

State of Vermont
VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

RE: Northeast Developers, Inc.
c/o Lucille P. Pafundi
P.O. Box 617
Wells, VT 05774

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

This decision pertains to an appeal to the Environmental Board ("Board") of the District #1 Coordinator's jurisdictional opinion exempting from Act 250 jurisdiction five slate quarry holes in Wells, Vermont, all of which pre-existed Act 250.

I. BACKGROUND

On December 23, 1996, Northeast Developers, Inc. ("Northeast") filed a Slate Quarry Registration form dated December 17, 1996 with the District #1 Environmental Commission ("Commission"). Northeast sought to register five slate quarry holes ("Quarry Holes") on various locations within an approximately 120 acre parcel of land owned by Northeast in Wells, Vermont ("Project Tract").

Northeast filed the registration request pursuant to a newly adopted provision of Act 250 (See Act 30 of the 1995 Vermont Legislature) that was aimed at granting a limited exemption to owners and operators of slate quarry holes. The Commission's Coordinator ("District Coordinator") contacted Lucille Pafundi, Northeast's representative, by a letter dated January 2, 1997 stating that the Northeast registration request ("Slate Quarry Registration #1 S-59") was timely filed.

On February 21, 1997, the District Coordinator issued Jurisdictional Opinion # 1-S-59 ("J.O. #1-S-59") in which he concluded that the Quarry Holes were exempt from Act 250 jurisdiction since they constitute a pre-existing development and had not been abandoned prior to June 1, 1970. J.O. #1-S-59 clearly stated that operation of and changes to the Quarry Holes will not require a land use permit under 10 V.S.A. §6001-6092 ("Act 250") provided that no new quarry holes were created, and provided that no new buildings were constructed on the Project Tract.

On March 13, 1997, Lou Magnani, an adjoining landowner to the Project Tract ("Petitioner"), filed a letter appealing J.O. #1-S-59 pursuant to 10 V.S.A. §6007(c). By a letter dated March 14, 1997, the Board's Director of Administration replied to the notice of appeal informing the Petitioner that the application omitted certain documents. On April 4, 1997, the Petitioner supplemented his March 13, 1997 letter to address those deficiencies.

On May 20, 1997, Board Chair John T. Ewing convened a prehearing conference in the above-referenced matter in Montpelier, Vermont. The following persons participated:

Terry Pafundi, for Northeast Developers, Inc. (the quarry registrant)
Lou Magnani, Petitioner
Rosanne Albert, an adjoining property owner (via telephone)

On June 10, 1997, Chair Ewing issued a Prehearing Conference Report and Order in which the issues before the Board were summarized, a schedule was established for the prefilings of evidence, a hearing date was set, and party status determinations were made.

Prior to the public hearing in this matter, the parties met on their own during late May or early June to try to resolve any issues regarding the location of the Quarry Holes. This meeting consisted of several parties meeting on the Project Tract and walking the property with the intention of clearly delineating the Quarry Hole locations on a survey of the Project Tract.

On July 21, 1997, Chair Ewing convened a public hearing pursuant to EBR 41, as a hearing officer. Shortly after commencing the hearing, Chair Ewing conducted a site visit in which the participants in the public hearing pointed out the locations and sizes of each of the five Quarry Holes that Petitioner had registered. After concluding the site visit, the parties presented evidence and conducted cross examination.

On September 23, 1997, Chair Ewing issued a proposed decision to the parties. Pursuant to 10 V.S.A. § 6027(g), parties were allowed to request oral argument before the Board. In addition, parties were allowed to file written objections.

On October 14, 1997, Petitioner Lou Magnani filed a Memorandum of Objection to Hearing Officer's Conclusion of Law regarding Declaratory Ruling Request #342, as well as a request for oral argument.

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Ms. Albert raised concerns with regard to the possibility of inaccuracies in the survey of the Project Tract. She noted that because of the alleged inaccuracies, Northeast might have inadvertently registered a quarry hole or holes that were on land owned by the Alberts. Ms. Albert initially voiced these concerns to the Board's counsel, but eventually, on May 16, 1997, filed a letter in which she sought party status by permission under Environmental Board Rule ("EBR") 14(B)(2), and whereby she expressed a concern about the confusion over boundary lines and the exact location of the Quarry Holes. Ms. Albert was granted permissive party status but did not attend or otherwise participate at the merits hearing.

On October 22, 1997, the Board convened oral argument at which Petitioner Lou Magnani presented his objections to the Chair's Hearing Officer opinion. The Board had previously reviewed the record in this matter and at oral argument considered the proposed decision and the evidence in light of the legal argument presented by the Petitioner. Immediately after hearing the Petitioner's arguments, the Board declared the record complete. Also on October 22, 1997, the Board deliberated with respect to this matter. The matter is now ready for decision. To the extent that any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied. Petition of Village of Hardwick Electric Department, 143 Vt. 437,445 (1983).

II. ISSUES

The only issues before the Board in this matter are whether the existing surveys and maps of the Project Tract accurately depict the location of the five Quarry Holes. If these are determined to fall wholly within the Project Tract, there may be an issue with respect to one or more of the proposed Quarry Holes regarding their status prior to 1970. The parties have been informed of the breadth of the exemption for pre-existing quarry holes and appear to be most concerned about an accurate determination of which holes are exempt and exactly where they are located.

III. FINDINGS OF FACT

1. Slate Quarry Registration #1-S-59 was filed by Northeast with the District #1 Commission on December 17, 1996.
 2. Slate Quarry Registration #1-S-59 seeks to register 5 separate slate quarry holes on the approximately 120 acre Project Tract.
 3. The Project Tract is recorded in the Wells' land records at Book 35, page 116.
 4. The Quarry Holes are located as depicted on a survey map that was submitted as Exhibit ND-1.
 5. The Project Tract is wholly within the boundaries of the U.S.G.S. topographic map for the Wells, Vermont - New York NW/4 Pawlet 15' Quadrangle ("Wells Quadrangle").
 6. The Quarry Holes are all clearly within the boundaries of the Project
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Tract, even though the exact location of certain of the Quarry Holes has not been represented with precision on Exhibit ND- 1.

7. The site visit further demonstrated that all the Quarry Holes were within the Project Tract.
8. The size of the Quarry Holes varies. The following are the approximate dimensions of the Quarry Holes. The identification of the Quarry Hole number references that number which is depicted on Exhibit ND-1.
 - a. Quarry Hole #1 is located within a heavily-worked area to which well-constructed dirt and gravel roads provide access. Quarry Hole #1 is a relatively narrow depression about 50 feet in length from which marketable stone had not been removed due to its quality. It is evident that exploration of this Quarry Hole was conducted prior to 1970. Remnants of old cables are present around the perimeter of this Quarry Hole.
 - b. Quarry Hole #2 is a large 110 feet by 250 feet quarry hole which is partially filled with water. Slate had been removed from this site prior to 1970, and it has been active since 1970.
 - c. Quarry Hole #3 is a 10 feet by 15 feet 'pilot hole' which is not much deeper than a few feet. This Quarry Hole was also characterized as a 'depression hole' because the owners allegedly conducted exploratory slate extraction during the period of the Great Depression.
 - d. Quarry Hole #4 is located in the northernmost portion of the Project Tract. It is quite large, roughly 300 feet long by 120 feet wide and filled with water. A derrick mount was visible adjacent to and above the Quarry Hole. It stabilized slate removal equipment when the quarry was in operation. The derrick mount and associated equipment were present prior to 1970.
 - e. Quarry Hole #5 is a small pit roughly 15 feet by 25 feet in area, and partially filled with water. Old cables are strewn about the land surrounding this pit. Also surrounding Quarry Hole #5 are discarded pieces of scrap slate with finished edges.

9. Quarry Holes #1 and #2 are registered with the Federal Mine Safety and Health Administration ("MSHA") as MSHA Identification #4300431 (Moose Quarries).
10. The Quarry Holes were in operation to remove slate prior to 1970.
11. There are no buildings or other structures ancillary to slate quarrying activity on the Project Tract.

IV. CONCLUSIONS OF LAW

Quarry holes from which slate has been removed prior to June 1, 1970, as well as the ancillary activities associated with those quarry holes, have been determined by Act 30 of the 1995 legislative session to be exempt from Act 250 review as pre-existing development. See 10 V.S.A. § 6081 (j), (k), and (l). Pursuant to this statutory revision to Act 250, such quarry holes shall not be deemed to have been abandoned even if they had been "held in reserve" and not used since 1970. To qualify for the Act 250 exemption, all slate quarry owners or operators were required to register existing quarry holes that appeared to fit within the exemption on or before January 1, 1997.

In the absence of this specific exemption, or if a potential registrant failed to timely register the quarry holes to which Act 30 applied, the Board could review the proposed slate quarrying activity as "development" for a broad variety of impacts typically associated with slate quarrying operations under the ten criteria set forth at 10 V.S.A. § 6086(a)(1)-(10).

In this case, Northeast Developers filed Slate Quarry Registration #1-S-59 prior to the statutorily imposed deadline. Northeast identified each of the five Quarry Holes on a survey of the Project Tract and each was demonstrated to be in existence prior to June 1, 1970. As a matter of law, the Quarry Holes are pre-existing and have not been abandoned. Accordingly, the Board has no jurisdiction to assess the impacts associated with any slate quarrying activity associated with these Quarry Holes.*

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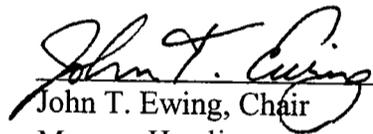
Should Northeast or its successor construct new buildings on the site or otherwise conduct activities that are not defined in 10 V.S.A. §608 l(k)(1) and (2) as ancillary activities, it may be required to secure an Act 250 for substantial changes to the pre-existing Quarry Holes.

V. ORDER

1. The Quarry Holes were properly registered pursuant to 10 V.S.A. 96081 (j), and (1) (1)-(3) and are not subject to Act 250 jurisdiction.
2. Slate quarrying activity consisting of an expansion of any of these sites, within the parameters of 10 V.S.A. § 608 1 (k) (1) and (2); § 608 1 (1) (5), and which does not otherwise constitute a substantial change, shall not require an Act 250 permit.
3. Slate Quarry Registration #1-S-59 is valid. Pursuant to 10 V.S.A. 96081 (1) (4), the Registration Application, J.O. #1-S-59, and these Findings of Fact, Conclusions of Law, and Order, shall be recorded in the municipal land records at the expense of the registrant along with an accurate site plan of the parcel depicting the site specific information contained in the registration documents (or alternatively, a copy of Exhibit ND-1).

Dated at Montpelier, Vermont this 28th day of October, 1997.

ENVIRONMENTAL BOARD



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