

STATE OF VERMONT  
ENVIRONMENTAL BOARD

RE: WILLIAM S. NOYES  
D/B/A Willy's Auto  
Stowe, Vermont

DECLARATORY RULING #75  
DEVELOPMENT  
10 VSA §6001(3)

The above matter comes before the Environmental Board on the petition of William S. Noyes, d/b/a Willy's Auto, for a ruling that Act 250 permit #5L0348 issued pursuant to Chapter 151 of Title 10 (Act 250), is void for lack of jurisdiction over the subject matter.

On September 19, 1975 Land Use Permit #5L0348 was issued for the construction and operation of an automobile service center on two acres of land in Stowe as a development as defined in Act 250:

"Development" shall also 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. (10 VSA, §6001(3)).

Parties to the application include the State Agency of Environmental Conservation, Stowe Planning Commission and Stowe Board of Selectmen, the Lamoille Development Council and three adjoining property owners. The permit contains 14 conditions, a number of which pertain to the operation of the center for the 20 year term of the permit.

On December 19, 1975 the Town of Stowe became a so-called 10-acre town by virtue of having enacted permanent zoning and subdivision bylaws; and since that date a commercial project such as the petitioners would not be a development as defined in Section 6001(3) and therefore subject to the permit requirements of the Act because it involved less than 10 acres of

land.

The issue before the Board is whether the adoption of the bylaws voids retroactively those permits previously issued by a District Commission with respect to developments on less than 10 acres of land.

Act 250 provides that development as defined must receive a permit prior to commencement of construction, and authorizes the District Commission after hearing and participation by parties recognized by law to issue a permit with such conditions that may be reasonable. The Act specifically provides for the duration of permits:

Any permit granted under this chapter shall be for a specified period determined by the Board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated in the application, and with due regard for the economic considerations attending the proposed development or subdivision. (10 VSA, §6090(a)).

The action of the Commission in issuing the permit is a final decision under the statute and no action by the Town of Stowe, absent express provision in the law to the contrary, can undo or set aside that act. Therefore, the petitioner's service center and the two-acre parcel of land are subject to the provisions of the permit notwithstanding the enactment of zoning and subdivision bylaws.

Insofar as the petitioner believes that change of circumstances warrant it, including imposition of local land use control through the enactment of the bylaws that may be applicable to its development, he may petition for amendment of the

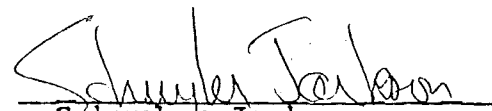
Act 250 permit including the deletion of such conditions as may no longer be required under the permit to protect the interests of parties to the original application as recognized by the Commission.

The petition is denied.

Dated at Montpelier, Vermont this 10th day of June, 1976.

ENVIRONMENTAL BOARD

By

  
Schuyler Jackson  
Chairman

Board Members participating in this decision:

Schuyler Jackson, Robert E. Broderick, William D. Countryman, Donald B. Sargent, Margaret Garland, James W. Marvin, John D. Veller

CERTIFICATE OF SERVICE

I hereby certify that I, Schuyler Jackson, Chairman of the Environmental Board, sent a copy of the foregoing Declaratory Ruling #75 by U.S. Mail to the following on June 10, 1976:

Robert P. Davison, Jr., Esq.  
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P.O. Box 960  
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Stowe Planning Commission  
Edson Hill Road  
Stowe, Vermont 05672

Board of Selectmen  
Town of Stowe  
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Waterbury, Vermont 05676

Dated at Montpelier, Vermont this 10th day of June, 1976.

ENVIRONMENTAL BOARD

By

  
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Schuyler Jackson  
Chairman