

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

**Re:** Sterling College  
Declaratory Ruling #259

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated March 27, 1992, pertains to a petition for a Declaratory Ruling filed with the Environmental Board on November 21, 1991, by Joan Bernhard (the Petitioner) concerning whether an Act 250 permit is required for the construction of a building by Sterling College (the Respondent) for use as a storage for farm equipment. The Board concludes that no permit is required because the building will be used for farming and farming is specifically exempt from the permit requirements of 10 V.S.A. chapter 151.

I. BACKGROUND

On November 12, 1991, the District #7 Environmental Coordinator issued a Project Review Sheet concerning a construction project proposed by Sterling College consisting of construction of a building to be used to store farm equipment. The Coordinator determined that no Act 250 permit was required because construction of the building constitutes farming and is therefore exempt under 10 V.S.A. § 6001(22).

On November 21, 1991, the Petitioner filed this petition for a Declaratory Ruling. A notice was published and sent to the parties of the filing of the petition, and a date for a hearing was arranged at the convenience of the Petitioner.

On February 21, 1992, the Chair of the Board, Elizabeth Courtney, convened a public hearing as an administrative hearing officer pursuant to Board Rule 41, with the following parties participating:

The Petitioner by Robert P. Davison, Esq.  
Sterling College by Peter Collins, Esq.

A proposed decision was sent to the parties on March 5, 1992, and the parties were provided an opportunity to file written objections, and to present oral argument before the full Board. On March 17, 1992, the Applicant responded to the proposed decision. No request was received for oral argument or written objections.

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The Board deliberated concerning this matter on March 25, 1992 and following a review of the proposed decision and the record, the Board declared the record complete and adjourned the hearing. 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. ISSUE

Whether the construction by Sterling College of a shed for the storage of farm equipment falls within the exemption for farming purposes at 10 V.S.A. § 6001(3).

## III. FINDINGS OF FACT

1. In 1991 the Respondent decided to plan and construct a shed for storing farm equipment. The purposes for building the shed were to prolong the life of the Respondent's farm equipment by keeping it under cover and to consolidate in one central location most of the Respondent's farm equipment. The shed will only be used for farming purposes.
2. The Respondent originally wanted to build a farm equipment shed 24 feet by 48 feet with a height of 15 feet at the front, sloping to nine feet in back. The Respondent reduced the size of the building to accommodate the concerns of several neighbors. The final size of the building is 24 feet by 32 feet, with a height of 13 feet at the front and sloping to seven feet in back.
3. The shed has been partially completed. It is currently being used to store a manure spreader, a trailer for hauling farm material, fence posts, fencing, a farm wagon, a water tank trailer for watering livestock on the pasture in the summer, a bushhog for mowing pastures, a logging winch, a fore-cart for use with draft horses, a tractor used in farm and forestry operations, and a portable greenhouse frame. After the final grading is completed, the Respondent intends to store in the shed two sets of harrows, a cultivator, a horse-drawn plow, and a manure spreader.

4. The Respondent currently has one dairy cow, three steers raised for beef, and a brood sow. The Respondent usually keeps five or six steers, and raises two litters of piglets each year. Most of the pigs are sold and two or three are raised for pork to be used at the College kitchen. The Respondent also has 20 ewes which provide lambs for use in the College dining hall or for sale and about 140 pounds of wool annually, which is sold as yarn in the College bookstore; three draft horses used in logging operations and for some farm work; 20 to 60 laying hens, depending on the time of year, which provide meat and about 700 dozen eggs per year for use in the College dining hall or for sale; and two dairy goats which are sold for the Easter market and whose milk is fed to the pigs or calves. The Respondent raises approximately 10 turkeys for Thanksgiving.
5. The farm operation is run by the students. It is conducted all around the College property, including 15 acres of pasture on both sides of the main road, plus additional land owned by neighbors upon which is grazed livestock. The farm also includes a 15,000 square foot garden for which some of the equipment stored in the new shed is used. Produce from the garden is used in the College kitchen.
6. The farming operation is essential to the Respondent's educational mission as well as to help meet expenses. In the 1990-91 fiscal year, the Respondent produced approximately \$5,000 worth of products from the livestock, poultry, and other animals raised at the College, and produced over \$650 worth of vegetables from the College garden.
7. The Respondent follows accepted agricultural practices as recommended by the Vermont Department of Agriculture. It strives to conduct its farming operations in a manner which exceeds the minimum standards of the Agriculture Department's pamphlet entitled "Defining Accepted Agricultural Practices in Vermont."

#### IV. CONCLUSIONS OF LAW

Act 250 requires that no person shall commence construction on a development or commence ~~development~~ without a permit. 10 V.S.A. § 6081(a). An exemption is

provided for "construction for farming, logging or forestry purposes below the elevation of 2500 feet." 10 V.S.A. § 6001(3).

"Farming" is defined at 10 V.S.A. § 6001(22) as:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding or management of livestock, poultry, equines, fish or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products principally produced on a farm; or

(F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

The Petitioner argues that the farming activities conducted by the Respondent are not "farming" as defined in Act 250 because Sterling College is an educational institution, with almost all its land holdings and structures devoted to the housing and teaching of students, and the principal purpose of the College is to receive tuition payments and not to cultivate land to produce food or forage crops. The Petitioner argues that the legislature's intent in enacting the farming exemption in Act 250 was to exempt "ordinary Vermont farms," in order to protect the Vermont landscape. To the contrary, the Petitioner contends, the storage shed built by the Respondent is removed from the College's farming operations and does not fit into any Vermont farm landscape, and is a commercial operation.

The Board believes that the exemption "for farming purposes" and the definition of farming in Act 250 are clear and unambiguous, and that the construction of the shed by Sterling College clearly falls within the exemption. The definition of farming lists a number of activities that constitute farming; there is no reference to the nature of the person conducting the activity. Act 250 regulates land

use regardless of the identity of the person or institution conducting the use. In re Baptist Fellowship of Randolph, Inc., 144 Vt. 636, 639 (1984).

The fact that Sterling College teaches students, for which it receives tuition, does not change the nature of the activities. The College raises, feeds, and manages livestock and poultry, including dairy cows, beef cattle, pigs, sheep, goats, chickens, and turkeys. It produces wool and eggs. The College also grows food in its garden. Some of its products and produce are used for feeding the students, and some of it is sold. Construction of a shed to store equipment used in the conduct of its farming operation is therefore for "farming purposes" and is exempt from the definition of development in Act 250.

V. ORDER

Construction of a shed to store farm equipment by Sterling College is exempt from the permit requirements of Act 250 because it is for farming purposes.

Dated at Montpelier, Vermont this 27th day of March, 1992.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair  
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c:farming.dec (PWP)