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August 26, 2010

Town of Mount Holly
Select Board
PO Box 248
Mount Holly, VT 05758

Subject: Jurisdictional Opinion # 1-379; Blue Spruce House, Rt. 155

Dear Select Board:

I. Summary of Opinion

On June 10, 2010, the Select Board requested a jurisdictional opinion as to whether or not an Act 250 permit was needed for a proposal by Blue Spruce House, Inc. ("BSH") to convert the former Blue Spruce Inn on Rt 155 in Mount Holly into a transitional housing facility for men for substance abuse treatment. On June 14th and August 3rd I requested more information from BSH regarding their proposal, and received responses on July 30th and August 25th.

In summary, I have concluded that the proposed facility would not be a substantial change from the pre-existing motel/restaurant. Accordingly, no Act 250 permit is necessary.

II. Facts and Documents

The Blue Spruce Inn, aka Mount Holly Inn, was constructed in the 1960s for lodging and restaurant use, closing in 2000. The 5.69 +/- acre property does not have any Act 250 permits nor State wastewater permits on file. The State Health Dept., Bob Manfredi, has indicated that it was approved for 20 lodgers and up to 57 restaurant patrons.

The Inn has 9 living units: 4 in the main lodge, 4 in the "motel building," and 1 in the block building in the rear. The Inn is served by on-site water and septic. Its water system, a "transient community water system," has a State ID #20474. The State's Regional Engineer has indicated the facility's septic system would be "grandfathered" for up to 20 lodgers.

The property is owned by the Lutheran Synod which plans to lease the facility on a long-term basis to BSH. BSH plans to use the existing 9 units and not construct additional units. Maintenance and repair work would occur on the exterior of the buildings, including storm windows, while interior improvements would also be made.

The Town does not have subdivision regulations.

III. Analysis

Having been constructed before the enactment of Act 250, the Inn qualifies as a pre-existing facility. If built today, it would require a 250 permit as a commercial development on more than one acre in Mount Holly. 10 V.S.A. § 6081(b) exempts pre-existing developments such as this one, but also states that permits are required for any "substantial change" in otherwise exempt developments. The Vermont Supreme Court has upheld the two-pronged test used by the Environmental Board to determine whether a "substantial change" has occurred at a pre-existing development. *In re H.A. Manosh Corp.*, 147 Vt. 367, 369-70 (1986). Under that test, the first question is whether a "cognizable physical change" is being made to the pre-existing development. Only if that kind of physical change is made is the second prong of the test applied: whether the change would have potential significant impact on the Act 250 criteria in 10 V.S.A. § 6086(a)(1)-(10). *In re Barlow*, 160 Vt. 513, 521-22 (1993).

In the proposed project by BSH, there will be no "cognizable physical change" to the Blue Spruce property: it will have the same number of buildings as now, looking substantially the same as before. The use will change, nevertheless, that is not a "physical change."

Moreover, Environmental Board precedent makes clear that what BSH proposes here is not a "substantial change" under Act 250. In 1987, the Environmental Board ruled in declaratory ruling DR #181, *Esprit, Inc.*, (6/3/87), that conversion of a pre-existing facility into a treatment center for drug-dependent persons was not a substantial change and therefore did not require a 250 permit. That Danby project had several buildings and had been used as a ski lodge in the 1960s. The Danby project would also make

repairs and interior improvements. The Board allowed that Espirit could even install a new septic system if the capacity was similar to the old system.

Since the proposal by BSH is similar to that of Espirit in Danby, I must conclude that no cognizable physical change will occur, thus no substantial change is found.

IV. Conclusion

Accordingly, since I find no basis for a “substantial change,” the proposal by BSH to convert the former Blue Spruce Inn into a transitional housing/treatment facility for up to twenty residents does not require an Act 250 permit.

V. Reconsideration or Appeal

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A).

Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660)

Sincerely,

/s/ Warren E. Foster
Warren E. Foster
Acting District Coordinator

c: Certificate of Service