Hollow Road. Exhibit #3.
6. Snowfall presently owns four three-acre lots located south of Dorset Hollow Road. These lots are part of the Barlow property.
7. Snowfall, unable to sell the four unimproved lots described in Finding #6, is now or proposes to construct one duplex condominium on each lot for a total of eight units.
8. Snowfall obtained a public building Certification of Compliance No. PB-8-0247 for the construction of a mound system for the first two units. Exhibit #2. The foundation and septic system for the first two units have been completed.
9. In 1980 Snowfall purchased approximately 1.5 acres of land from Robert and Margaret Schadler located on the north side of the Dorset Hollow Road across from the parcels described in Finding #6 (the "Schadler lot"). Exhibit #3.
10. Snowfall intends to construct a single-family residence on the Schadler lot which it currently owns. The foundation for this residence has been constructed by Wooden Indian and paid for by Snowfall. The septic system for this lot is or will be located on one of the four lots described in Finding #6. Exhibit #2.
11. During 1977 Ms. Nadine Stearns considered constructing a house in Rupert, Vermont. Wooden Indian was to be the contractor for the house; however, that house was

- never built. Instead Ms. Stearns and Mr. Heaton discussed and verbally agreed that a sugar house located on the so-called Barlow property be renovated for her purchase and use.
12. In September, 1977 a Contract for Purchase and Sale of the sugar house and 12 acres was prepared at the request of Mr. Heaton but never executed. Exhibit #6.
 13. From September 1977 through January 17, 1978 Wooden Indian expended \$23,133.46 partially renovating the sugar house described in Finding #11 to a single-family residence. Exhibit #4.
 14. Architectural plans dated November 3, 1977 were prepared by Richard Penny at the request and direction of Ms. Stearns. Said plans were provided by Ms. Stearns to Wooden Indian. Exhibit #7.
 15. Wooden Indian completed the necessary construction pursuant to a December 31, 1977 Construction Agreement. Exhibit #8. Actual construction and payment for said work was not completed until June or July 1978.
 16. On January 19, 1978 Snowfall sold the partially renovated sugar house and approximately 12 acres of the so-called Barlow property to Ms. Stearns.
 17. Mr. Heaton, Snowfall and/or Wooden Indian own no other land and/or are engaged in no other development activities within 5 miles of the so-called Barlow property.

C. CONCLUSIONS OF LAW

1. This case raises for the Board's interpretation the question of whether the construction of various housing units constitutes "development" for purposes of Act 250 jurisdiction. Snowfall proposes to construct four duplex condominium units and one single family residence or nine units of housing on land it owns in Dorset, Vermont. The four duplex units are being constructed on part of the so-called Barlow farm. A sugar house also located on the Barlow farm was renovated for residential use. Said renovations commenced during the Fall of 1977 when the property was owned by Snowfall and were completed in 1978 after the sale to a third party, Ms. Nadine Stearns.

If the sugar house is deemed a part of the remaining nine-unit housing project currently proposed by

Snowfall, then Act 250 jurisdiction applies to the project. We so conclude.

The language of 10 V.S.A. §6001(3) applicable to housing projects is the following:

The word "development" shall mean the construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or the maintenance of mobile homes or trailer parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land. (Emphasis added.)

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During the fall of 1977 through approximately January 19, 1978 construction of improvements necessary to renovate a sugar house on the Barlow farm for use as a single-family residence were undertaken. During this time the sugar house and related lands were owned by Snowfall. The construction or renovation of the sugar house must be considered the first unit of housing for purposes of determining Act 250 jurisdiction. The current proposal to construct an additional nine units triggers the jurisdiction of the Act. Therefore, Snowfall must apply for and obtain an Act 250 permit for the construction of the remaining nine units.

D. ORDER

For the reasons set forth above, Snowfall must apply to the District #8 Environmental Commission and obtain an Act 250 permit authorizing the construction of the nine housing units currently proposed.

Dated at South Burlington, Vermont this 3rd day of March, 1983.

ENVIRONMENTAL BOARD

Board members participating
in this decision:

Lawrence H. Bruce, Jr.
Roger N. Miller
Melvin H. Carter
Ferdinand Bongartz
Leonard U. Wilson

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