VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151
July 2, 1991

Re: Gerald Costello Garage
Declaratory Ruling #243

FINDINGS OF FACT, 'CONCLUSIONS OF LAW, AND ORDER

This decision pertains to a petition for declaratory ruling regarding a storage and maintenance garage recently constructed by Gerald Costello (the Petitioner) in Dover. As is explained below, the Environmental Board concludes that a permit was required pursuant to 10 V.S.A. Chapter 151 (Act 250) prior to construction and remains required.

I. SUMMARY OF PROCEEDINGS

On January 15, 1991, Assistant District #2 Coordinator Julia Schmitz issued Advisory Opinion #2-63, which concluded that a permit was and is required for the Petitioner's garage. On February 15, the Petitioner filed a request for declaratory ruling with the Board with extensive attachments addressing the relevant factual and legal issues.

On March 27, 1991, the Board issued a notice of this petition inviting submissions by other parties and stating that if no factual disputes existed the Board would consider this matter in deliberative session unless oral argument was requested. On April 18, the Petitioner filed a request for oral argument. No other submissions were received.

On June 13, 1991, the Board issued a notice setting oral argument for June 27. On June 26, the Petitioner's attorney contacted the Board office by telephone and stated that she could not appear on June 27 due to a conflict and that she would like the Board to make its decision based on her written submissions. No-one appeared at the time and date set for oral argument.

The Board deliberated concerning this matter on June 27, 1991. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. ISSUES

The issue is whether a permit is required because the Petitioner's garage constitutes a development pursuant to 10 V.S.A. § 6001(3) and therefore requires an Act 250 permit. The specific question raised by the Petitioner is whether the garage is on a tract of one acre or more.

## III. FINDINGS OF FACT

1. On December 12, 1967, the Petitioner and Thomas Swim purchased an approximately three acre parcel (Parcel A) from John D. Goode. The parcel is located in Dover. The Petitioner acquired sole interest in the parcel from Mr. Swim on January 19, 1976.

2. In February 1978, the Petitioner acquired a parcel slightly less than one acre in size (Parcel B) from John D. Goode. This parcel is contiguous to the parcel described in Finding 1, above.

3. During late 1990 or early 1991, the Petitioner constructed a storage and maintenance garage on Parcel B. This garage was constructed for commercial purposes.

4. Dover does not have permanent zoning or subdivision bylaws.

## IV. CONCLUSIONS OF LAW

10 V.S.A. § 6081(a) provides: "No person shall ... commence construction on a subdivision or development, or commence development without a permit." 10 V.S.A. § 6001(3) further provides:

> "Development" shall ... mean the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws.

In Re: New England Land Associates, Declaratory Ruling 8175 at 5 (August 7, 1986), the Board stated concerning the term tract:

> [T]he 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. Devartment 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.

In that decision, the Board also stated:

> 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 ....

Id. at 2 (Finding of Fact 3).

The Board's interpretation of "tract" in New Enaland Land Associates leads to a conclusion that the Petitioner's garage is on a tract of more than one acre because it was built on one contiguous land mass of slightly less than four acres. While this-land mass was acquired in-two deeds, it is now all one contiguous piece of land owned by the Petitioner.

The Petitioner argues that the Board should reconsider its construction of the word tract and hold that the land acquired by the Petitioner is two tracts. Specifically, the Petitioner argues that the New Enaland Land Associates case relies on Black's Law Dictionary, and that the dictionary in turn relies on a Texas case which has been overruled. The case which was overruled held that two contiguous parcels separately acquired and owned by the same person should be treated as one tract for purposes of taxation in Texas. Holt v. Wichita County Water Imwrovement Dist. No. 2, 48 S.W.2d 527, 530 (Texas Ct. Civ. App. 1931). In overruling the case and holding that the parcels should be treated as separate tracts, a higher Texas court noted that the tracts had previously been considered as separate for tax purposes by the government defendant. Holt v. Wichita County Water Imnrovement Dist. No. 2, 63 S.W.2d 369, 370 (Texas Comm. of App. 1933). No similar prior treatment by the Act 250 program is alleged here.

The Board declines to adopt the reasoning of these cases from another jurisdiction. Vermont law allows that two contiguous parcels acquired by the same person may be treated as one tract for purposes of taxation. Neun v. Town of Roxburv, 150 Vt. 242, 243-44 (Aug. 5, 1988).

More importantly, the Board would continue to interpret the word tract the way it did in New Enaland Land Associates regardless of tax law. The Board believes that adopting the Petitioner's interpretation would result in significant difficulty in making jurisdictional determinations and in administering Act 250. A layer of investigation would be

added to the jurisdictional process, including inquiry into a parcel's title history and into the propriety or fraudulence of divisions of land. Indeed, the Petitioner's interpretation could encourage people who own tracts greater than the requisite size to divide those tracts and convey them to other real or fictional persons, still maintain control over the whole of the tract, and then embark on the construction of improvements for commercial or industrial purposes.

The Board is reluctant to create such a potential for dispute and litigation. Instead, it will continue to interpret the word tract in accordance with New Enaland Land Associates: if a proposed project is located on a contiguous land mass of the requisite size, then the "tract" requirement of the definition of development is met, further inquiry regarding that requirement need not be made, and parties know where they stand.

Based on the foregoing, the Board concludes that an Act 250 permit was required prior to commencement of construction of the Petitioner's garage, and must now be obtained.

V. ORDER

An Act 250 permit was required prior to commencement of construction of the Petitioner's garage, and must be obtained.

Dated at Montpelier, Vermont this 2nd day of July, 1991.

ENVIRONMENTAL BOARD

Elizabeth Courtney, Chair
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