

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

Re: Michael Singer  
Declaratory Ruling #257

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated April 13, 1992, pertains to a petition for a Declaratory Ruling filed with the Environmental Board by Michael Singer on October 15, 1991. The petition, which was filed as an appeal of Executive Officer Advisory Opinion #EO-91-239 (the Advisory Opinion) seeks a ruling that a land use permit is not required for the construction of a studio addition and a pole barn on the Petitioner's property in Wilmington, Vermont, pursuant to 10 V.S.A. Chapter 151 (Act 250). As is explained below, the Board concludes that an Act 250 permit is not required.

I. BACKGROUND

After receiving the Declaratory Ruling petition, the Board published a notice of the petition and invited interested persons to submit statements of interest, issues, and whether any facts in the Advisory Opinion are disputed.

On November 12, 1991, the Board received a letter from the Town of Wilmington Board of Selectmen disputing two of the facts in the Advisory Opinion. The Town stated that the Petitioner owns more land than asserted in the Advisory Opinion, and that contrary to Fact No. 5, the Petitioner hires people to assist him in his work. On November 12 the Board also received a letter from the Petitioner that includes his statement of interest, identification of issues, and a correction of a fact in the Advisory Opinion concerning the size of his tract of land. On December 20, the Petitioner filed a memorandum of law. In this memorandum, the Petitioner stated that he has no employees. Because of the disagreement concerning whether the Petitioner has employees, the Board scheduled a hearing for the purpose of taking evidence on that question.

The Board convened a public hearing on February 26, 1992. Participating was the Petitioner by Seth Bongartz, Esq. At the hearing, Board member Terry Ehrich stated that he uses Mr. Bongartz's law firm but believes that would not affect his ability to fairly consider the facts and apply the law in this matter.

Following the hearing, the Board conducted a deliberative session. This matter is now ready for decision. To the extent any proposed findings of fact and

**D.R. #257**

conclusions of law are included below, they are granted; otherwise, they are denied.

## II. ISSUE

Whether the construction of a studio and a pole barn constitute the construction of improvements for commercial purposes on more than one acre of land so that a permit must be obtained pursuant to 10 V.S.A. Chapter 151.

## III. FINDINGS OF FACT

1. The Petitioner is a sculptor who owns an approximately 50-acre tract of land in Wilmington. Located on his property is a farmhouse in which he lives, a barn that contains a studio, and a pole barn.
  2. When Mr. Singer bought his land, there was a barn on it. In 1981, he constructed an addition on the barn. In 1987, he constructed a pole barn on his property.
  3. The Petitioner makes his living as a sculptor. He uses the studio to conceptualize and make models of his sculptures. He hires people to help him do drawings and work on models for his sculptures. They meet with him at his studio to discuss the work but they do the work elsewhere.
  4. The Petitioner produces drawings of the models. The drawings are sent to fabricators who construct the components of the sculptures. These are made out of materials such as granite and bronze at foundries and other industrial-type places, and are shipped directly to the place of assembly. The Petitioner goes to the site and oversees the installation of the sculptures.
  5. The Petitioner conducts no sales from his property. He does not advertise, he has no sign on his premises, and he does not deal with customers at his property.
  6. The pole barn is used for storing his art materials and his personal property.
  7. The Town of Wilmington does not have both subdivision and zoning bylaws.
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IV. CONCLUSIONS OF LAW

A permit must be obtained prior to commencement of development or commencement of construction on a development. 10 V.S.A. § 6081(a). "Development" is defined at 10 V.S.A. § 6001(3) as, in pertinent part:

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.

Board Rule 2(L) defines "commercial purpose" as:

the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation, or other object having value.

A permit is required for development in the Town of Wilmington if it takes place on more than one acre of land and is for a commercial purpose. The Petitioner argues that his studio is not a commercial enterprise because no product is made there, there are no employees, and there are no customers. Thus, the Petitioner contends, he is not providing facilities, goods, or services.

The Board agrees with the Petitioner that the mental creation of art, with no on-site production, no employees, and no visits from customers, does not constitute the provision of facilities, goods, or services. Thus, the construction of the studio and the pole barn were not for a commercial purpose as that term is defined in Act 250, and no permit is required.

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V. ORDER

No permit is required, pursuant to 10 V.S.A. Chapter 151, for the construction by the Petitioner of a studio and a pole barn.

Dated at Montpelier, Vermont this **13** day of April, 1992.

ENVIRONMENTAL BOARD

  
Elizabeth Courtney, Chair  
Lixi Fortna  
Arthur Gibb  
Samuel Lloyd  
William Martinez

Steve Wright believes a permit is required. Terry Ehrich abstains from voting because he is concerned about the need to consider the potential for broader consequences from this ruling.

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