

STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 VSA, CHAPTER 151

RE: CHURCH STREET PROJECT  
BURLINGTON, VERMONT

DECLARATORY RULING  
NO. 102

On November 22, 1978 the City of Burlington filed a request for a Declaratory Ruling. It asked the Board to rule that the so-called "Church Street Project" is exempt from Act 250. On November 29, 1978 the Board served notice of hearing and pre-hearing conference on all parties and had the notice published in the Burlington Free Press on December 2, 1978. A pre-hearing conference was held on December 6, 1978, and a Report and Order issued December 13.

By agreement of the parties, the applicable definition of 10 VSA, §6001(3) is: "The word 'development' also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings."

On December 19, 1978 the Board convened the hearing. Parties appearing were the City of Burlington and City Planning Commission by Attorney William Sorrell, the Regional Planning Commission by Executive Director Arthur Hogan, and the Agency of Environmental Conservation by Attorney Stephen B. Sease. A resident of the Town of St. George, Vermont, Armand Beliveau, requested to be designated as a party in these proceedings. The Board denied him party status but called him as a witness for the Board and allowed him to disclose any information that he had about the project.

FINDINGS OF FACT

1. Under consideration are the elements of the "Church Street Project" as set forth in Board Exhibit #4 - Advisory Opinion #4-005 issued by the District Coordinator. As computed in this opinion, the involved land exceeds 10 acres in area.
2. The City of Burlington contended through its witnesses and exhibits that there are three separate projects: the Church Street Market Place, the downtown Transit Loop, and the Winooski Avenue Parking Garage.

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3. The Transit Loop involves rerouting traffic, building pedestrian shelters, and changes in traffic signalization. There will be minimal construction associated with this project. If, however, the entire width of the rights-of-way of existing streets, whether or not they are to be improved are calculated as incidental to the use, then several, but less than 10 acres, are involved.
4. The Church Street Market Place involves municipal and apparently commercial construction by the City of Burlington. It involves a pedestrian market place with shelters, rental space and related construction on several, but less than 10 acres. The entire right-of-way of Church Street in this area is incidental to the use.
5. The Winooski Avenue Parking Garage encompasses slightly more than one acre. Construction of the Church Street Market Place and the Parking Garage are inseparable as a project. Closing Church Street for a pedestrian mall is contingent on alternative parking. Total construction and involved land in the Market Place and the Parking Garage, however, remain less than 10 acres in size.
6. The downtown Transit Loop, while obviously planned with reference to the other municipal endeavors, cannot be justified as an essential part of the so-called "Church Street Project". Essentially, it involves rerouting of traffic on existing streets with minimum construction. Actual construction areas and involved lands incidental to the use of the Transit Loop are something considerably less than the entire width of the rights-of-way of the existing streets.

DISCUSSION

The definition of development in Sec. 6001(3) of 10 V.S.A. Chapter 151 (Act 250) and Environmental Board Rule 2 distinguishes between projects for commercial and industrial purposes, and projects for municipal or state purposes. Construction of improvements for commercial or industrial purposes on a tract or tracts of land which involve more than 10 acres of land is a development and a permit is required. In this case the total acreage owned or controlled by the applicant within a five mile radius that is used or related to the commercial or industrial purpose is computed and a permit is required if there are 10 or more acres. If the town does not have municipal zoning and subdivision regulations, a permit is required if the project is on one or more acres owned or controlled by an applicant.

Construction of improvements for state or municipal projects must also involve 10 or more acres before a permit is required. In this case, however, the definition specifically states that involved lands shall include those areas that are incident to

the use such as lawns, parking areas, roadways, leaching fields, and accessory buildings. As a result, the construction of improvements for projects such as the Church Street proposal must physically involve 10 or more acres before jurisdiction is established and a permit is required.

Had the legislature not made this distinction, practically every state and municipal project would come under the jurisdiction of Act 250 because the amount of related land within a five mile radius that is owned or controlled by these political entities would be more than 10 acres.

CONCLUSIONS OF LAW

The total amount of involved land and land incidental to the use of the three projects included under the heading of the Church Street Project is less than 10 acres. Ten acres can be identified only by the inclusion of the entire width of the existing rights-of-way for the Transit Loop. This significantly and unrealistically inflates the amount of involved land.

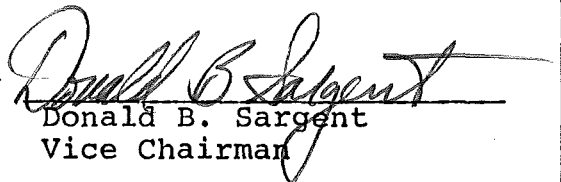
The Transit Loop, the municipal project which is to be considered for the purposes of Act 250 jurisdiction, is separate from the construction of the Market Place and the Parking Garage. That notwithstanding, even if included, the total acreage of the three projects would not be sufficient for the assertion of Act 250 jurisdiction.

The Church Street Project is exempt from Act 250 as being the construction of two separate projects, each involving less than 10 acres of land incidental to the use. However, even if viewed as parts of one larger undertaking, there still would not be the requisite acreage to support Act 250 jurisdiction.

Accordingly, it is hereby ordered that the so-called Church Street Project is exempt from Act 250.

Dated at Montpelier, Vermont this 29th day of January, 1979.

ENVIRONMENTAL BOARD

By   
Donald B. Sargent  
Vice Chairman

Board members participating  
in this decision:

Ferdinand Bongartz  
Dwight E. Burnham, Sr.  
Melvin H. Carter  
Michael A. Kimack  
Donald B. Sargent

CERTIFICATE OF SERVICE

I hereby certify that I, Donald B. Sargent, Vice Chairman of the Environmental Board, sent a copy of the foregoing Declaratory Ruling No. 102 by U.S. Mail (postage prepaid) on this 29th day of January, 1979, to the following:

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Susan H. Cain, Environmental Coordinator  
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Dated at Montpelier, Vermont this 29th day of January, 1979.

By   
Donald B. Sargent  
Vice Chairman  
Environmental Board