

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

RE: Harold Jacobs, President Findings of Fact,
E.P.E. Corporation Conclusions of Law,
Box 190 and Order,
South Windsor St. Declaratory Ruling #210
South Royalton, VT 05068

This decision pertains to a request for a declaratory ruling filed by E.P.E. Corporation (E.P.E. or the Petitioner) regarding a six-unit apartment building which E.P.E. proposes to construct in South Royalton, Vermont. As is explained below, the Board concludes that a permit must be obtained pursuant to 10 V.S.A. Chapter 151 (Act 250) prior to the commencement of construction on this building.

I. SUMMARY OF PROCEEDINGS

On March 23, 1989, District #3 Coordinator Robert Sanford issued a project review sheet to the Petitioner concerning a plan to build a six-unit apartment building on a parcel of land in South Royalton. The District Coordinator concluded that a permit would be required for this construction pursuant to Act 250. On June 15, 1989, the Petitioner filed a declaratory ruling request objecting to the District **Coordinator's** conclusion. This request included written argument on why the Petitioner thought the Board should overturn the District Coordinator. On July 11, Environmental Board Chairman Leonard U. Wilson convened a prehearing conference in South Royalton, Vermont. At the prehearing, the Petitioner stipulated to the relevant facts and waived a hearing. The Board issued a prehearing conference report on July 28. On August 23, the Board deliberated in Montpelier.

II. ISSUE IN THE DECLARATORY RULING

The issue in this case is whether, pursuant to 10 V.S.A. sec. 6001(3) and Board Rule 2(A)(3), the Petitioner has created or plans to create ten commercial dwelling units within a radius of five miles on a tract or tracts of land which it owns or controls. The Petitioner requests the Board to answer two questions in this regard: (1) whether the intent of Act 250 is to include units which were built many years ago (see section III below), and (2) whether the tracts of land have to be contiguous.

III. FINDINGS OF FACT

1. Harold and Rita Jacobs are the officers and sole shareholders of E.P.E.

2. E.P.E. renovated a barn located in South **Royalton** in 1974 and made it into a four-unit apartment building. E.P.E. owns or controls the parcel on which this building is located.
3. E.P.E. created a trailer park with at least six units located in South **Royalton** in 1977. E.P.E. owns or controls the parcel on which the trailer park is located.
4. E.P.E. owns a parcel of land in South **Royalton** with a two-unit building on it which was built in the **1800's**. It proposes to build the subject six-unit apartment building on that land.
5. The four-unit building, the trailer park, and the parcel to be used for the six-unit proposal are all within five miles of each other.

IV. CONCLUSIONS OF LAW

In relevant part, Act 250 requires that a permit be obtained prior to commencement of construction on developments and subdivisions. 10 V.S.A. sec. 6081(a). The definitions of development and subdivision are separate and distinct. 10 V.S.A. sec. **6001(3)**, (19). The term "**development**" includes, among other things:

[T]he construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or trailer parks, with 10 or more units, constructed or maintained on a tracts or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land.

10 V.S.A. sec. **6001(3)**.

This definition of development is not limited to any particular time frame. In contrast, under the separate definition of "subdivision," the Act limits the lots counted for jurisdictional purposes to those created "**within any continuous period of five years.**" 10 V.S.A. sec. **6001(19)**. That provision does not apply here. If the Vermont legislature had intended to limit the amount of time in which dwelling units are counted for the purposes of establishing whether a "**development**" exists, it would have done so explicitly, as it did with the definition of "**subdivision.**"

Further, the definition of development does not require contiguity of the tracts of land on which dwelling units are to be located. Instead, the definition states that such units must be located on a "**tract** or tracts of land, owned or controlled by a person, within a radius of five miles of any

point on any involved **land.**" Thus, all units located on a tract or tracts which are owned or controlled by a person are counted if the tract or tracts are within a five-mile radius, whether or not the tracts are contiguous. An opposite interpretation would cause the phrase "**within** a radius of five **miles**" to be surplusage.

The Petitioner has created or plans to create at least sixteen dwelling units within a five-mile radius on tracts which it owns or controls. Accordingly, an Act 250 permit is required for the six-unit apartment building which the Petitioner proposes to construct in South Royalton.

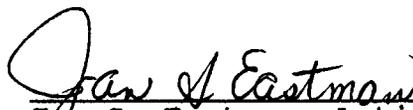
V. ORDER

1. An Act 250 permit is required for the six-unit apartment building proposed to be constructed by E.P.E. Corporation in South Royalton, Vermont.

2. **E.P.E.** Corporation shall apply for and obtain an Act 250 permit prior to commencing construction of said apartment building.

Dated at Montpelier, Vermont this 28th day of September, 1989.

ENVIRONMENTAL BOARD



Jan S. Eastman, Acting Chair
~~Ferdinand Bongartz~~

Arthur Gibb
Samuel Lloyd
Roger N. Miller

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