

SUPREME COURT OF VERMONT

In re Snowstone, LLC Act 250 Jurisdictional Opinion

2021 VT 72 · No. 2020-197 · Decided September 3, 2021

SUMMARY

The Vermont Supreme Court affirmed the Environmental Division’s conclusion that a proposed dimensional stone quarry occupying 0.93 acres did not constitute “development” under 10 V.S.A. § 6001(3)(A)(ii) and therefore did not require an Act 250 permit. The Court held that the one-acre threshold refers to land actually used for construction of improvements, rather than the size of the larger parcel, and declined to read “involved land” or “owned or controlled by a person” into the statutory provision on the facts presented. The Court also upheld enforcement of the deadline for requesting an additional hearing and held the landowners’ intervention issue moot.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Cohen, J.; Robinson, J.; Eaton, J.; Carroll, J.; Morris, Supr. J. (Ret.), specially assigned
JURISDICTION	Vermont
DECIDED	September 3, 2021
DOCKET	2020-197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Neighbors appealed the Vermont Superior Court, Environmental Division's final judgment in an Act 250 jurisdictional-opinion appeal. The Environmental Division held that Snowstone's proposed dimensional-stone quarry would not constitute development requiring an Act 250 permit, rejected the neighbors' request for an additional hearing concerning stormwater and project footprint, and entered judgment for Snowstone.
STANDARD OF REVIEW	The Supreme Court reviewed the Environmental Division's legal conclusions de novo and its factual findings for clear error, viewing the evidence in the light most favorable to the prevailing party.
PRECEDENTIAL VALUE	precedential

PARTIES

Michael Harrington, et al., Neighboring landowners v. Snowstone, LLC, Justin and Maureen Savage, Vermont Natural Resources Board

TOPICS

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mining law

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether construction of commercial or industrial improvements on 0.64 acre, or at most 0.93 acre including the access road, constitutes development under 10 V.S.A. § 6001(3)(A)(ii) when the project is located within a larger parcel.
2. Whether the retained portion of the landowners' 176-acre parcel had to be treated as involved land or otherwise included in calculating the acreage subject to Act 250 jurisdiction.
3. Whether the neighbors' motion to consolidate the Act 250 jurisdictional-opinion appeal and the stormwater-permit appeal constituted a timely request for an additional hearing.
4. Whether the Environmental Division erred by permitting the landowners to intervene.

HOLDINGS

1. In a municipality without permanent zoning and subdivision bylaws, the phrase "construction of improvements for commercial or industrial purposes on more than one acre of land" refers to the land actually used for construction of the improvements, not the size of the parcel on which the improvements are located. Because the proposed improvements occupied no more than 0.93 acre, the project was not development requiring an Act 250 permit.
2. The motion to consolidate the jurisdictional-opinion and stormwater appeals did not qualify as a timely request for an additional hearing because it was filed forty-four days after the stormwater permit determination, beyond the thirty-day deadline imposed by the Environmental Division.
3. The intervention issue was moot because the Court could no longer grant effective relief on that issue after affirming the judgment.

KEY QUOTATIONS

“The construction of improvements for commercial or industrial purposes on more than one acre of land” refers to the land actually used for the construction of improvements, rather than the size of the parcel on which the construction of improvements will be located.” (¶ 20)

“There is only one stamp on the envelope. The proposed project does not constitute development within the meaning of § 6001(3)(A)(ii) and accordingly does not require an Act 250 permit.” (¶ 25)

FACTUAL BACKGROUND

Snowstone proposed to purchase a 0.64-acre portion of a 176-acre undeveloped parcel in Cavendish, Vermont, containing a dimensional-stone quarry, together with a 0.29-acre access easement. The proposed project therefore occupied 0.93 acre, and no other commercial or industrial improvements existed on the 176-acre parcel or nearby. Snowstone revised the sales contract to remove provisions that had led the district coordinator to view the transaction as non-arm's-length. The stormwater permit ultimately authorized treatment activities within the same 0.93-acre footprint.

PROCEDURAL HISTORY

Snowstone requested an Act 250 jurisdictional opinion regarding a proposed quarry on a 0.64-acre parcel and a 0.29-acre access easement within a 176-acre undeveloped parcel. The district coordinator concluded that the project required a permit because the parcels were effectively controlled by one person and therefore exceeded the one-acre threshold. After Snowstone revised its purchase contract, the Environmental Division found the transaction arms-length, held that the retained parcel was not included in the acreage calculation, and concluded that the project did not require a permit. The court later rejected the neighbors' untimely request for an additional hearing after stormwater permitting and entered final judgment for Snowstone; the neighbors appealed.

DISPOSITION

affirmed

CASES CITED

- In re Vitale, 151 Vt. 580, 563 A.2d 613 (1989)
- In re N.E. Materials Grp., LLC, 2019 VT 55, 210 Vt. 525, 217 A.3d 541
- In re N.E. Materials Grp. LLC Act 250 JO # 5-21, 2015 VT 79, 199 Vt. 577, 127 A.3d 926
- Agency of Transp. v. Timberlake Assocs., 2020 VT 73, 239 A.3d 253
- Flint v. Dep't of Labor, 2017 VT 89, 205 Vt. 558, 177 A.3d 1080
- State v. Davis, 2020 VT 20, 211 Vt. 624, 230 A.3d 620
- Lyons v. Chittenden Cent. Supervisory Union, 2018 VT 26, 207 Vt. 59, 185 A.3d 551
- State v. Blake, 2017 VT 68, 205 Vt. 265, 174 A.3d 126
- Judicial Watch, Inc. v. State, 2005 VT 108, 179 Vt. 214, 892 A.2d 191
- Comm. to Save the Bishop's House, Inc. v. Med. Ctr. Hosp. of Vt., Inc., 137 Vt. 142, 400 A.2d 1015 (1979)
- In re Snyder Grp., Inc., 2020 VT 15, 233 A.3d 1077
- Miller v. Miller, 2008 VT 86, 184 Vt. 464, 965 A.2d 524
- In re Woodstock Cmty. Tr. & Hous. Vt. PRD, 2012 VT 87, 192 Vt. 474, 60 A.3d 686
- State v. Jones, 157 Vt. 553, 601 A.2d 502 (1991)
- Houston v. Town of Waitsfield, 2007 VT 135, 183 Vt. 543, 944 A.2d 260