

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

RE: Budget Motor Inn by Declaratory Ruling #179
William D. Robinson, Esq.
P.O. Box 123
Colchester, Vermont 05446

On November 12, 1986 a petition for a declaratory ruling in the above matter was filed with the Environmental Board by the City of Winooski (the City). The City asks the Board to determine whether the construction of a three story, 23,000 sq. ft. office building with related site improvements on the site of a pre-existing 21 unit motel development at Budget Motor Inn (now to be called Highpoint Center) would require a permit pursuant to 10 V.S.A., Chapter 151 (Act 250). The Budget Motor Inn is located in the Town of Colchester on property which borders the City of Winooski.

On November 18, 1986 the Board notified the parties of its intent to designate its Chairman to act as an administrative hearing officer in this matter pursuant to Board Rule 41 and 3 V.S.A. § 811. On November 26, 1986 the Board received from the developer an objection to the use of a hearing officer and a request to have this matter heard by the full Board. Consequently, the previously scheduled public hearing was cancelled and a prehearing conference was held on December 15, 1986.

The following persons participated in the prehearing conference:

Petitioner City of Winooski by William E. Wargo, City Attorney
Budget Motor Inn (the developer) by William D. Robinson, Esq., Martin Lavin, Schuyler Jackson, Esq. and Karen Patterson
Town of Colchester and Colchester Planning Commission by David Timmons, Town Manager, and Raymond Stewart
Chittenden County Regional Planning Commission by Arthur Hogan.

At the Prehearing Conference, the City of Winooski argued that the construction of a 23,000 square foot office building on the site of the existing Budget Motor Inn in Colchester, Vermont is subject to the permit requirements of 10 V.S.A., Chapter 151 (Act 250) because it is a substantial change to the pre-existing motel pursuant to § 6081(b). In addition, Winooski argued that this office building project may also require a permit as a commercial development involving more than 10 acres in a town with both permanent zoning and subdivision regulations.

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The developer argued that the office building will not be a substantial change to the pre-existing motel because it is a separate project which will not significantly alter the motel, and it is not a "development" pursuant to § 6001(3) because it does not involve 10 or more acres in a town with both permanent zoning and subdivision regulations.

In determining whether the office building would be a substantial change to a pre-existing project, the Board must first find that a change to the original project has occurred. If the Board finds that there would be a change, it must then determine whether that change would be substantial. "Substantial change" is defined in Environmental Board Rule 2(G) as "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. § 6086(a)(1) through (a) (10)."

At the Prehearing Conference Chairman Bradley ruled that the question of whether a change to the pre-existing motel facility will occur as a result of the proposed construction at the site was a legal issue which could be determined based upon the uncontested facts without the need for a factual hearing. Consequently, the parties agreed to postpone any hearing on the "substantial change" question until the Board ruled on the issue as to whether the project as proposed would result in a "change" to the existing motel.

On February 3, 1987 the Board convened a hearing in Essex Junction, Vermont to hear oral argument from the parties on the "change" question as outlined above. After a final deliberative session on March 4, 1987, this matter is now ready for decision. The following findings of fact and conclusions of law are based upon the uncontested facts as agreed to by the parties, the memoranda of law submitted by the parties, and the oral arguments presented at the public hearing.

I. FINDINGS OF FACT

1. The developer is currently in the process of constructing a 23,760 square foot office building with related site improvements, including a 122-space parking lot, on the site of the Budget Motor Inn located off Vermont Routes 2 and 7 in Colchester, Vermont. The project involves the removal of an existing building which was used as a residence/motel office, the conversion of the small motel laundry building into the motel office, and the filling in of a swimming pool. The existing 21-room unit motel complex, which was constructed prior to June 1, 1970, would otherwise be unchanged by the
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construction of the office building. Both the motel and the office building will share the existing motel accesses to Routes 2 and 7.

2. The tract of land on which the project is located consists of approximately 6 acres. This land is situated about 300 feet south of Exit 16 of Interstate 89 next to lands of **Whitcomb** Construction Co. One boundary of the tract borders the City of Winooski.
3. To the north of Exit 16 on the west side of Vt. Routes 2 and 7, the developer purchased a 26 acre parcel of land. The option agreement signed by the developer for the purchase of this property does not show any involvement of this land with the Budget Motor Inn property. Closing on the purchase occurred on or about December 1, 1986. The developer maintains that it has no plans for the future use of this land at this time, nor was there any evidence introduced upon which the Board could find that the 26 acres are related to or involved with the motel/office building property.
4. If constructed today, the 21 unit Budget Motor Inn would require an Act 250 permit because it consists of 10 or more commercial dwelling units as defined by Environmental Board Rule 2(M).
5. The Town of Colchester has both permanent **zoning** and subdivision regulations. Therefore, there is no Act 250 jurisdiction over commercial and industrial developments constructed on less than 10 acres of land.
6. The developer at one time had proposed to construct an additional 8 motel units, but has since dropped all plans to increase the size of the motel.

II. -CONCLUSIONS OF LAW

If the motel had been built subsequent to the enactment of Act 250 in 1970, it would require an Act 250 permit because it contains more than ten commercial dwelling units. See 10 V.S.A. § 6001(3) and Board Rules 2(A)(3) and 2(M). However, under 10 V.S.A. § 6081(b) of Act 250, developments which were in existence prior to the adoption of Act 250 are exempt from the jurisdiction of the Act unless there is a "substantial change" to the development. "Substantial change" is defined in Board Rule 2(G) as follows:

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

The definition requires the Board to make two determinations: first, whether a "change" has occurred and, second, whether the change may result in a significant impact with respect to any of Act 250's ten criteria. See Declaratory Ruling #168, Productions Limited, issued April 1985,

The evidence before the Board indicates that some changes have been made to the motel operation. These include the removal of the residence/office building, filling in of the swimming pool, conversion of the laundry building, and slight alterations to the access driveways. However, the evidence is also clear that these changes will have minimal impacts under the Act 250 criteria. There is no evidence, for example, that the residence/office building was an historic structure, or that the motel operations would have greater impacts in terms of traffic, sewage flows, water usage, municipal services, etc. after the changes were made than before. Indeed, no party has argued that these changes, by themselves, would constitute a "substantial change."

The changes which the City of Winooski urges will have a significant impact in terms of traffic, sewage, municipal services, etc. is the construction and use of the new office building and its related facilities, including parking. Since there does not appear to be any direct relationship between the ~~operation~~^{of} the motel and the new office building, the issue which the Board must decide here is whether a change to the tract of land upon which a pre-existing development is located constitutes a change to the pre-existing development.

The Board concludes that the construction of the office building and related facilities does not constitute a "change" to the pre-existing motel, absent any showing of some operational relationship between the two facilities. In reaching this decision, the Board is guided by the General Assembly's intent in establishing the jurisdictional limits of Act 250. At the time Act 250 was enacted, few Vermont municipalities had adopted permanent zoning ordinances and subdivision regulations, and thus many towns were in a poor position to cope with the potential impacts of major developments and subdivisions within their borders. To protect those communities which had not yet adopted local land use controls, the General Assembly required that all commercial and industrial developments which were located on a tract or tracts of land involving more than one acre undergo Act 250 review. However, for those **communities** which had adopted permanent zoning ordinances and subdivision regulations, the General Assembly decided that

only those commercial and industrial developments constructed on more than ten acres of land would be required to obtain an Act 250 permit. 10 V.S.A. § 6001(3). The assumption of the General Assembly was that if a community had adopted permanent zoning and subdivision regulations, it could cope with the impacts of commercial and industrial developments on lands involving less than ten acres without the necessity of State Act 250 review.

Colchester is a so-called "ten-acre town" because it has permanent zoning and subdivision regulations. Had the land upon which the new office building is being constructed been vacant, there would clearly be no Act 250 jurisdiction because the involved land is less than ten acres.^{1/} The only basis upon which the City of Winooski can urge jurisdiction is for the Board to find that the new office building constitutes a "change" to the pre-existing motel,

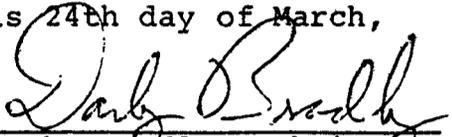
Had the new facility involved additional motel units or -been a facility such as a conference center for use in conjunction with the motel, the Board would be able to find that a change to the motel had occurred. However, in the absence of any evidence showing an operational relationship between the office building and the motel, the Board can find that the new office building is a change only to the tract of land upon which the motel is built, not to the motel itself. While it may be possible to find sufficient ambiguity within the statute to support the City of ~~Winooski's~~ Winooski's interpretation of § 6001(3), the Board should follow what was clearly the General Assembly's intent in adopting the definitions of "development." It therefore concludes that the construction of the new office building does not constitute a "change" to a pre-existing development within the meaning of 10 V.S.A. § 6081(b) and Board Rule 2(G).

^{1/}The City of Winooski had argued that the 26-acre parcel located east of I-89 and purchased by developer in December 1986 should be considered "involved land" for purposes of asserting Act 250 jurisdiction over the new office building. The Board rejected that argument in a Memorandum of Decision dated January 15, 1987, because it could find no basis upon which to conclude that the 26 acres was related to or involved with the motel/office building property.

III. ORDER

Because the Board has concluded that the project as proposed does not constitute "development" or a "substantial change" to a pre-existing development, no permit is **required** pursuant to 10 V.S.A. § 6081(b).

Dated at Montpelier, Vermont **this 24th day of March,**
1987.



Darby Bradley, Chairman
Lawrence H. Bruce, Jr.
Jan S. Eastman
Samuel Lloyd III
Roger N. Miller