

about was what I was going to visit about with you, is the difference...when they say that the board shall approve the application if it...if the proposed area fits within those definitions. Somebody has got to make a determination whether it fits within those areas. My reading of that section of the statute is that that's what the board does. Wouldn't that be true, that they're going to look at the application to see if it fits within that? In other words, the city...you know, you could be right, a city and a county could come in and declare Senator Lindsay's business district, because of the way he practices or whatever, blighted and substandard, but that...let's just say that those factors were wrong. The board is going to look at that application. Don't they have to make that determination of whether they're...now, they could be wrong or right, I'm just saying, but they do make that determination. If they find that it does, then that's when the "shall" kicks in?

SENATOR HALL: Senator Chambers.

SENATOR CHAMBERS: Senator Kristensen, allow me a minute or so to give a rounded explanation. What the courts have said is that the mere fact that a board or an individual on whom a duty rests can say yes or no does not make the decision discretionary, even if facts must be found before that decision is made, that does not make it discretionary. Once the facts are found, then the board can be compelled to act. So if the designation of Senator Lindsay's district is to be blighted and substandard because no new businesses are developing there and the fact is that no new businesses are developing there, then the board can, by mandamus, be compelled to declare it blighted and substandard, even though they have to find facts to reach their decision.

SENATOR KRISTENSEN: Well, I guess that's...the bottom line here is I'm not sure it makes a difference whether it's "may" or "shall", I think it's the bottom line that I'm coming to. I don't know that it makes a big difference either way because this isn't one of those total discretionary duties, in other words, the board just can't go out and say we pick this and this is what's going to happen. They have to have an application brought to them, they do have some, by statute, some standards that they've got to follow. Whether they may grant it or shall I don't think makes a big difference, Senator Chambers, and I was glad to hear Senator Withem say that he might well vote for