



---

December 13, 2013

**Jurisdictional Opinion #7-275**

RE: **10 V.S.A. § 6007(c) Act 250 disclosure statement; jurisdictional determination**  
Change in Use, 239 Whipple Hill Drive, Lyndon, Vermont  
Land Use Permit #7C0066 and Amendments

Attn: All Parties Identified on the Certificate of Service December 13, 2013

A request for a jurisdictional determination was filed on November 5, 2013 by a number of individuals, via Amy Rast and Muriel Potter. This jurisdictional opinion identifies whether or not an Act 250 permit is required for a Project described as change in use of an existing single family residence to occupancy by two residents (and staff) as a component of a community based crisis stabilization program operated by the Emergency Services Department of Northeast Kingdom Human Services (the "Project"). The Project is located on Whipple Hill Drive in Lyndon, Vermont.

For the reasons outlined below, it is my opinion that a land use permit is not required for the Project. In the process of forming this opinion, I relied upon my understanding of the facts from the information and sources identified in the attached Exhibits, and as noted herein.

**STATEMENT OF FACTS**

1. Act 250 Land Use Permit #7C0066 was issued on July 28, 1972 for an 18-lot extension of the Finney Hill residential subdivision (the "Subdivision") and construction of roads and related improvements. Exhibit A.
2. A portion of the Subdivision pre-dates Act 250. Letters issued in 1980 by then-Coordinator John Miller provide some related background and Subdivision permit history. Exhibit B
3. Permit #7C0066 includes approval for creation of Lot 17, and construction of a single family residence thereon. Exhibits A, B and C.
4. Permit #7C0666 includes "Permit Expiration Date: July 1, 1975". Exhibit A.
5. The 1972 Act 250 permit application for the Subdivision includes the following information:



3. Nature of the Development or Subdivision: 18 single dwelling house lots.

12. What Restrictive Covenants are Planned for any Deed(s) to be Issued?

Family dwellings, not over 2 stories, 2 car garage only, only 2 cars allowed, 1 dog  
– 1 cat only, Min. 950 sq. ft. floor space.

Exhibit D.

6. The Town of Lyndon has adopted permanent zoning and subdivision bylaws, and is a so-called “10 Acre Town”. The Town of Lyndon has adopted a Town Plan, dated December 22, 2008 (date of adoption by the select board). Exhibit F.
7. An existing single family residence was constructed on Lot 17 prior to October 1980. Exhibit B.
8. Lot 16 was not permitted for construction, and Lot 16 is not developed with a residence. Exhibits C and E.
9. Lot 17 was combined with Lot 16 according to Act 250 file #7C0066. Exhibit B.
10. The lot on which the subject residence is located will be referred to as Lot 16-17. The address of the residence on Lot 16-17 (the subject residence) is 239 Whipple Hill Drive, Lyndon.
11. Lot 16-17 is located at the intersection of James Way and Whipple Hill Drive, and is surrounded by other residential lots that are similar in size to Lot 16-17. The subject residence on Lot 16-17 is located approximately 110 feet from the nearest adjacent residence. Exhibits E, N, and P.
12. The subject residence is currently owned by Lisa Farnsworth. Lisa Farnsworth has entered into a 6-month lease agreement with a human services agency. Exhibit I.
13. The subject residence was recently occupied by two residents (and staff) as a component of a community based crisis stabilization program operated by the Emergency Services Department of Northeast Kingdom Human Services (the “Project”). This occupancy commenced on or around mid-October 2013 and is continuing. Exhibits I, J, and L.
14. The Project provides short-term housing for two residents, who occupy the residence, on average, for a typical duration of seven days. In addition to the two residents, two daytime staff (or one night-time staff) occupy the residence. Exhibits G, H, and I.
15. Northeast Kingdom Human Services receives significant funding from the State of Vermont and also operates by and for each community served. Exhibit I.

16. Minor renovations or de-minimis improvements are needed to adapt the existing single family residence for the Project. This work is expected to include replacement of two windows (with larger windows) and replacement of smoke detectors and electrical outlet(s) in the bathroom, and may also include installation of security cameras or modified doorways. The Project does not include construction of any new substantive improvements; no exterior signage will be installed, and the existing building, parking, and water supply / wastewater disposal systems will not be expanded. Exhibit I.
17. According to information found on the Town of Lyndon's website, the population of Lyndon is 5,981, as determined in the 2010 census. Exhibit O.

### **ISSUE**

Whether modification of the existing single family residence to change its use for the Project is a "material change" to the existing Subdivision which is subject to Act 250 Land Use Permit #7C0066, pursuant to Rules 34(A) and 2C(6).

### **JURISDICTIONAL ANALYSIS**

A Land Use Permit Amendment is required for a "material change" to a "permitted subdivision." Rule 34(A). A material change is "any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10)." Rule 2(C)(6).

The existing developed Lot 16-17 is part of a permitted subdivision subject to Act 250 permit #7C0066, issued in 1972. The expiration date contained in permit #7C0066 (July 1, 1975) was extended for an indefinite term pursuant to 10 V.S.A. § 6090(b)(2), whereby permit #7C0066 remains in effect.

The permit and findings, and all plans and exhibits in the #7C0066 file relevant to the subject property, have been reviewed. The changes do not have a significant impact on any findings, conclusion, term or condition of the project's permit. It is noted that the #7C0066 permit, findings and exhibits do not encompass any covenants or other restrictions which would expressly prohibit a commercial or business type activity on the subject property (though "family dwellings" were identified in the application).

In addition, all of the criteria specified in 10 V.S.A. Section 6086 (a)(1) through (a)(10) have been reviewed relative to the potential for significant adverse impact pursuant to Rule 2(C)(6). With a change in use from residential to commercial, common types of Act 250 impacts include traffic (Criterion 5), municipal services (Criterion 7), aesthetics (Criterion 8), and municipal plan conformance (Criterion 10). Each is evaluated in turn, below:

Criterion (5) Traffic: Two residents and two staff (one staff at night) will travel to and from the Project on existing roadways. The fact that different staff come and go, at different work shift times, is analogous to a hired person (or perhaps a public entity) traveling to and from a

residential property to provide on-site care or transportation for a person (or even a pet) in need of personal care or transportation assistance, e.g. Meals on Wheels, publicly-funded rural transit, etc. The expected traffic volume attributable to the Project is not substantially greater than traffic volumes otherwise reasonably attributable to the existing residence, and the subdivision when viewed as a whole. The Project does not require or involve an expansion of the existing available on-site parking. The Project does not have potential for significant adverse impact on traffic safety or congestion.

Criterion (7) Municipal Services: The Project may impact demand on services. Police coverage is provided by a combination of Town and State police coverage. The State police have identified that the Project service demands can be met. The Town of Lyndon has not specifically identified a position (the Town of Lyndon Police Chief was contacted, but did not reply). Persons receiving needed crisis housing under a controlled setting may yield a net reduction in total demand on services, when compared to the potential demands on services attributable to the same persons if not receiving housing care. The two residents occupying the Project represent only a very small fraction of the local population (5,981). No information was received which would suggest that the Project may have a potential for significant adverse impact on the ability of the municipality to provide municipal services.

Criterion (8) Aesthetics: The Project includes minor renovations or de-minimis improvements to the existing residential property, as detailed in Finding 16. These small physical changes do not have potential for significant adverse impact under Criterion 8 Aesthetics. It is noted that Permit #7C0066 includes only minimal requirements related to house design (single family, not over 2 stories, 2 car garage only, min. 950 square feet) as outlined in the Application (Exhibit D); the Permit does not specify, for example, building design review or specific window glazing or color requirements. As such, the Project has no impact on the existing permit, with respect to scenic beauty and aesthetics. Potential for adverse impact on the character of the area (as a component of aesthetics) will also be evaluated. The 1972 application identifies that the subdivision covenants will require “family dwellings”. The commercial and transient nature of the Project may arguably change the existing residential character of the area, however short-term and medium-term occupancy of residential properties is fairly common in the region (for example short-term vacation rental use), also the presence of staff is analogous to hired persons providing, for example, in-home eldercare, as a component of typical residential occupancy. It is also noted that the Project encompasses occupancy by only two residents (plus staff). If the Project encompassed a greater number of residents, for example eight or ten, then this higher level of use and occupancy would have considerably greater potential for impact on the character of the area; the current Project does not increase the number of bedrooms or total occupancy that would otherwise typically occur with a single family residence. No specific information was received that would support a finding of potential for significant adverse impact under Criterion 8 (aesthetics) from the Project.

Criterion (10) Municipal Plan Conformance: The current Town Plan (Exhibit F) has been reviewed and no language which might be relevant to a question of potential for adverse impact under Criterion 10 was found. As such, the Project does not have potential for significant adverse impact under Criterion 10 related to municipal plan conformance.

There is no indication that the Project could have a potential for significant adverse impact under any of these criteria, or under any other criterion specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10). It is also worth noting that Act 250 would not apply to the Project even if no subdivision permit existed, because it is located on a tract of land less than ten acres in size.

## **CONCLUSION**

The existing Project (change in use of an existing single family residence to occupancy by two residents (and staff) as a component of a community based crisis stabilization program operated by the Emergency Services Department of Northeast Kingdom Human Services) does involve a change in use from the residential use authorized by Land Use Permit #7C0066, but the Project does not have any potential for significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10). The existing Project is not a “material change” to the existing Subdivision which is subject to Act 250 Land Use Permit #7C0066, pursuant to Act 250 Rule 2C(6). Therefore, an Act 250 permit is not required pursuant to Rule 34(A).

Please do not hesitate to contact me with questions at 802-751-0126 or [kirsten.sultan@state.vt.us](mailto:kirsten.sultan@state.vt.us).

Sincerely,

*/s/ Kirsten Sultan*

Kirsten Sultan, P.E., Coordinator  
District #7 Environmental Commission

cc: Certificate of Service dated December 13, 2013

### **Exhibit List**

- A. Permit, Findings of Fact and Conclusions of Law and Order #7C0066 dated July 28, 1972;
- B. Letters from District Coordinator John Miller dated July 17, 1980 and October 20, 1980;
- C. Project Site Plan dated 9-1973;
- D. Excerpts from application #7C0066 submitted June 2, 1972;
- E. Locus Map;
- F. Lyndon Town Plan Adopted by the Lyndon Selectboard on December 22, 2008;
- G. Petition to oppose the NEKHS CARE bed facility dated October 3, 2013;
- H. Lyndon Development and Review Board minutes dated October 3, 2013;
- I. Coordinator’s Notes dated November 5, 2013;
- J. CARE brochure;
- K. CARE Questions and Answers;
- L. Emails from Jurisdictional Opinion requestors;

- M. Act 250 criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10);
- N. Locus Map with Distance Information;
- O. 2012 Information from Town of Lyndon website, obtained 12-12-13;
- P. Photographs taken on December 13, 2013 by Coordinator Sultan.

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). A request for reconsideration by the district coordinator, pursuant to Act 250 Rule 3(B), must be sent to the district coordinator at the above address within 30 days of the mailing of this opinion. Effective July 1, 2013, no appeal may be taken from a jurisdictional opinion or coordinator's decision on reconsideration without reconsideration by the Natural Resources Board. Requests for reconsideration by the Board must be submitted to the Board within 30 days of the mailing of this decision or a coordinator's decision on reconsideration. The mailing address is: Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201. For additional information, see the Board's Interim Procedure on Jurisdictional Opinions and Reconsideration [<http://www.nrb.state.vt.us/policies/recon.pdf>].

## CERTIFICATE OF SERVICE

I hereby certify that I, Kirsten Sultan, Coordinator, District #7 Environmental Commission, sent a copy of the foregoing document [JURISDICTIONAL OPINION #7-275 , CHANGE IN USE AT 239 WHIPPLE HILL DRIVE, LYNDONVILLE, VT] by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 13th day of December, 2013.

Amy Rast  
832 Highland Circle  
Lyndonville, VT 05851  
[Rast\\_832@yahoo.com](mailto:Rast_832@yahoo.com)

Muriel & Grover Potter  
16 Gus's Run  
Lyndonville, VT 05851  
[mlpotter@charter.net](mailto:mlpotter@charter.net)

Bernard Norman  
Northeast Kingdom Human Services  
81 Crawford Road, Derby  
PO Box 724  
Newport, VT 05855  
[bnorman@nkhs.net](mailto:bnorman@nkhs.net)

Lisa Farnsworth  
239 Whipple Hill Road  
Lyndonville, VT 05851

Town of Lyndon  
c/o Municipal Administrator  
PO Box 167  
Lyndonville, VT 05851  
[lyndon@kingcon.com](mailto:lyndon@kingcon.com)

Town of Lyndon  
Planning Commission  
ATTN: Justin Smith  
Zoning Administrator  
PO Box 167  
Lyndonville, VT 05851  
[lynzoning@kingcon.com](mailto:lynzoning@kingcon.com)

Northeastern Vermont  
Development Association  
PO Box 630  
St. Johnsbury, VT 05819  
[dsnedeker@nvda.net](mailto:dsnedeker@nvda.net)

Agency of Natural Resources  
Office of Planning & Legal Affairs  
1 National Life Drive  
Davis 2  
Montpelier, VT 05620-3901  
[ANR.Act250@state.vt.us](mailto:ANR.Act250@state.vt.us)  
[Elizabeth.Lord@state.vt.us](mailto:Elizabeth.Lord@state.vt.us)  
[Jennifer.Mojo@state.vt.us](mailto:Jennifer.Mojo@state.vt.us)

District #7 Environmental Commission  
1229 Portland Street, Suite 201  
St. Johnsbury, VT 05819

Interested Persons:

Donna M. Garfield  
97 Liberty Lane  
Lyndonville, VT 05851

Amie Guyer  
312 Whipple Hill Drive  
Lyndonville, VT 05851

Donna Wheeler  
20 Wheeler Lane  
Lyndonville, VT 05851

Nicole Bigelow  
81 Strawberry Hill  
Lyndonville, VT 05851

Charles & Rebecca Holden  
299 Whipple Hill Drive  
Lyndonville, VT 05851

Martin & Jan Hatch  
PO Box 859  
Lyndonville, VT 05851

Kathy Stewart  
328 Whipple Hill Drive  
Lyndonville, VT 05851

Certificate of Service JO 7-275  
Change in Use at 239 Whipple Hill Drive  
Lyndonville, VT  
Page 2 of 2

Vincent & Lorraine Matteis  
53 Strawberry Hill  
Lyndonville, VT 05851

Joanne & Robert Bertrand  
45 Fairview Lane  
Lyndonville, VT 05851

Reed Garfield  
97 Liberty lane  
Lyndonville, VT 05851

Justin & Laura Tanner  
149 Clover Hollow  
Lyndonville, VT 05851

Kevin & Holly McKeon  
PO Box 1191  
Lyndonville, VT 05851

Stuart Rast  
832 Highland Circle  
Lyndonville, VT 05851

Patricia Weston  
141 Whipple Hill Drive  
Lyndonville, VT 05851

Claire Tanych  
132 Whipple Hill Drive  
Lyndonville, VT 05851

David Keenan  
103 Fairview Lane  
Lyndonville, VT 05851

Candace King  
90 Vista Lane  
Lyndonville, VT 05851

Patricia Muzzy  
230 Finney Drive  
Lyndonville, VT 05851

Deborah Lee  
821 Highland Circle  
Lyndonville, VT 05851

Luke Bergeron  
112 Whipple Hill Drive  
Lyndonville, VT 05851

Cheryl Ziembroski  
365 Whipple Hill Drive  
Lyndonville, VT 05851

Joan Hahr  
11 James Way  
Lyndonville, VT 05851

*/s/ Kirsten Sultan*

---

Kirsten Sultan, Coordinator