



March 14, 2011

Douglas Tuthill
c/o Robert Harrington P.E.
P.O. Box 248
North Pomfret, VT 05053

RE: Jurisdictional Opinion #3-140 Paul Oakes Estate - Oakes Salvage Yard / Hartford

Dear Bob and Douglas:

This is a reconsideration of the jurisdiction opinion (in the form of a project review sheet) issued on September 28, 2011, regarding whether there has been a substantial change to the pre-existing development known as "Oakes Salvage Yard" located off Route 14 in Hartford, Vermont. This project review sheet was requested by Robert Harrington, engineer for the project and Douglas Tuthill, Trustee on behalf of the Paul W. Oakes Estate. The following is my understanding of the relevant facts from information provided by Robert Harrington and Douglas Tuthill:

1. Oakes Salvage has existed since at least 1965. Prior to 1970 the business used a 24' x 30' garage where fluids were drained from vehicles and the vehicles were then stored in the abandoned gravel pit in the rear of the property.
2. There was also a very large barn which was used for storage of car parts, scrap engines, transmissions, and sheet metal.
3. An addition to the garage was constructed in the 1970's or 1980's which doubled the size of the garage. About half of the east side of the addition is visible from Route 14. Mr. Tuthill reports that "the volume of cars moving through the yard more than likely peaked around 2003." Currently, the footprint of the operation is smaller than at any time since 1965.
4. In addition to the doubling of the size of the garage, stockade fencing was added to screen a portion of the property from Route 14 and in 2010 additional stockade fencing was added for the demarcation of the limits of the salvage yard and for security. A 12' by 20' shed was constructed in 2010 for storage of hazardous materials.
5. In 2002 the large barn was demolished. Although the project review sheet stated that the barn was "demolished and removed when the barn roof collapsed and the structure was beyond repair," further inquiry provided the more specific information. In an email dated November 29, 2010, Douglas Tuthill provided the following:

Bob, as answer to April Hensel's question about the barn. There is no documentation about its condition prior to being torn down. I had numerous conversations with Paul and tried to get him to apply to various agencies about grant money to repair the barn, he was not interested at all. The center two floors had fallen in at the time he tore it down, there were still a lot of good car parts in it from the sixties, which he used his loader and placed in scrap iron bins, also to my amazement. Red had always stored engines and transmissions in the barn along with various sheet metal parts. Why Paul tore down the barn and left the milk house standing is also a good question.

6. The area where the barn stood was subsequently used as a "parking lot for cars and equipment." (Email from Bob Harrington dated December 3, 2010).

Conclusion

There is no question that there was a salvage operation on this property prior to June 1, 1970, which qualified as a pre-existing development pursuant to Act 250 Rule 2(C)(8). At issue, is whether there has been a "substantial change" to the "pre-existing development" which would require an Act 250 permit. (See Act 250 Rule 2(C)(7) - Jurisdiction attaches to any substantial change to a pre-existing development - 10 V.S.A Section 6081(b).)

Act 250 Rule 2(C)(7) defines "substantial change" as follows:

Substantial change means any change in a pre-existing development or subdivision which may result in significant adverse impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10).

Act 250 precedent has established a two-part test to determine whether a project constitutes a substantial change to a pre-existing development. The first step of the analysis is to determine whether there has been or will be a cognizable change to the pre-existing development. Secondly, a determination must be made as to whether the change has the potential for significant impact with respect to one or more of the Act 250 Criteria. *Re: L.W. Havnes*, Declaratory Ruling #192 at 7 (Sep. 5, 1987). The question is not whether the impacts will occur, but whether they *may* occur. *Re: Robert and Barbara Barlow*, Declaratory Ruling #234 at 11 (Sep. 20, 1991), affirmed, *Robert Barlow*, 160 Vt. 513 (1993).

There has been a cognizable change to the pre-existing development. The garage has doubled in size, stockade fencing has been installed, the barn which was used for storage of auto parts was demolished and an additional area cleared for parking of vehicles and equipment. Most recently, a new 12' by 20' shed has been erected. Operations peaked at this facility in 2003, the doubling of the size of the garage most likely coincided with a time when many cars were being processed for salvage. Although, the operation has since diminished, it is necessary to evaluate whether the construction had the potential, *at the time it was undertaken*, for significant adverse impact under any of the criteria. It is my opinion that the doubling of the size of the garage had potential for significant adverse impacts under several criteria. The increase in the garage would have allowed for more vehicles to be salvaged and more hazardous waste generated requiring responsible handling and disposal. There was, therefore, the potential for significant adverse impacts under Criterion 1(B) Waste Disposal and 3 Impact on Water Supplies. It is clear that since the death of Paul Oakes, Mr. Tuthill, as trustee, has taken steps to improve handling of hazardous wastes with the building of the hazardous waste storage shed. This is obviously commendable, but it does not change the need for a permit triggered by past construction.

The doubling of the garage also would have meant more cars stored on the property. This increased storage had potential for an adverse aesthetic impact. The later erection of the stockade fence is commendable, but it does not change the analysis as to whether a the need for a permit was previously triggered. Also, the new parking area created when the barn was demolished was located close to Route 14 and had the potential for a significant adverse visual impact.

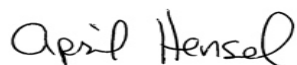
There was also the potential for significant adverse impact under Criterion 8 Historic Sites. There is not adequate documentation of the condition of the barn to say definitively that it needed to be demolished. In fact, Mr. Tuthill had numerous conversations with Mr. Oakes about seeking funds to make repairs to the barn.

Demolition is regarded as the commencement of construction and the demolition of the barn allowed for the creation of the new parking area. The barn may have been eligible for listing on the State Register of Historic Sites, depending on its condition. If the barn was eligible for listing on the State Register of Historic Sites then the demolition was a significant adverse impact.

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In closing, it remains my conclusion that Mr Oakes should have obtained an Act 250 permit when he doubled the size of the garage and before he demolished the barn. Since Mr. Tuthill has taken over the management of the salvage yard significant improvements have been made. I will be happy to assist in the process of obtaining a permit – a process which will be made easier because of the work that Mr. Tuthill has already undertaken.

Best regards,



April Hensel
District 2 Coordinator

cc: Service List

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 Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B).

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.