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2026 VT 39

No. 25-AP-351

Land Use Review Board

v.

3643 VT Route 103, N, LLC et al.

Supreme Court

On Appeal from
Superior Court,
Environmental Division

May Term, 2026

Joseph S. McLean, J.

Charity R. Clark, Attorney General, and Melanie Kehne, Assistant Attorney General,
Montpelier, for Petitioner-Appellee.

Mark G. Hall and Alex Arroyo of Paul Frank + Collins PC, Burlington, for Respondents-
Appellants.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **DRESCHER, J.** Because it had been in business since the early twentieth century, a quarry in Chester, Vermont was exempt from Act 250 as a pre-existing development. After its owner integrated the quarry into the operations of two of the owner's nearby quarries, however, both the district environmental commission and the Environmental Division determined the quarry became subject to Act 250's permitting requirements. Landowner now appeals from a judgment of the Environmental Division holding that the quarry still requires a permit even after its operations returned to pre-existing levels disconnected from the other quarries, and affirming the imposition of a stop-work order by the Land Use Review Board (LURB). We affirm because the quarry's unpermitted and expanded commercial operation went on for years and inflicted lasting

impacts on the landscape, and because the court’s consideration of the stop-work order was a sound exercise of discretion.

I. Background

¶ 2. The following facts are undisputed. Appellants are quarry operators Julian Materials, LLC; Julian Development, LLC; 137 Chandler Road, LLC; 3643 VT Route 103, N., LLC; and others, collectively referred to here as landowner. From about 2018 to 2024, landowner operated three quarries in Chester known as North Quarry, South Quarry, and Chandler Quarry.

¶ 3. Chandler Quarry is located on an eight-and-a-half-acre parcel, about a mile-and-a-half from North and South Quarries. Because Chandler Quarry’s operations preceded the 1970 passage of Act 250, it had not previously been subject to Act 250’s permitting requirements. See 10 V.S.A. § 6081(b) (providing permit exemptions for developments commenced prior to June 1, 1970, but not for subsequent substantial changes). Landowner had operated Chandler Quarry since 2011, first under a lease and then as owner after acquiring it in early 2019.

¶ 4. Landowner acquired North and South Quarries in 2018. Until then, they operated independently from Chandler Quarry. North and South Quarries occupy the same 300-plus-acre parcel and have operated pursuant to Act 250 permits.

¶ 5. Landowner’s acquisitions of all three quarries coincided with a new business strategy involving fabricating and processing stone “in house” at Chandler Quarry and selling finished goods on site. Starting in 2018, landowner began trucking stone from North and South Quarries to Chandler Quarry for processing. In 2021, landowner constructed a new building on Chandler Quarry to house and use its newly purchased processing equipment. The building remains standing. During this time, and until about April 2024, landowner operated Chandler Quarry seven days a week.

¶ 6. LURB’s predecessor, the Natural Resources Board (NRB),¹ began receiving noise and traffic complaints from neighboring landowners related to these expanded activities. In 2022, neighbors requested that the NRB assess whether the expanded operations at Chandler Quarry needed a permit. The District 2 Environmental Commission issued a jurisdictional opinion (JO) in March 2023, concluding the use of Chandler Quarry as part of the larger operations required an Act 250 permit amendment.

¶ 7. Landowner appealed to the Environmental Division. In a March 2024 summary judgment ruling, the court affirmed the NRB’s determination that operating Chandler Quarry in coordination with North and South Quarries constituted a substantial change to a pre-existing development that required an Act 250 permit.² Landowner did not appeal this decision.

¶ 8. In June 2025, pursuant to 10 V.S.A. § 8008, LURB issued an administrative order (AO) determining that landowner violated Act 250 in several ways, including by operating Chandler Quarry without a permit. The AO imposed a civil penalty of \$27,500 and ordered landowner to pay expenses associated with LURB’s action. The order also directed landowner to cease all operations, including quarrying activity at Chandler Quarry, until appropriate permits were obtained.

¶ 9. Landowner timely requested a merits hearing before the Environmental Division pursuant to 10 V.S.A. §§ 8008(b) and 8012. During the hearing, a quarry employee confirmed

¹ As part of a legislative restructuring in 2024, the NRB was replaced by LURB. See 2023, No. 181 (Adj. Sess.), § 2 (codifying 10 V.S.A. § 6021 and establishing LURB as a five-member board).

² The Environmental Division explained that Chandler Quarry previously did not qualify as a development for Act 250 not only because it operated independently from North and South Quarries, thereby falling below the ten-acre threshold for towns with permanent zoning bylaws, but also because Chandler Quarry’s operations predated Act 250. Because Chandler Quarry is less than five miles from North and South Quarries, landowner’s coordinated operation of all three quarries increased the amount of involved land to more than ten acres, which brought Chandler Quarry within Act 250’s definition of development. See 10 V.S.A. § 6001(3)(A)(i) (listing factors to qualify as “development”).

that in 2018 landowner began using its newly purchased equipment at Chandler Quarry for processing stone from North, South, and Chandler Quarries. According to the employee, in response to the Environmental Division's March 2024 determination, landowner stopped processing stone at Chandler Quarry, sold its equipment, and conducted a "mass layoff" that reduced the number of its employees in Chester to just three, from a high of forty-two. Whereas before the ruling, landowner blasted, hauled, cut, and palletized stone at Chandler Quarry, landowner after the ruling only transported stone extracted from the quarry to third-party vendors elsewhere. According to the employee, operations at Chandler Quarry returned to at-or-below pre-existing historical operating levels and were again separate from North and South Quarries.

¶ 10. The Environmental Division affirmed the AO. The court found that landowner had taken steps to "decouple" Chandler Quarry from North and South Quarries following the court's 2024 ruling. The court also found that landowner dramatically reduced quarrying activity at North and South Quarries. Nevertheless, the court concluded that landowner's unpermitted activities at Chandler Quarry between 2018 and 2025 were a continuing violation of Act 250. In affirming the AO's stop-work order, the court did "not take this step lightly." The court emphasized the long duration of landowner's continuing violations, despite direction provided to landowner by prior orders and the unambiguous language of the permits that issued with respect to North and South Quarries. Landowner timely appealed.

II. Analysis

¶ 11. Landowner raises two issues on appeal. First, it contends that notwithstanding the Environmental Division's March 2024 order affirming the JO, the court erred in concluding that Chandler Quarry continues to be subject to Act 250 jurisdiction. Relying largely on our decision in In re Audet, 2004 VT 30, 176 Vt. 617, 850 A.2d 1000 (mem.), landowner argues that by returning to a pre-2018 level of activity Chandler Quarry has returned to its previous not-subject-to-Act 250 status. Second, landowner contends that the Environmental Division abused its

discretion in affirming the AO's stop-work provision because it failed to consider the economic impact on the quarry's employees.

A. Act 250 Jurisdiction

¶ 12. This Court reviews the Environmental Division's factual findings deferentially and will overturn them only if they are clearly erroneous when viewed in the light most favorable to the prevailing party. In re Wheeler Parcel Act 250 Determination, 2025 VT 28, ¶ 14, 221 Vt. 216, 342 A.3d 836. We will not disturb the Environmental Division's legal conclusions when reasonably supported by its factual findings. Id. We review its resolution of legal questions, however, de novo. In re Katzenbach A250 Permit #7R1374-1, 2022 VT 42, ¶ 11, 217 Vt. 155, 287 A.3d 36.

¶ 13. Act 250 is designed to “insure” that Vermont’s “‘lands and environment are devoted to uses which are not detrimental to the public welfare and interests.’” In re Pilgrim P’ship, 153 Vt. 594, 596, 572 A.2d 909, 910 (1990) (quoting 1969, No. 250 (Adj. Sess.), § 1). To that end, the legislation imposes permitting requirements for certain large-scale projects that implicate “values of state concern” and represents “a philosophic compromise between a desire to protect and control all the lands and environment of the state of Vermont, and the need to avoid an administrative nightmare.” In re Agency of Admin., State Bldgs. Div., 141 Vt. 68, 76, 444 A.2d 1349, 1352 (1982). The general rule is that “once a change of statewide impact occurs to land, Act 250 jurisdiction attaches and it cannot be undone by later events such as a cessation of the development activity.” Audet, 2004 VT 30, ¶ 13; see also In re Rusin, 162 Vt. 185, 191, 643 A.2d 1209, 1212 (1994) (holding that once developer took significant steps to realize his permitted project, subsequent reduction of scope of construction did not remove project from Act 250 jurisdiction).

¶ 14. We first address landowner’s argument that its 2024 reduction of operations at Chandler Quarry resulted in reversion to its historical Act 250 exemption. Landowner concedes

on appeal that, from 2018 to 2024, it operated Chandler Quarry in conjunction with its other quarries and that by doing so, Act 250 jurisdiction attached. Landowner contends, however, that because Chandler Quarry was previously exempt from Act 250 as a pre-existing development under 10 V.S.A. § 6081(b), Act 250 jurisdiction dissolved when it reduced activities at Chandler Quarry to at-or-below previous levels after the Environmental Division's 2024 order. In landowner's view, returning Chandler Quarry to its pre-2018 operations, and "decoupling" it from the North and South Quarries, rendered the Environmental Division's March 2024 order no longer applicable.

¶ 15. Landowner relies heavily on our decision in Audet, 2004 VT 30. In that case, a landowner who repaired and sold vehicles on two contiguous parcels in Worcester purchased a third parcel one-third of a mile away and proposed building a home on it. Neighbors successfully opposed that plan before the selectboard. To retaliate, landowner began using the third parcel to store junked cars and other debris from his business. He told neighbors he planned to be a "bad neighbor" and to build a garage on the parcel that would increase traffic in the area. Id. ¶ 3. He "graded, filled and graveled portions" of the parcel. Id. In response, the neighbors requested a jurisdictional opinion from the district environmental commission. The commission determined that Act 250 jurisdiction was triggered under 10 V.S.A. § 6001(3)(A)(ii) because, as in this appeal, see supra, ¶ 7 n.2, the proximity and addition of the third parcel to the landowner's other two caused the combined size of the three parcels to exceed Act 250's jurisdictional threshold. The landowner thereafter ceased using the third parcel in any way connected to his business and petitioned the environmental board for a declaration that Act 250 jurisdiction did not apply because the third parcel was not being used as part of his business.

¶ 16. We affirmed the board's decision that the third parcel did not require an Act 250 permit. Id. ¶ 10. Although jurisdiction was "technically" triggered when the landowner started using the third parcel in association with his business, he "changed his plans and ceased the use"

once “faced with the prospect of having to obtain an Act 250 permit.” Id. ¶ 14. We held that when the landowner abandoned that use shortly after the district environmental commission informed him that Act 250 would apply, “the environmental board could find that no further Act 250 jurisdiction existed at that point, so long as [the landowner’s] change of plans was made in good faith and occurred without any sort of construction, physical change to the land or other ongoing impact that would require Act 250 review.”³ Id. To hold otherwise, we explained, would permanently impose Act 250 jurisdiction simply because the use of the land temporarily changed. Id.

¶ 17. Chandler Quarry is different. Here, landowner unlawfully operated Chandler Quarry in coordination with North and South Quarries for over five years. During that time, landowner materially increased quarrying activity, including the use of hydraulic hammers and blasting. It also constructed a building in connection with its operation. And after LURB ruled that a permit was required for Chandler Quarry to operate lawfully, landowner continued to drill, blast, and process stone as part of its coordinated multi-quarry operations. Drilling and blasting continued at Chandler Quarry—albeit at a reduced rate and apparently independently of the other quarries—even after the March 2024 ruling. Unlike Audet, landowner here engaged in sustained commercially motivated jurisdiction-triggering operations that inflicted lasting impact on the property. To hold that landowner can undo Act 250 jurisdiction simply by reducing operations would ignore those impacts and incentivize recalcitrance.

¶ 18. Our holding does not mean Chandler Quarry is forever subject to the Environmental Division’s Act 250 jurisdiction determination. “Any permit granted under” Act 250 “for extraction of mineral resources,” for instance, “shall be for a specified period determined by the Board.” 10 V.S.A. § 6090(b)(1). “[A]bsent some [other] activity to trigger the statute’s application,”

³ The environmental board found that the clearing and grading of the third parcel were not related to the landowner’s business. Id. ¶ 16 n.2.

jurisdiction can end when the permittee ceases operations and reclaims the parcel in compliance with the permit's requirements. In re Huntley, 2004 VT 115, ¶¶ 1, 3-6, 177 Vt. 596, 865 A.2d 1123 (mem.) (holding Act 250 mine permit expires upon cessation of mining and reclamation and rehabilitation in accordance with permit requirements); accord In re Hamm Mine Act 250 Jurisdiction (Jurisdictional Op. No.2-241), 2009 VT 88, ¶¶ 17-19, 186 Vt. 590, 980 A.2d 286 (mem.) (explaining Act 250 enforcement jurisdiction continues until reclamation conditions of mine permit are satisfied). As LURB points out, permits for earth extraction operations include reclamation plans and other conditions to ensure environmental impacts are addressed going forward. See 10 V.S.A. § 6086(a)(9)(E). Landowner must get a permit (or an amendment to an existing permit) which will contain reclamation requirements, if appropriate, for Chandler Quarry.

¶ 19. Landowner also argues that the Environmental Division's determination that Act 250 jurisdiction attached to Chandler Quarry was not supported by sufficient evidence. We decline to address this argument. The issue was fully litigated and resolved against landowner in the March 2024 order, which landowner did not appeal. See Nat. Res. Bd. Land Use Panel v. Dorr, 2015 VT 1, ¶¶ 10-13, 198 Vt. 226, 113 A.3d 400 (rejecting effort to relitigate prior Act 250 jurisdictional ruling in subsequent enforcement action); see also Town of Pawlet v. Banyai, 2024 VT 13, ¶¶ 8, 12, 219 Vt. 90, 315 A.3d 1008 (explaining that "court's final judgments are conclusive upon parties and cannot be collaterally attacked" and declining to consider landowner's arguments concerning prior final order that he did not appeal (quotation omitted)). We decline to review previously decided issues that landowner opted not to appeal.

B. Stop-Work Order

¶ 20. Lastly, we turn to landowner's claim that the Environmental Division erred in affirming the stop-work order because it failed to consider the economic impact of the order or landowner's efforts to comply with the administrative penalty process. Under 10 V.S.A. § 8008(c), LURB may issue an AO that "directs the respondent to stop work until a permit is

issued, compliance is achieved, a hazard is abated, or any combination of the above.” When issuing a stop-work order, LURB must “consider the economic effect . . . on individuals other than the respondent.” Id. Similarly, in reviewing an AO issued by LURB, the Environmental Division must also “consider the economic effect of the order on individuals other than the respondent.” Id. § 8012(b)(3). Landowner argues that the stop-work order should be reversed and vacated because the Environmental Division failed to comply with this statutory mandate.

¶ 21. We only review whether the Environmental Division’s continued imposition of the stop-work order constituted an abuse of discretion. See In re Beliveau NOV, 2013 VT 41, ¶ 22, 194 Vt. 1, 72 A.3d 918 (reviewing imposition of fine for zoning violation under abuse of discretion standard); accord Fenwick v. City of Burlington, 167 Vt. 425, 432, 708 A.2d 561, 565 (1997) (reviewing trial court’s decision not to grant injunction in zoning case for abuse of its “wide discretion”). When the Environmental Division’s decision is grounded in the various statutory factors and is not clearly unreasonable, we will find no abuse of discretion. Vt. Agency of Nat. Res. v. Duranleau, 159 Vt. 233, 240, 617 A.2d 143, 147 (1992).

¶ 22. Landowner argues that the Environmental Division made “no attempt” to assess the economic impact on the quarries’ employees in violation of § 8012(b)(3). The record indicates otherwise. The Environmental Division explicitly cited the applicable statutory standard and stated that it considered the economic harm of the stop-work order on the quarries’ employees. The court accurately noted that landowner itself could have mitigated that impact by seeking an Act 250 permit. The court reiterated it did not “take this step lightly but [felt] compelled to” affirm the stop-work order because of the unambiguous need for a permit as expressed by the JO and March 2024 decision; the extended duration of the continuing violations; the relatively small number of employees; and landowner’s ability to prevent the harm.

¶ 23. The record demonstrates the Environmental Division reasonably considered the statutory factors, including the economic impacts on those affected. It was not, therefore, an abuse of discretion to affirm the stop-work order.

Affirmed.

FOR THE COURT:

Associate Justice