

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

RE: Unadilla Theatre by Declaratory Ruling #161  
William Blachly  
RD 1  
Marshfield, VT 05658

This decision pertains to a Petition for Declaratory Ruling filed with the Environmental Board ("the Board") on July 9, 1984 by **Gabor Rona**, Esq. on behalf of Jane E. Bryant et al., seeking a determination as to the applicability of 10 V.S.A., Chapter 151 (Act 250) to the operation of a theater by William Blachly in Calais, Vermont.

On July 18, 1984, the Board notified the parties of its intent to designate its Chairman to act as administrative hearing officer in this matter pursuant to Board Rule 41 and 3 V.S.A. §811. No objection to use of a hearing officer was filed with the Board within the time period identified in its notice. A public hearing was, therefore, convened on August 7, 1984, at Montpelier City Hall, Montpelier, Vermont, with Margaret P. Garland acting as hearing officer.

The following participated as interested parties at the hearing:

Petitioners by Tim Howe;

William Blachly;

Ruth Lowry,

The hearing was recessed on August 7, 1984 pending preparation of a **proposal** for decision, a review of the record, and deliberation by the full Board. No party having requested the opportunity to present oral argument, the Board determined the record complete on October 10, and adjourned the hearing. This matter is now ready for decision. The following findings of fact and conclusions of law are based upon the record developed at the hearing.

I. ISSUES IN THE PETITION

By letter dated June 19, 1984, the Board's Executive Officer issued an advisory opinion-concluding that the conversion of a barn on the Blachly premises to a theater constituted a "substantial change" within the meaning of 10 V.S.A. §6081 (b) requiring a land use permit under Act 250.

The opinion further concluded, however, that performances could continue until the District #5 Environmental Commission ("the Commission") had disposed of the then-pending land use permit application filed by Mr. Blachly.

Petitioners do not object to the jurisdictional decision but do object to the continued operation of the theater. They claim that operation of the theater cannot be authorized until Mr. Blachly has met his burden of proof in respect to the ten criteria of 10 V.S.A. §6086(a). They further argue that operation of the theater threatens irreparable harm in that the quality of life for residents along the theater's access route has been and will be impaired and that traffic presents a safety threat.

## II. DECISION

William Blachly filed a land use permit application pursuant to 10 V.S.A. §6083 on June 20, 1984. A public hearing was convened by the Commission on July 24, 1984, additional information was submitted by Mr. Blachly following the hearing and the proceedings were adjourned on August 31, 1984. On September 13, 1984, the Commission issued findings of fact, conclusions of law and a land use permit, authorizing the operation of the theater, subject to certain terms and conditions.

The Supreme Court has indicated that principles applicable to judicial declaratory judgment proceedings also apply to analogous proceedings before administrative bodies. Among those principles is the following: "Every petition for declaratory relief must satisfy an initial burden: there must be an actual controversy between the parties to confer jurisdiction." Town of Cavendish v. Vt. Public Power Supply Authority, 141 Vt. 144, 147 (1982). No active controversy remains concerning the narrow issue presented in the Petition. A decision has now been issued by the Commission; any party dissatisfied with the decision may pursue the remedies provided by Statute and the Board's Rules. This proceeding is now moot./1/

We express no opinion on the merits of any issues before the Commission during the permit proceedings.

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/1/ In any event, parties appearing at the August 7th hearing expressed agreement to continued operation of the theater through its final 1984 performance on September 1st.

III. ORDER:

Because no active controversy remains concerning the narrow issue presented in the Petition, the Petition is hereby dismissed.

Dated at Sheffield, Vermont, this 10th day of October, 1984.

VERMONT ENVIRONMENTAL BOARD

By:

  
Margaret P. Garland, Chairman

Members participating  
in this decision:  
Margaret P. Garland  
Ferdinand Bongartz  
Melvin H. Carter  
Warren M. Cone  
Roger N. Miller