

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. Ch. 151**

Re: *Real J. Audet and Joe Audet Auto  
and Truck Sales, Inc.*

Declaratory Ruling #409

**Memorandum of Decision**

This decision addresses a petition for party status in a Petition (Petition) for a Declaratory Ruling (DR) concerning jurisdiction pursuant to 10 V.S.A. Ch. 151 (Act 250) over certain parcels of land.

**I. Background**

On April 19, 2002, Real J. Audet filed a Petition with the Environmental Board (Board), appealing a Jurisdictional Opinion (JO) issued by the Assistant Coordinator for the District 5 Environmental Commission which asserted jurisdiction over four tracts of land in the Town of Worcester, Vermont.<sup>1</sup>

By petition filed on May 29, 2002, John and Dorothy Mitchell (the Mitchells) seek to participate as parties in this proceeding. On June 4, 2002, Real J. Audet and Joe Audet Auto and Truck Sales, Inc.<sup>2</sup> (collectively, Audet) filed a response to the Mitchells' petition.

The Board deliberated on the Mitchells' party status petition on June 19, 2002.

**II. Discussion**

In reviewing party status petitions in Declaratory Ruling Petitions, the Board has written:

The distinction between standing and party status is slight: a person who wishes to initiate an appeal or declaratory ruling request must

---

<sup>1</sup> In her May 31, 2002 Prehearing Order, Board Chair Marcy Harding ruled that one of the parcels addressed by the JO (the property referred to in the JO as "Parcel 4") is not subject to Act 250 jurisdiction. No party has objected to this conclusion, and therefore jurisdiction over only the tracts referred to in the JO as "Parcels 1, 2 and 3" is at issue in this Petition.

<sup>2</sup> As Joe Audet Auto and Truck Sales, Inc. is the owner of Parcel 2, it was added as a party in the Prehearing Order.

demonstrate standing to do so whereas the question of party status arises when a person wishes to be a party to a proceeding initiated by someone else. *Re: Putney Paper Company, Inc.*, Declaratory Ruling #335, Findings of Fact, Conclusions of Law, and Order at 5-6 (May 29, 1997). Whether or not the Petitioner has demonstrated standing is solely within the Board's discretion. 10 V.S.A. §6007(c). *See also, e.g., Putney Paper, supra* at 7 and citations provided therein. ....

A district coordinator's jurisdictional opinion may be appealed to the Board by “the applicant, by individuals or entities who may be affected by the outcome of the opinion, or by parties entitled to receive notice under [10 V.S.A. §] 6084, if jurisdiction were determined to exist.” 10 V.S.A. §6007(c). EBR 3(C)(3) states that a jurisdictional opinion may be appealed to the Board “by any person who qualifies as a party under Rule 14(A) or who may be affected by the outcome of the opinion.” ...

The standard by which the Board determines whether an entity is “affected by the outcome” pursuant to §6007(c) is identical to the standard by which it determines whether to grant party status to an entity under EBR 14(B)(1): the entity must demonstrate that the proposed development may affect its interest under any of the Act 250 criteria. *Re: Wesco, Inc. and Jacob & Harmke Verburg*, Declaratory Ruling #304, Memorandum of Decision at 4-5 (June 30, 1995); *Re: Hiddenwood Subdivision*, Declaratory Ruling #324, Memorandum of Decision and Dismissal Order at 4 (Aug. 29, 1996).

*Re: Developer s Diversified Realty Corporation (Berlin Mall Wal\*Mart)*, Declaratory Ruling #364, Memorandum of Decision at 5 - 6 (Sept. 10, 1998).

The Mitchells seek party status pursuant to Environmental Board Rule (EBR) 14(A)(5), as adjoining landowners, and EBR 14(B)(1), as interested persons. They allege that their property is adjacent to Parcel 3 and that any proposed development on Parcel 3 may have a direct affect on their property and interests with respect to Criteria 1 (water pollution), 1(B) (waste disposal), 5 (traffic), 8 (aesthetics) and 10 (Town Plan). 10 V.S.A. §§6086(a)(1), (1)(B), (5), (8) and (10).

In its response to the Mitchells' petition, Audet states that it “does not object to the Mitchells being given party status under Criterion 5 only. In doing so, Mr. Audet notes that there is no dispute that the Mitchells own land which adjoins one of the parcels at issue, and that the Mitchells travel on the town highway past the ¼ acre lot Mr. Audet owns on Hersery Road (Parcel 3) to get to the Mitchell home.” (Emphasis in original).

Audet's response concedes the elements necessary for the Mitchells to establish party status for at least Criterion 5. Having qualified for party status under at least one criterion, the Mitchells qualify to participate as parties for purposes of the instant Declaratory Ruling Petition. *Re: Developer s Diversified, supra.*<sup>3</sup>

### **III. Order**

The Mitchells are granted EBR 14(A)(5) and 14(B)(1) party status in the instant Declaratory Ruling Petition.

Dated at Montpelier, Vermont this 19th day of June 2002.

ENVIRONMENTAL BOARD

---

Marcy Harding, Chair  
John Drake  
George Holland  
Samuel Lloyd  
Alice Olenick  
A. Gregory Rainville  
Jean Richardson  
Donald Sargent  
Nancy Waples

\\vtenv-01\Johnh\dr\409audet\mod20619.doc

---

<sup>3</sup> The Board reaches no conclusion as to the interests asserted by the Mitchells under Criteria 1, 1(B), 8 or 10. If jurisdiction is found and permit proceedings commence, the Mitchells are free to assert, and Audet is free to contest, any claim for party status under those Criteria.