

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

RE: Albert Nadeau
Johnson, Vermont 05656

Findings of Fact and
Conclusions of Law and Order
Declaratory Ruling #141

On November 1, 1982, Albert S. Nadeau petitioned the Environmental Board (the "Board") for a declaratory ruling as to the applicability of 10 V.S.A., Chapter 151 (Act 250) to sand and gravel operations conducted by Mr. Nadeau in Johnson, Vermont.

Chairman Leonard U. Wilson held a pre-hearing conference on December 13, 1982, in Johnson, and on that date the parties requested an indefinite postponement of the Board hearing scheduled for December 22, 1982. The Board convened a public hearing in this matter June 8, 1983, at Johnson State College, Johnson, Vermont.

Parties present at the hearing were the following:

Petitioner Albert S. Nadeau;
Lamoille County Development Council by Anthony
Ciaraldi; and
State of Vermont, Agency of Environmental Conservation by
Dana Cole-Levesque, Esq.

The Board recessed the hearing on June 8, 1983, pending conduct of a site visit, a review of the record, and deliberation. On June 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 upon the record developed at the hearing.

I. ISSUES IN THE DECLARATORY RULING

This declaratory ruling request raises the following questions:

1. Did Mr. Nadeau's commercial gravel pit operation commence after the enactment of Act 250?
2. If not, does Mr. Nadeau propose any substantial change to the gravel pit operation?

If the answer to both questions is in the negative, there is no 10 V.S.A., Chapter 151 jurisdiction over Mr. Nadeau's operations and no Act 250 permit is required. See 10 V.S.A. §6081(b) and Board Rules 2(A)(2), 2(A)(5) and 2(G).

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II. FINDINGS OF FACT

1. Petitioner Albert S. Nadeau is the owner of certain premises used for commercial sand and gravel extraction which are located on Vermont Route 15 in the Town of Johnson, Vermont.
2. The site at issue in these proceedings ("the site") is approximately 1.5 acres in size and is a portion of an approximately 30 acre parcel whose easterly boundary adjoins Route 15 (the "West Parcel"). Directly across Route 15 is an approximately 70 acre parcel owned by Mr. Nadeau which is also used for sand and gravel extraction purposes (the "East Parcel").
3. The site is bounded on the west and south by existing access roads and on the east by a gravel extraction area which has been replanted. The northwest and southwest corners of the site have been subject to extraction within the past year. The southeast corner of the site is within 150 feet of a water well owned by the Town of Johnson..
4. Mr. Nadeau acquired the East Parcel in 1946 and began regular extraction in June of that year. In response to a need for a site to dispose of tailings and to construct a wash water settling basin in connection with the, East Parcel operation, Mr. Nadeau acquired the West Parcel on a piecemeal basis, between 1947 and 1956.
5. The West Parcel has been used continuously since acquisition for extraction, as a location for one or more settling ponds, and as a place to dispose of tailings from East Parcel operations. Substantial portions of the West Parcel have been reforested subsequent to removal of sand and gravel.
6. Extraction began in the northwest corner of the West Parcel in the mid-1950s. A road was constructed in that area and wash water facilities were installed. Large areas of the West Parcel directly south of the site at issue here have had substantial amounts of gravel removed and are now either reforested or are used for settling basins or tailing fill areas.
7. The East and West Parcels are part of a single glacial deltaic deposit and are, therefore, part of one continuous gravel bed. This deposit extends substantial distances both north and south of the Nadeau lands.

III. CONCLUSIONS OF LAW

1. For the purposes of determining jurisdiction, Mr. Nadeau's gravel operations on the West Parcel predate the enactment of Act 250. Furthermore, that parcel has been in continuous use for purposes directly related to Mr. Nadeau's extraction business which is comprised of facilities on both sides of Vermont Route 15.
2. Therefore, jurisdiction exists only if Mr. Nadeau proposes a "substantial change" to these operations. See 10 V.S.A. §6081(b). "Substantial change" is defined by Board Rule 2(G) as follows:

"Substantial change means any change in a development or subdivision which may result in significant impact with respect to any of the criteria specified in 10 V.S.A. section 6086(a) (1) through (a) (10)."

We have previously held that it is inherent in the nature of gravel extraction operations to gradually expand over time. See Re: Clifford's Loam and Gravel, Inc., Declaratory Ruling No. 90, November 6, 1978. We also stated in that decision:

"The pre-existing gravel operation has not been changed even though it is apparent that the gradual expansion of the directly and visibly involved area is causing greater impacts."

Id at page 2. We then proceeded to suggest examples of operational change which, in case-specific application, could justify a finding of substantial change.

3. We find no substantial change in Mr. Nadeau's proposed use of the site under the analysis set forth in Clifford's Loam. Extraction at the site is simply a natural progression in a pre-existing operation. On the facts presented, there is no basis to find Act 250 jurisdiction.
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ORDER

For the reasons stated above, the Board concludes that the extraction proposed by Mr. Nadeau is a component part of a pre-existing development, as defined by 10 V.S.A. §6081(b), and does not constitute a "substantial change" to that development. Therefore, no land use permit is required.

Dated at Montpelier, Vermont this 23rd day of June, 1983.

For the Environmental Board

Leonard U. Wilson
Priscilla N. Smith
Lawrence H. Bruce
Dwight E. Burnham
Roger N. Miller
Ferdinand Bongartz
Melvin H. Carter

Members participating
in this decision:

Leonard U. Wilson
Priscilla N. Smith
Lawrence H. Bruce, Jr.
Dwight E. Burnham, Sr.
Roger N. Miller
Ferdinand Bongartz
Melvin H. Carter