

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

RE: **Maida Z. Maxham** by
Paul P. Hanlon, Esq.
25 Court Street
Montpelier, VT 05602

Declaratory Ruling #196
Findings of Fact,
Conclusions of Law and
Order

On September 21, 1987, a petition for a declaratory ruling was filed with the Environmental Board by **Maida Z. Maxham** concerning whether the sale of certain parcels of land was subject to the jurisdiction of 10 V.S.A., Chapter 151 (Act 250). The land in question consists of 56 acres and is located in Worcester, Vermont.

On October 6, 1987, 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 Leonard U. Wilson, conducted a prehearing conference in Montpelier on October 21, 1987. The following person appeared at and participated in the prehearing conference:

Petitioner **Maida Z. Maxham** by Paul P. Hanlon, Esq.

Because no other parties appeared at the prehearing conference and because the issues raised by the petitioner are questions of law; the Board Chairman agreed to prepare a proposed decision based on the facts presented by the petitioner without convening a public hearing. A proposed decision was prepared by the Chairman and mailed to all statutory parties. No party having requested the opportunity to present oral argument to the full Board, the Board conducted a deliberative session on January 12, 1988. On that date the Board determined the record complete and adjourned the matter. The declaratory ruling is now ready for decision. The following findings of fact and conclusions of law are based on the facts submitted by the petitioner.

I. Issues in the Proceeding

The issues sought to be resolved by the Declaratory Ruling request are as follows:

- 1: If a parcel of land is divided by a town highway, is the transfer of all the land on one side of the highway considered a "subdivision" of the parcel under 10 V.S.A. § 6001(19)?

2. Can a landowner's spouse's corporation and partnership be considered "affiliated" with the landowner under 10 V.S.A. § 6001(14)(A) in determining whether the landowner has created a subdivision of land under 10 V.S.A. § 6001(19)?
3. Do subdivision activities of a spouse or the spouse's corporation or partnership occurring prior to the enactment of H.383 count toward the ten-lot threshold of Act 250 for a landowner whose marriage to that spouse took place after such subdivision activities?

II. Findings of Fact

1. **Maida Z. Maxham**, the petitioner, purchased her home and substantial acreage in the Town of Worcester, Vermont in 1970. This land is located on both sides of Town Highway #3, Minister Brook Road. She sold her house and 10 acres of land on the north side of the road in 1976, retaining 56 acres on both sides of the road.
2. She built a new house on the north side of the road in 1976, and now she wishes to sell the entire 30+ acres of land which remain on the south side of the road.
3. On March 8, 1987, she married David E. **Maxham**. Mr. **Maxham** is the owner of a corporation named **Maxham Fur Farms**, and he is a partner in Maxham-Ferrari Investment Partnership. Both the corporation and the partnership have subdivided more than nine lots within a five-mile radius or within the jurisdictional area of the district environmental commission within the last five years.
4. The petitioner has not created any other lots within the last five years within a radius of five miles or within the jurisdictional area of the district environmental commission.

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 the person has 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, or within the jurisdictional area of the same district commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same district commission.

While "subdivision" is defined as the division of a tract **or** tracts 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. The Board has previously ruled that when pieces of land are separate they are not the same tract. New England Land Associates, Declaratory Ruling #175.

The issue to be decided here is whether the town highway actually separates the land owned by the petitioner so that she will not in fact either partition or divide the land in question. The town's property interest in the road, whether it is ownership in fee simple or dedicated right-of-way, is such that the town has complete control over the entire right-of-way area, thereby creating a de facto subdivision of the land. This interpretation of the effect of town highways with regard **to the** subdivision of land is consistent with the policy of the Agency of Natural Resources as articulated in the Environmental Protection Rules. Consequently, in the situation subject to this declaratory ruling, the petitioner will not create a "lot" when she transfers the land located south of the town highway and no Act 250 permit is required prior to this transaction.

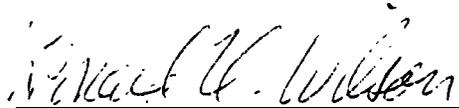
With regard to the other two issues raised by the petitioner in this declaratory ruling request, the Board did not reach them, having concluded that the petitioner does not need to obtain an Act 250 permit in order to transfer the subject land.

IV. Order

Based on the Findings of Fact and Conclusions of Law as stated herein, the Board finds that an Act 250 permit is not required for the sale of the petitioner's remaining 30+ acre parcel of land located south of Minister Brook Road in Worcester, Vermont.

Dated at Montpelier, Vermont, this 14th day of January, 1988.

ENVIRONMENTAL BOARD



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