



October 17, 2011

Pilgrim Partnership, LLC
Attn: Stephen Van Esen and Ed Steele
PO Box 447
Waterbury Vermont 05676

Green Mountain Coffee Roasters
Attn: Paul Comey
33 Coffee Lane
Waterbury Vermont 05676

RE: Jurisdictional Opinion 5-18
Pilgrim Partnership, LLC/Green Mountain Coffee Roasters: Introduction of Fill off Demeritt Place,
Village of Waterbury

Dear Stephen, Ed and Paul:

This letter constitutes a Jurisdictional Opinion, pursuant to Act 250 Rule 3, and is issued in response to a request from Kathryn Grace, a resident at 144 South Main Street, Waterbury and who visited the District 5 Environmental Commission office on September 22, 2011. A proposed Jurisdictional Opinion was circulated for comments until October 14, 2011. Comments were filed on October 14, 2011 by Debra L. Bouffard, Esq., on behalf of Green Mountain Coffee Roasters, Inc. No other person filed comments with respect to the proposed Jurisdictional Opinion. As explained below, a land use permit was, and is, required for the placement of the excavated soils at the site off Demeritt Place.

Facts

1. On July 30, 2010, Green Mountain Coffee Roasters (GMCR) and Pilgrim Partnership, LLC (PP) filed an application for an amended land use permit for the construction of a connector road, approximately 950 feet in length, and running between Pilgrim Park Road and Demeritt Place in the Village of Waterbury.
2. The submittals included with the amendment application indicated that the project would involve the excavation of approximately 28,000 cubic yards of soils.
3. The applicants represented that the excavated soils would be used as cover material at a landfill in Moretown. The applicants further suggested that some of the excavated soils could be disposed of at the contractor's storage yard or other sites southerly of Demeritt Place. No representations were made that excavated soils would be disposed of on lands owned or controlled by the applicants.
4. The District Commission issued Land Use Permit and Findings of Fact 5W0894-13/ 5W1156-13/5W0867-6 on September 14, 2010 and approved the construction of the connector road.
5. During excavation on the project tract, the permittees allowed excavated soil to be disposed of at a site located to the north of, and adjacent to, Demeritt Place. This site is to the west of the road project site and the two sites are separated by the Grand Trunk Western Railroad corridor.
6. The fill site is owned by Pilgrim Partnership, LLC and is approximately 2 acres in area.
7. Notations on a plan for the fill site that was filed by PP on August 22, 2011 along with an application for a Town/ Village of Waterbury zoning permit indicate that approximately 1,420 cubic yards of excavated soil were placed on the PP fill site.

8. As depicted on the site plan filed with the Town/Village on August 22, 2011, the fill was placed within a mapped flood plain area.
9. Kathryn Grace and her husband Robert own three properties on South Main Street in the Village. These three properties adjoin the fill site.

Conclusions

Under Act 250, the jurisdictional tract for a permitted tract includes one or more physically contiguous parcels of land owned or controlled by the same person or persons [Act 250 Rule 2 (c)(12)]. The review of proposed development under Act 250 also includes “involved land” which in relevant part is defined as:

The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by a reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction. [Rule 2(C)(5)]

The PP fill site is located within 100 feet (ie across the railroad tracks) from the PP tract on which the road project excavation was undertaken.

In neither the application submittals nor in testimony at the District Commission's hearing did the applicants represent that the 2± acre site would be used for the disposal of fill. The District Commission has a right to rely upon the material representations made by an applicant in obtaining a land use permit [See Montpelier Broadcasting, Inc. 5W0396-EB (February 17, 1994)].

Because the 2 acre fill site was not included in the material representations as to the scope of the project, notice was not provided by the District Commission to Kathryn and Robert Grace, as well as other property owners who adjoin the fill site.

The introduction of fill on the 2 acres of “involved land” constituted “physical action” recognized under Rule 2(C)(3) and resulted in a demonstrable likelihood of impacts on the values sought to be protected under Act 250 by at least criteria 1(B) (stormwater runoff), 1(D) (floodway fringe), 4 (erosion) and 8 (aesthetics).

The placement of the excavated soil on “involved land” without benefit of a land use permit was in contradiction of 10 V.S.A. 6081(a). The placement of the fill was, and is, a “material change” pursuant to Rule (C)(6) and an amendment application must be filed for the review of the District Commission.

Attorney Bouffard's comments indicated that Pilgrim Partnership intends to address “any local and Act 250 issues” and that, therefore, the final Jurisdictional Opinion should be directed solely to Pilgrim Partnership and not Green Mountain Coffee Roasters. In that the Jurisdictional Opinion addresses a permitted project that included both Pilgrim Partnership and Green Mountain Coffee Roasters as co-permittees, the final Jurisdictional Opinion references both corporate entities. However, the anticipated amendment application will be deemed administratively complete under Rule 10(D) with Pilgrim Partnership as an individual applicant subject to the provisions of Rule 10(A) which allow the District Commission to join others as necessary co-applicants if so required by factual circumstances.

Sincerely,

/s/ Edward Stanak
Edward Stanak
District Coordinator

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

Reconsideration requests are governed by Natural Resources Board 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: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660)

