

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

RE: **Woodside** Juvenile Findings of Fact,
Rehabilitation Center Conclusions of Law and **Order**
Town of Essex, Vermont Declaratory Ruling No. 139

On October 14, 1982 the Town of Essex petitioned the Environmental Board (the "Board") for a declaratory ruling appealing the Executive Officer's Advisory Opinion, dated September 15, 1982, regarding the proposed **Woodside** Juvenile Rehabilitation Center (the "Center") to be constructed by the Division of State Buildings, Agency of Administration, State of Vermont ("State Buildings*"). Petitioner claims that the construction of the Center is "development" within the meaning of 10 V.S.A., Chapter 151 (Act 250), and therefore requires a land use permit. The Center is to be constructed on a 99.1 acre tract of land, owned by the State of Vermont and located east of Vermont Route 2A in the Village of Essex Junction and the Town of Essex, Vermont.

Chairman Leonard U. Wilson held a pre-hearing conference on October 25, 1982 in Essex Junction, Vermont. The Board convened a public hearing on this petition on November 10, 1982 at the Human Services Training Center, Waterbury, Vermont.

Parties present at the hearing were the following:

Petitioner, Town of Essex by Robert J. Perry, Esq.;
State of Vermont, Division of State Buildings by Jane Hart,
Marter, Esq. and Irving Bates;
State of Vermont, Agency of Environmental Conservation by
Dana Cole-Levesque, Esq.; and
Chittenden County Regional Planning Commission by Arthur R.
Hogan, Executive Director.

The Board recessed the hearing on November 10, 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 November 22 and 30, 1982. On December 8, 1982, 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.

A. ISSUES IN THE DECLARATORY RULING

This declaratory ruling request raises the issue of whether or not the Center constitutes "development" as defined in 10 V.S.A. §6001(3) and Board Rule 2(A)(4), and therefore, requires an Act 250 permit. At issue is the definition of "involved land" for purposes of Act 250 jurisdiction over projects for municipal or state purposes.

B. FINDINGS OF FACT

1. The **Woodside** Juvenile Rehabilitation Center (the "Center") is a 30-bed secured facility for delinquent juveniles mandated by the General Assembly in Act No. 233, 1982 Adjourned Session. The Center will be operated by the Department of Social and Rehabilitation Services of the Agency of Human Services, State of Vermont and administered by the State Buildings Division, Agency of Administration, State of Vermont.
2. Act No. 233 mandated that the Center be located in the Town of Essex on a portion of a 99.1 acre tract, known as the "**Grove Street Tree Farm**" (the "**Tree Farm**"), east of Vermont Route 2A in the Village of Essex Junction and Town of Essex, Vermont. Exhibit #5. The Tree Farm, owned by the State of Vermont, is administered by the Department of Forests, Parks and Recreation.
3. The State **Buildings Division** has **allocated** approximately 4.8 acres in the Town of Essex for the facility. That portion of the Tree Farm designated for the **Center** will be administered by the State Buildings Division.
4. An improved entrance road to the Center will provide **access** from the existing Town road, known as Old **Colchester Road**.
5. The area to be disturbed by grading, construction of the Center building, the entrance road described in paragraph 4, exercise yard, parking spaces, landscaping, drainage, leaching, and all other **on-site appurtenances** is 2.47 acres. An additional 2.33 acres has been set-aside for on-site use but will not be disturbed.
6. The Center's sewer and water systems will be located off-site on no more than 2.2 acres. Exhibit #1. Connection to municipal services will be within a **20-foot** corridor within the public right-of-way of Old **Colchester Road**, approximately 2,262 feet in length. The **re-routing of** the jogging trail **east** of the Center site is not included in the on- or off-site acreage. Exhibit #4.
7. The Center is located in a zoning district designated as "**O1**" by the Town of Essex Official Zoning **Regula-**
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Regulations may restrict the Town of Essex's ability to regulate state owned and operated facilities. Exhibit, #6. The State's application to the Town of Essex Planning Commission was denied on October 28, 1982. The State has appealed this denial to Superior Court on the basis that the State is exempt from this 10-acre "set-aside."

8. The construction of the Center and its appurtenances involves 7.0 acres. The construction is not part of a larger undertaking or "plan." The land not used for the Center will remain under the administration of the Department of Forests, Parks and Recreation.

C. CONCLUSIONS OF LAW

1. This case raises for the Board's interpretation the question of whether the entire tract of land is "involved" for purposes of Act 250 jurisdiction over projects for municipal or state purposes. State Buildings proposes to construct a facility for state purposes on no more than 7.0 acres, but the tract of land owned by the State of Vermont on which the construction is to occur is 99.1 acres. If the entire tract of 99.1 acres is involved land, then Act 250 jurisdiction applies to the project. We conclude that the entire tract is not necessarily involved land. In reaching its conclusion the Board is mindful of the Supreme Court's discussion interpreting the phrase "involved land" in Committee to Save Bishop's House v. Medical Center Hospital, 137 Vt. 142 (1979) and In re Agency of Administration, State Buildings Division, No. 398-80 (S. Ct. Vt., decided March 25, 1982).

Discussion

The language of 10 V.S.A. §6001(3) applicable to projects for state or municipal purposes is the following:

The word "development" also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings.

Board Rule 2(A)(4) interprets the definition of "development" in pertinent part as follows:

The construction of improvements for state, county or municipal purposes, on a tract or tracts of land involving more than ten

acres of land. The computation of involved land shall include the land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings.

Board Rule 2(A) (4) differs from Rule 2(A) (2) that applies to projects for commercial or industrial purposes in that under Rule '2(A) (4) the entire tract of land is not specifically' included as involved land. As the Board stated in a prior ruling concerning a State project, the so-called Capitol Complex, "Act [250] creates a mechanism for state-level review of the impacts of large public projects."* State Buildings Division, Declaratory Ruling #121 (October 29, 1980) at II. In that case, the Board discussed Board Rule 2(A) (4) and the general issue of involved land relative to projects for state purposes, and concluded that:

... distinct parcels of land are [not] "involved" in an overall plan for a project merely because they are incorporated within the boundaries of the planning area. A tract of land within the planning area of a large-scale phased [public] project is "involved" in the development only where: (a) substantial development activity related to the plan has occurred or will occur on that tract during the period of time subject to Act 250 review, or (b) where the tract bears some relationship to the land actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act.250 will be substantially increased -by reason of that relationship.-

Board Rule 2(A) (4) was later upheld by the Supreme Court although the Court disagreed with its application to the Capitol Complex project. The Court's basis for disagreement in that case is not at issue here.

2. The Board cannot agree with the Town of Essex's argument that 10 acres of land is involved in this project because of the 10 acre "set-aside" specified by the Zoning Regulations. The Board must review and determine whether Act 250 permits are required for projects as proposed. Currently the Center "involves"* less than 10 acres of land. However, if at any time the project as designed is changed and it is determined that 10 acres or more of land must be set aside or reserved for this project, an Act 250 permit would be required pursuant to 10 V.S.A. §§6001(3) and 6081(a).'

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3. In reaching its decision that no Act 250 permit is required for the Center, the Board has not and does not **conclude** that the Legislature has exempted this project from the permit requirements normally applicable to municipal and state **projects** under Act 250. If the General Assembly intended to create an exemption from Act 250 for this project, it could have expressly so stated, as it has in the case of projects that are subject to the review of the Public Service Board under section 248 of Title 30. See 10 V.S.A. §6001(3); In re State Buildings Division, Declaratory Ruling #121 (October 29, 1980); and In re Burlington Electric Department, Declaratory Ruling #119 (September 1, 1980).

D. ORDER

For these reasons the Board concludes that the project currently proposed involves less than ten (10) acres of land within the meaning of 10 V.S.A. §6001(3); therefore, the project does not require a land use permit at this time. The Board, however, comes to this conclusion reluctantly as there is a strong feeling that the lines around this project have been drawn in order to deliberately avoid Act.250 jurisdiction. The Board notes that if for any reason it should be determined that 10 acres or more of land must be set aside for this project, then an Act 250 permit would be required pursuant to the language of 10 V.S.A. §§6001(3) and 6081(a).

Dated at South Burlington, Vermont this 26th day of January, 1983,.

For the Environmental Board:

Dissenting:

Melvin H. Carter
Dwight E. Burnham
Lawrence H. Bruce

Donald B. Sargent
Warren M. Cone
Ferdinand Bongartz
Leonard U. Wilson
Priscilla N. Smith

Board members participating
in this decision:

Donald B. Sargent
Warren M. Cone
Ferdinand Bongartz
Leonard U. Wilson
Priscilla N. Smith
Melvin H. Carter
Dwight E. **Burnham**
'Lawrence H. Bruce, Jr.