



November 2, 2011

John K. Benson, PE
Vice President
Director, Environmental Documentation
DuBois & King, Inc.
PO Box 339
Randolph Vermont 05060

Re: Jurisdictional Opinion 5-19
Construction of Shared Use Path ("Barre City Pathway - Museum Segment"), Barre City

Dear John:

This letter constitutes a Jurisdictional Opinion pursuant to Act 250 Rule 3 and is issued in response to your request dated August 11, 2011. A proposed Jurisdictional Opinion was circulated on October 11, 2011 for comments until October 31, 2011. No comments were filed by that date. As explained below, a land use permit will be required for the proposed project.

Facts

The Museum Segment

1. The City of Barre proposes to construct a shared use path that will extend from the Vermont Granite Museum tract located off US Route 302 to Granite Street.
2. The total length of the proposed path is 7,135 feet and will involve an estimated 4.1 acres of land.
3. The route of the path and related details are shown on the 19 sheets of plans which accompanied your August 11, 2011 letter. A small portion of the path will pass through the Vermont Granite Museum tract which is subject to the terms of Land Use Permit 5W1366.

Other Barre City Path Segment

5. In 1999 this office corresponded with the City of Barre manager concerning construction of improvements (ie tree clearing, site work and paving) for a multi-use path running between Fairview Street in the City and Bridge Street in the Town of Barre.
6. The 1999 path segment has an approximate length of 1.1 miles and width of 15 feet. The land involved is estimated as 2 acres.

Barre City/Barre Town Multi Use Path Study

7. The Central Vermont Regional Planning Commission (CVRPC) is managing a study for the City and Town of Barre for the alignment plan of a shared use path between the existing multi use paths in both municipalities. The study area extends from Merchants Row in the City south to the area in the vicinity of the Town's elementary and middle school. A descriptive narrative and maps for the path alignments is available on the CVRPC web site.
8. The preferred alignment for the combined City and Town path is depicted on figure 2 of the posted study.

9. It appears that the total land to be involved in the development of the preferred alignment will exceed 10 acres in area.
10. The CVRPC study states that overall path will be developed in phases as dictated by funding and community support.

Central Vermont Regional Path

11. On September 9, 2008 the CVRPC adopted a regional transportation plan which is also posted on the CVRPC web site.
12. The regional transportation plan includes a detailed description of the Central Vermont Regional Path which will have an overall length of 14.5 miles running from Junction Road in the City of Montpelier, through the Town of Berlin, into Barre City and ending in the Town of Barre.
13. The 14.5 mile regional path is discussed in the context of ten sections. Two sections within the City of Montpelier have been completed. These sections are situated between: 1) Junction Road and Taylor Street and 2) Main Street and Granite Street via Stone Cutters Way. In addition, two other sections have been completed: 1) the section from Fairview Street in Barre City to Bridge Street in the Town of Barre and 2) the section in the Town of Barre between the elementary school and Graniteville.
14. Over time, land use permits have been issued for segments of the regional path network: Land Use Permit 5W1433 (2004) to the Town of Berlin for the segment between US Route 2 and the "Ames Plaza"; Land Use Permit 5W0966-5 (2005) to the Town of Barre for the segment between the elementary school and Graniteville; and Land Use Permit 5W1513 (2009) to the Millstone Trails Association in the Town of Barre.

Conclusions

The provisions of 10 V.S.A. 6001(3)(A)(v) state the jurisdictional parameters for municipal, state and county "development":

The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county or state purposes. In computing the amount of land involved, land shall be included that is incidental to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings.

Thus, proposed municipal developments must disturb 10 or more acres of land in order to require a land use permit under Act 250.

Act 250 Rule 2(C)(5)(b) is also relevant to determinations of jurisdiction over land "involved" in proposed municipal, state or county development. The Rule states:

Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the valued sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction.

In interpreting applicable statutory and regulatory provisions of Act 250, the Environmental Board and the courts have held that terms "are to be given their plain and commonly accepted meaning" [See eg Green Mountain Habitat for Humanity, Inc. (Declaratory Ruling 406: December 13, 2002); ANR vs. Handy Family Ent 163 Vt 476 (1995)]. In this context, the final sentence of Rule 2(C)(5)(b) must be applied to the proposed "Museum Segment" path in light of the overall path networks proposed, and already developed, within the City and elsewhere in the region.

"Completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking..."

As stated above, available facts indicate that Barre City intends to develop a path network through the City. The total involved land will exceed 10 acres when the 4.1 acres for the 1999 segment, the museum segment of 2 acres and remaining segments are all calculated.

Similarly, the cumulative involved acreages of the path segments in the City and Town of Barre, both already developed and proposed, will exceed 10 acres of involved land.

Likewise, the cumulative acreages of the 14.5 mile path segments through the combined four municipalities, both already developed and proposed, will exceed 10 acres of involved land.

While the facts at hand suggest that the overall path network entails four municipal co-applicants under Act 250 Rule 10(A), it will be reasonable to review and process the City's "Museum Segment" as an application to be filed by a single applicant - the City - as was done for Land Use Permits 5W1433 and 5W0966-5.

In closing, independent of the conclusions stated above under the provisions of 10 V.S.A. 6001(3)(A)(v) and Rule 2(C)(5)(b), the portion of the path through the Vermont Granite Museum tract will require issuance of at least an administrative amendment to Land Use Permit 5L1366.

Please do not hesitate to contact this office with any questions.

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)

