



January 8, 2010

Chris Poshpeck, GM
Deep Root Organic
P.O. Box 633
Johnson, VT 05656

Re: Jurisdictional Opinion 5-09
Proposed Construction of Office Building/Distribution Center, Lehouillier Farm Tract
Town of Johnson

Dear Chris:

This letter constitutes a Jurisdictional Opinion pursuant to 10 V.S.A. 6007© and Act 250 Rule 3 and is issued in response to your request dated December 1, 2009. In summary, this Jurisdictional Opinion concludes that the proposed construction of an office building/distribution center constitutes a development, pursuant to 10 V.S.A. 6001 (30(A)(ii), and an Act 250 permit is required.

FACTS

1. Deep Root Organic, which operates as a farmers cooperative, proposes to construct a 40' x 60' building adjacent to an existing barn located on the Lehouillier Farm off Route 15 in Johnson. The building will serve as office space for the 18 member staff. Three loading docks will facilitate the take-in, organization, and distribution of member farms' produce to various markets. Related infrastructure includes the construction of an in-ground septic system, a drilled well, and a parking area to be accessed via a new curb cut off Route 15.
2. In 2002, Water Supply and Wastewater Disposal Permit WW-5-1955 authorized the subdivision of the Lehouillier tract into three lots. Lot 1 is comprised of three acres; Lot 2, with an existing barn, is comprised of ten acres, and Lot 3, with an existing residence, is comprised 180 acres.
3. The site plans for the Deep Root Organic project depict the proposed subdivision of Lot 2, into two lots. Lot 2A, to be comprised of 0.95 acres, is the proposed site of the new Deep Roots Organic building. Lot 2, with the existing barn, will be comprised of 9.05 acres, and will be retained by Lehouillier. The septic easement for the project is proposed to be located on Lot 3.
4. According to a December 17, 2009 e-mail correspondence from Deep Root Organic, an application for the subdivision of Lot 2 has not been filed with the Department of

Environmental Conservation. Further, Lehouillier and Deep Root Organic have not entered into a purchase and sales agreement for the land.

5. The Town of Johnson is a one acre town for purposes of Act 250 jurisdiction.

CONCLUSIONS

10 V.S.A. 6001(3)(A)(ii) defines development as the construction of improvements for commercial purposes on more than one acre of land within a municipality that has not adopted permanent zoning and subdivision bylaws. "Construction of improvements" is defined as "any physical action on a project site which initiates development." Act 250 Rule 2(C)(3).

Act 250 Rule 2(C)(5) (a) defines "involved land" as the entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial purposes will occur, and any other tract within a radius of five miles, to be used as part of the project."

"Tract of land" means one or more physically contiguous parcels of land owned or controlled by the same person or persons. [Act 250 Rule 2(C)(12)]

"Farming" means: (A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap or horticultural and orchard crops; or (B) the raising, feeding, or management of livestock, poultry, fish or bees; or (C) the operation of greenhouses; or (D) the production of maple syrup; or, (E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or, (F) the on-site production of fuel or power from agricultural products or wastes produced on the farm; or (G) the raising, feeding, management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training and the management of equines. [10 V.S.A. 6001(22)]

Deep Root Organic's 18 member staff serves its member farmers by taking in produce from all of the farms, organizing it, and distributing it to markets. Accordingly, the proposed construction of the office/distribution center does not meet the farming exemption. In parsing the provisions of 10 V.S.A. 6001(3)(A)(ii) and Act 250 Rule 2(C)(3) in the context of the Deep Root Organic proposal, it is clear that the construction of the building is for a commercial purpose.

With respect to determining the tract of land upon which the construction of improvements is proposed, it is noted that the plans indicate that Lot 2 is proposed to be subdivided into two lots. The Deep Root Organic building is proposed to be constructed on Lot 2A, comprised of 0.95 acres, while Lehouillier will retain the 9.05 acre Lot 2. However, no application for a Water Supply Wastewater Disposal System Permit for the subdivision of Lot 2 has been filed with the Department of Environmental Conservation. There is no purchase and sales agreement between Deep Root Organic and Lehouillier, nor has a long-term lease agreement been entered into which has been structured so as to effectively convey ownership of 0.95 acres to Deep Root Organic. (See former Environmental Board decision Shelburne Farm Resources, Inc, #4C0660-1-EB, September 3, 1987). It is further noted that Lot 3 constitutes involved land as the plans depict a septic easement for the Deep Roots Organic building on Lot 3. Therefore, the entire tract of land

to be considered for jurisdictional purposes exceeds the one acre jurisdictional threshold for commercial development in the Town of Johnson. Based on the foregoing, the proposed project constitutes a development, and an Act 250 permit is required..

One final consideration; please be advised that jurisdiction will not extend to the entire Lehouillier tract. Pursuant to 10 V.S.A. 6001(E), when a development is proposed on a tract of land that is devoted to farming activity, only those portions of the tract that support the development shall be subject to regulation under this chapter.

Sincerely,



Susan Baird, Assistant Coordinator

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

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 attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the natural Resources Board, National Life Records Ctr. Bldg., National Life Drive, Montpelier, Vermont 05620-3201, and on other parties 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 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)