

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

Re: Scott Burns
Box 264
Ludlow, VT 05149

Findings of Fact,
Conclusions of Law,
and Order
Declaratory Ruling #236

This decision pertains to a petition for declaratory ruling filed by Linda and Charles Peake, adjoining landowners, concerning a four-lot subdivision created by Scott Burns in Orwell, Vermont. As is explained below, the Board has determined that a land use permit was not required prior to the commencement of road construction at the subdivision pursuant to 10 V.S.A. Chapter 151 (Act 250) because the construction does not meet the requirements of Environmental Board Rule 2(A)(6) (the Road Rule).

I. SUMMARY OF PROCEEDINGS

On November 29, 1989, District #9 Environmental Coordinator Dana Farley issued Advisory Opinion #9-19 "Revised" concerning a four-lot residential subdivision created by Scott Burns located off Mudd Dock Road in Orwell. In that opinion the District Coordinator concluded that a permit was not required for the project pursuant to the Road Rule because the length of the access road serving the subdivision is approximately 781 feet, and thus not more than the 800 feet which triggers jurisdiction under the Road Rule. The District Coordinator excluded from her calculation a portion of the road which serves Lot #1 because, in her opinion, it is a private driveway. If the private driveway were included, the length of the road would be more than 800 feet.

On December 28, 1989, Linda and Charles Peake (the Petitioners) filed a request for an executive officer advisory opinion. On July 16, 1990, Stephanie J. Kaplan, Executive Officer, issued Advisory Opinion #EO-89-196, affirming the District Coordinator's opinion.

On August 13, 1990, the Petitioners filed a petition for declaratory ruling with the Board. On October 1, Board Chairman Stephen Reynes convened a prehearing conference in Essex Junction. On October 30, the Board issued a prehearing conference report. Pursuant to that report, this matter was decided based on the facts contained in the two advisory opinions previously issued and three exhibits which were admitted by stipulation: a map of the subdivision and two warranty deeds.

During the fall of 1990, parties were given an opportunity to file written argument concerning whether the Petitioners were interested parties. On December 5, the Board issued a memorandum of decision concluding that the Petitioners should be granted party status.

On January 2, 1991, the Petitioners filed legal argument in writing. No written argument was received from Mr. Burns. The Board deliberated on January 9 in Montpelier. This matter is now ready for decision.

II. ISSUES

The issue in this matter is whether, pursuant to the Road Rule, the road constructed by Mr. Burns at his subdivision should be considered to be more than 800 feet in length, or whether a portion of that road should be considered a private driveway, making the road less than 800 feet.

III. FINDINGS OF FACT

1. Scott Burns has created a four-lot subdivision off Mudd Dock Road in Orwell. As part of the subdivision, Mr. Burns constructed an access road running from Mudd Dock Road east across Lots #4, 3, and 2 (respectively) to Lot #1. See Exhibit #1.
2. The length of the access road from Mudd Dock Road to a point which is the approximate mid-point of Lot #2 is 781 feet. From Mudd Dock Road to that point, the width of the road is approximately 30 feet. The remainder of the access road, running to its end at a house site on Lot #1, is approximately 20 feet wide. The approximate length of this portion is 216 feet. Mr. Burns has executed warranty deeds which limit use of this 216-foot portion to access to Lot #1 only. See Exhibits 2 and 3.
3. The lots are to be used for residential purposes only.

IV. CONCLUSIONS OF LAW

In relevant part, the Road Rule requires a permit for the construction of improvements for a road, incidental to the sale or lease of land, if the road is to be more than 800 feet

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in length. Board Rule 2(A)(6). In Re: Alan Petrie, Declaratory Ruling #130 (Feb. 25, 1982), the Board distinguished between a road and a driveway:

Ordinarily, a driveway is a private way leading from a house to a street and incidental to the residential purpose. In contrast, a road is a street, highway, etc. used by the public.

Id. at 2.

Based on the above facts, the Board concludes that the 216-foot portion of the road should be considered a driveway rather than a public road. Accordingly, the length of the public road improvements at the subdivision is 781 feet, and therefore a permit is not required. However, if further subdivision of Lots #1 or #2 or surrounding tracts occurs, making it necessary for the private drive leading to Lot #1 to be used for access to additional parcels, this ruling will be void and an Act 250 permit will be required.

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V. ORDER

An Act 250 permit was and is not required for the **four-**
lot subdivision created by Scott Burns off Mudd Dock Road in
Orwell.

Dated at Montpelier; Vermont this 3rd day of April, 1991.

ENVIRONMENTAL BOARD

Stephen Reynes

Stephen Reynes, Acting Chair
Elizabeth Courtney
Arthur Gibb
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A:DR236.DEC (PWP12)