



December 13, 2018

Jon Anderson
Primmer Piper Eggleston & Cramer PC
30 Main Street, Suite 500
P.O. Box 1489
Burlington, VT 05402-1489

Subject: Jurisdictional Opinion #JO 1-392 - Vincent Connolly, 287 Estabrook Road, Killington, VT Cricket Hill Subdivision, Act 250 Permit Series #1R0096

Dear Mr. Anderson:

I write in response to your letter dated November 28, 2018 wherein you concluded that “Vince is not required to file for an Act 250 permit because he is not making a material change to his property because Vince does not propose to make a cognizable change at his property.” Pursuant to 10 V.S.A. § 6007, the statutory authority to determine whether Act 250 jurisdiction attaches to any given activity rests with the District Coordinator. Because you and your client elected to withdraw your request for such an opinion – embodied in Mr. Connolly’s October 23, 2018 request for a Project Review Sheet – and you subsequently and categorically assert that Act 250 jurisdiction does not attach, I am obligated to issue the opinion which follows herein.

I. Summary of Opinion

Act 250 permit #1R0096, issued on February 22, 1973, approved a 16-lot residential subdivision in Killington, Vermont. The water supply and wastewater systems, as well as the roadway and parking networks, were approved based upon usage as typical three or four-bedroom private homes. Both the citizens and the District Commission relied upon the representations made in the application for that permit. Mr. Connolly has subsequently converted the use to a commercial rental for occupancy by up to 28 people. That change in use, with its attendant potential for significant adverse impacts under Act 250 criteria 1B, 5 and 9K, 8 and 10 constitutes a material change for which an Act 250 permit amendment is required prior to continued use in this manner.

II. Facts and Documents

- a. Vince Connolly owns property at 287 Estabrook Road.
- b. Project Review Sheet Dated 10/23/18 PIN# RU18-0284, (Withdrawn).
- c. Letter from Meredith Maskell, Drinking and Groundwater Protection, dated October 5, 2018, 287 Estabrook Road Rental classified as a Public Transient Non-Community (TNC) drinking water system.

- d. Gmail from Vincent Connolly to Richard Horner, Town of Killington, October 12, 2108, regarding property and “Change of Use.”
- e. Fire Inspection Results from Vermont Department of Public Safety, Division of Fire Safety, Site ID 92007, classification of property as a “hotel,” Violations listed. Inspection Date 01/29/2014.
- f. Second Division of Fire Safety, Fire Inspection Results. Insp. Date. 12/12/2014. Violations Corrected.
- g. Notice of Alleged Violation (NOAV) Patrick Lowkes, Environmental Enforcement Officer, dated 10/08/18. Violation of Wastewater System and Potable Water Supply Rules - Permits Required.
- h. Letter from Richard Horner, Zoning Administrator, Town of Killington, dated August 2, 2018. Violation of Zoning Bylaws. Property Dwelling Capacity for no more than 6 persons.
- i. Letter from Kevin Smith, Marble Valley Engineering, dated July 24, 2017, regarding 287 Estabrook Road property. Property septic system is “overused.”

III. Analysis

The evidentiary standard in Act 250 is a “preponderance of the evidence.” That is a low bar compared to the higher “clear and convincing” or “beyond a reasonable doubt” standards. In this case and based upon my review of the facts and documents cited above, it is my opinion that Mr. Connolly’s conversion of a single-family home into a commercial rental for up to 28 occupants is so clearly a material change under Act 250 Rule 2(C)(6) that it rises to the “beyond a reasonable doubt” standard.¹ That level of occupancy implicates Act 250 criteria 1(B) with respect to potential adverse water supply and wastewater disposal, 5&9K with respect to traffic and parking impacts, 8 with respect to potential noise or other aesthetic impacts, and 10 with respect to conformance with the Killington Town Plan.

IV. Conclusion

The solicitation for and use of 287 Estabrook Road in Killington, Vermont as effectively a “hotel” (see Exhibit 002) for routine commercial occupancy is a material change to the Land Use permitted under permit #1R0096. Accordingly, continued use of the home in the manner described herein, requires an Act 250 permit amendment. Continuing use in this manner constitutes a continuing violation.

V. Reconsideration or Appeal

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). 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 (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) 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

¹ In the course of my meeting with Mr. Connolly on October 30, 2018, Mr. Connolly stated that he was obligated to spend “\$60,000” on the retrofit of a building sprinkler system to meet Division of Fire & Safety (“the Division”) regulations. I further note that the Division characterized the use as a “Hotel” (see Exhibits #2 and #3).

Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431(b)(1) (2015), which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Sincerely,

/s/ William Burke
William Burke
District Coordinator