

VERMONT ENVIRONMENTAL BOARD
10 V.S.A., Chapter 151

RE: New England Land Associates by Declaratory Ruling #175
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On July 9, 1986, a petition for declaratory ruling was filed with the Environmental Board ("Board") by New England Land Associates ("Petitioner") concerning whether or not the Environmental Board has jurisdiction over its activities involving the sale of land it acquired under one deed in 1968 from Ward Lumber Company, Inc. The land in question consists of numerous noncontiguous parcels located in 14 Vermont towns.

On July 14, 1986, the Board notified the parties of its intention to conduct the hearing in this matter by way of an administrative hearing officer pursuant to Board Rule 41 and 3 V.S.A. § 813. The hearing officer, Board Chairman Darby Bradley, conducted a prehearing conference in Montpelier on July 21, 1986. The hearing officer convened a public hearing in the proceeding on July 25, 1986, in Montpelier. The following persons appeared at and participated in the prehearing conference and hearing:

Petitioner New England Land Associates, by Thomas Sweet, General Manager, and Charles Adams, Esq.

Notice of the hearing had been mailed to all statutory parties and published in the newspapers. No statutory party or other person appeared or requested party status. A proposed decision was issued by the Chairman on July 25. No party having requested the opportunity to present oral argument to the full Board, the Board conducted a deliberative session on August 4. On that date the Board determined the record complete and adjourned the matter. The 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 Proceeding

The issue sought to be resolved by the Declaratory Ruling request is whether, when the Petitioner has acquired separate noncontiguous parcels of land in a single deed, the Petitioner owns a single "tract" or separate "tracts" of land, under the definition of "subdivision" **found in 10 V.S.A. § 6001(19)**. The question is relevant because the Petitioner has sold a number of parcels of land, and needs to know when Act 250 jurisdiction over a "subdivision" will be asserted under 10 V.S.A. § 6081.

II. Findings of Fact

1. Prior to 1968, Ward Lumber Company, Inc. ("WLC") acquired extensive land holdings in central and northern Vermont. While most of the property was concentrated in the Duxbury-Fayston area, WLC also owned land in Moretown, Waitsfield, Warren, Northfield, Middlesex, Waterbury, Worcester, Calais, Granville, Williamstown, **Bolton** and Victory.
2. In 1968, the stock of WLC was sold by the Ward family to a limited partnership named Laird Properties, New England Land Syndicate ("**Laird**"). Following the stock transfer, WLC sold several parcels of land to the Ward family. WLC then conveyed its remaining land holdings, consisting of 66 parcels in 14 towns, to Laird, and the corporation was dissolved. The conveyance was by a single deed. Laird subsequently changed its name to the New England Land Associates. Both Laird and the Petitioner have continued to do business under the name of Ward Lumber Company.
3. Many of the parcels in question here are separate, distinct, noncontiguous parcels having no common boundary. While several parcels have a common corner, access from one parcel to the other is not possible, so they are considered separate parcels. Where two pieces of land share a common boundary, however short, they are considered to be one parcel of land for purposes of the Declaratory Ruling Request, even though the two pieces may have been acquired separately by WLC.
4. Between the period from May 13, 1976 and June 30, 1984, the Petitioner sold and conveyed three parcels of land containing less than 10 acres within a radius of five miles of other land sold or to be sold in a 10 year period. The parcels fell into the following categories:
 - (a) Two separate, noncontiguous parcels from the Ward land acquisition without being subdivided or having changed the boundaries of those parcels between the date of acquisition and the date of sale. The two parcels were located in Fayston and Moretown.
 - (b) One 5.9 acre parcel was sold in Fayston to the Town of Fayston. The parcel was subdivided out of a 520 acre parcel (designated Parcel #9A by WLC for administrative purposes).
5. Between the period from July 1, 1984 until May 13, 1986, the Petitioner sold and conveyed nine parcels of land containing varying acreages, each within a five-mile radius of other land sold or to be sold in a 10 year period. The parcels fell into the following categories:

- (a) Two separate, noncontiguous parcels from the Ward land acquisition without being subdivided or having changed the boundaries of those parcels between the date of acquisition and the date of sale. The two parcels were located in Warren and Fayston.
- (b) Seven parcels which were subdivided and conveyed out of a larger parcel. The date of sale, acreage sold, administrative parcel #, name of purchaser, location, and contiguous acreage remaining from the larger parcel after the subdivision are as follows:
1. October 1984; 2.1 acres; Parcel #25A; A.G. Anderson; Waterbury Village; 15.1 contiguous acres remaining.
 2. June 1985; 25.8 acres; Parcel #11; R.N. Buck; Fayston; 362 contiguous acres remaining.
 3. November 1985; 33.8 acres; Parcel #7A; Townsend and Jodi Anderson; 4842.5 contiguous acres remaining.
 4. December 1985; 15.1 acres: Parcel #25A; Pilgrim Partnership; Waterbury Village; no acreage remaining (balance of land sold to A.G. Anderson).
 5. December 1985; 34.3 acres; Parcel #9A; sold to Town of Fayston; located in Fayston; 4808.2 contiguous acres remaining.
 6. February 1986; 54 acres; Parcel #7D; Townsend and Jodi Anderson; Duxbury; 4589.2 contiguous acres remaining in two parcels (one containing 4589.2 acres, and the other 165 acres).
 7. February 1986; 128 acres; Parcels #10F and #7E; Robert O. Buck; Fayston and Duxbury; 4461.2 contiguous acres remaining.
6. Parcels designated for WLC purposes as **7A, 7B, 7D, 7E, 6A, 6B, 9A, 9C, and 10F**, all located in Fayston and Duxbury and purchased from WLC, as well as Parcel #48 acquired separately, are all interconnected through common boundaries. The total combined acreages (excluding Parcel #48), prior to the sales listed above, was 4876.3 acres. The Petitioner retained 4626.2 acres in two parcels in these combined administrative parcels following these sales: one parcel contained 4461.2 acres and the other parcel contained 165 acres. Parcel #48 contains 84 acres.

III. Conclusions of Law

A person must obtain a land use permit under Act 250 before selling or offering to sell any interest in any subdivision in the state. 10 V.S.A. § 6081. "Subdivision" is defined at 10 V.S.A. § 6001(19):

"Subdivision" means a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, and within any continuous period of 10 years after the effective date of this chapter. In determining the number of lots, a lot shall be counted if any portion is within five miles.

Environmental Board Rule 2(B) further defines "subdivision" as having been created with the first of any of the following events:

(1) The sale or offer to sell or lease the first lot within a tract or tracts of land with an intention to sell, offer for sale, or lease 10 or more lots. A person's intention to create a subdivision may be inferred from the existence of a plot plan, the person's statements to financial agents or potential purchasers, or other similar evidence;

(2) The filing of a plot plan on town records;

(3) The sale or offer to sell or lease the tenth lot of a tract or tracts of land, owned or controlled by a person, when the lot is within a radius of five miles of any point on any other lot created by that person within any continuous period of ten years subsequent to April 4, 1970.

While "subdivision" is defined as the **division** of a tract of land for the purpose of resale, the word "**tract**" is not defined in Act 250. **When a term in a statute is undefined, it is to be given its plain and commonly accepted meaning.** Central Vermont Railway, Inc. v. Department of Taxes, 144 Vt. 601, 604 (1984). The word "tract" is defined as "[a] lot, piece or parcel of land" Black's Law

Dictionary. A "piece" or "parcel" of land connotes a contiguous area that can be identified as a separate land mass. When pieces of land are separate, they are not the same tract.

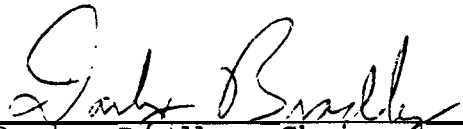
Therefore, we agree with the Petitioner that when its predecessor in name acquired a number of separate, noncontiguous parcels of land in a single deed, it did not acquire one "tract" for the purpose of Act 250 jurisdiction. The fact that the tracts were acquired in one deed is not a significant factor in determining jurisdiction. Whether the parcels were acquired in one deed or in numerous deeds in the same transaction is a technical distinction which does not alter the fact that the parcels are separate from each other and therefore not the same tract of land.

IV. Order

Based upon the Findings of Fact and Conclusions of Law as stated herein, the Board finds that an Act 250 permit will not be required for the sale of a separate noncontiguous parcel of land, where the owner is selling the entire parcel, and no subdivision of land or alteration of the parcel's boundaries has occurred.

Dated at Montpelier, Vermont this 7th day of August, 1986.

ENVIRONMENTAL BOARD



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