



NATURAL RESOURCES BOARD
District #9 Environmental Commission
111 West Street
Essex Jct., VT 05452

Liam L. Murphy, Esquire
Murphy Sullivan Kronk
275 College Street
P.O. Box 4485
Burlington, VT 05406-4485

RE: Jurisdictional Opinion #9-069 (2009) – Reconsideration of PRS issued to Champlain Oil Company Project, Ferrisburgh, VT.

Dear Liam:

Pursuant to your request of October 8, 2009 this is a reconsideration of a Project Review Sheet ("PRS") issued on September 25, 2009 asserting Act 250 jurisdiction on a project proposed by your client, Champlain Oil Company. The PRS asserts jurisdiction over the construction of a gas station, convenience store and restaurant on a tract or tracts of land greater than 10 acres, pursuant to 10 VSA §6001(3)(A)(i). Your client is requesting this opinion be reconsidered because the tract of land involved in the project will be at the time of construction be less than 10 acres and therefore will not constitute a development. The following are the facts upon which this opinion is based:

Facts:

1. Champlain Oil Company ("CoCo") has a purchase and sale agreement to purchase 9.04 acres of land from property owner Llonas. The Llonas currently own 2.5 acres of the 9.04 acre lot upon which CoCo will eventually build the project.
2. The Burdicks own an adjoining 25 acre tract which they have agreed to subdivide and sell 8.54 acres to the Llonas. The 8.54 acres from the Burdicks and the 2.5 acres from the Llonas create the 9.04 acre lot that will be purchased by CoCo.
3. CoCo has agreed to purchase the 9.04 acre lot from the Llonas once CoCo has obtained all the permits it requires to construct the project.
4. Neither the Burdick nor the Llonas property are currently subject to Act 250 jurisdiction.
5. Neither CoCo nor any affiliated person has undertaken any subdivision within five miles of the proposed project or within Addison County in the last five years.
6. The State of Vermont took fee title of the land under the prior Route 7 right-of-way in 1958.
7. Additional construction of improvements will be undertaken as part of this project within the Route 7 right of way. This work includes the construction of two entrances and a water line and amounts to 8000 square feet.

The key issue in this case is determining when commencement of construction or development begins. Four court decisions support the notion that Act 250 jurisdiction is triggered when the activity is about to impinge on the land and attaches to activity which has achieved such finality of design that construction can be said to be ready to commence. *In re Agency of Administration*, 141 Vt. 68, 78-79(1982); *In re Audet*, 2004 VT 30, 36 (4/1/04); *In re Wildcat Construction*, 160 VT 631, 632 (1993) and *In re Vermont Gas Systems, Inc.*, 150 Vt. 34 (1988).

A recent Jurisdictional Opinion #4-217 addressed a similar issue. In this opinion, the Coordinator found that if, at the time of commencement of construction, the developer owned less than 10 acres and had no affiliation with other landowners involved in the project, then Act 250 jurisdiction is not triggered.

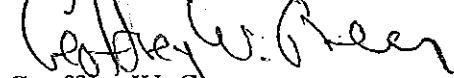
Conclusion:

No development or construction will take place until CoCo has received all its State and local permits and purchased the tract as a separate 9.04 acre tract. At this time, CoCo is merely seeking permits to develop a future 9.04 acre tract of land and the seeking of permits is not the commencement of construction or development.

Therefore, at the time of commencement of construction, CoCo will be the sole landowner and there are no other parties involved in the project, so that there are less than 10 acres owned or controlled by CoCo, an Act 250 permit is not required prior to the commencement of construction.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Geoffrey W. Green
District Coordinator

cc Town of Ferrisburg (2 copies)
Addison County Regional Planning Commission
Peter Young
Lou Borie
Denise Wheeler

This is a jurisdictional opinion and, pursuant to 10 V.S.A., Section 6007 (c) and Board Rule 3, it may be reconsidered by the District Coordinator or it may be appealed to the Environmental Board by the applicant, by individuals or entities who may be affected by the outcome of the opinion, or by parties that would normally be entitled to notice under 10 V.S.A. Section 6084 and Board Rule 14(A). **An appeal from a jurisdictional opinion must be filed within 30 days of the mailing of the opinion to the person appealing. Failure to appeal within the prescribed period shall render the jurisdiction opinion the final determination with respect to jurisdiction under this chapter unless the opinion has not been properly served on parties that**

CERTIFICATE OF SERVICE

I hereby certify on this 23rd day of October, 2009, a copy of the foregoing **Jurisdictional Opinion #9-069 (Reconsideration)** to **Liam L. Murphy, Esquire, Re: Champlain Oil Company Project, Ferrisburgh, VT** was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to nrb-act250essex@state.vt.us

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FOR YOUR INFORMATION

District #9 Environmental Commission
111 West Street
Essex Junction, VT 05452

Peter Young/Lou Borie/Denise Wheeler
Natural Resources Board
National Life Records Ctr. Bldg.
Montpelier, VT 05620-3201

Dated at Essex Junction, Vermont, this 23rd day of October, 2009.

/s/ Barbara J. Cady
Administrative Secretary
879-5614