



NATURAL RESOURCES BOARD
District 5 Environmental Commission
10 Baldwin Street
Montpelier, Vermont 05633-3201

July 16, 2019

Nicholas Low, Esq.
Tarrant, Gillies & Richardson
44 East State Street
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via [e-mail @ nlow@tgrvt.com](mailto:nlow@tgrvt.com)

Re: Jurisdictional Opinion JO-6-018 (Reconsideration)
Morin Subdivision, Town of Fairfax

Dear Attorney Low:

This letter constitutes a Reconsideration of Jurisdictional Opinion JO-6-018 pursuant to Act 250 Rule 3(B). The Morins filed a timely request for reconsideration via a July 8, 2019 e-mail to correct a typo regarding the dates on the J.H. Stuart site plan, and to file for the record a site plan prepared by David J. Peatman, inadvertently omitted from the original submittals, which depicts a 9 lot subdivision which the Morins withdrew prior to consideration by the Fairfax Development Review Board. The Reconsideration is hereby granted. Finding of Fact #5 is revised accordingly.

Following is Jurisdictional Opinion JO-6-018 (Reconsidered), which supersedes Jurisdictional Opinion JO-6-018 issued on July 3, 2019.

This letter constitutes a Jurisdictional Opinion pursuant to the provisions of 10 V.S.A. 6007(c) and Act 250 Rule 3 and is issued in response to your May 15, 2019 request on behalf of Ronald and Deanne Morin as to whether the proposed creation of 9 residential lots on their tract in Fairfax constitutes a "subdivision" pursuant to 6001(19). This determination relies on your May 15, 2019 letter and the accompanying submittals identified as Exhibits A-F and a site plan prepared by David J. Peatman. As determined in the following, the project does not constitute a subdivision as defined by the statute. Therefore, an Act 250 permit is not required for the proposed 9 lots subdivision.

Facts

1. On May 6, 2004, Wastewater System and Potable Water Supply Permit WW-6-0868 was issued to the Morins authorizing the creation of 8 lots (Lots 1, 2, 3, 4, 5, 7, 8, and 9 of their tract located off Vermont Route 104 and Michelle Road in the Town of Fairfax. (Exhibits A and B)
2. Lot 3 was subsequently conveyed and subdivided into two lots by the new landowner. Exhibit C depicts the subdivision of Lot 3, which was authorized by the issuance of Wastewater System and Potable Water Supply Permit WW-6-0868-2 on March 26, 2005.



3. Ten years later, on April 17, 2014, Wastewater System and Potable Water Supply Permit WW-6-0868-9 was issued to the Morins authorizing the creation of an additional 8 single family residential lots comprised of Lots 2, 3, 7, 1, 36, 43, 44 and 51. (Exhibit D)
4. Morin now proposes a third subdivision to create 9 lots (Lots A-H, and Lot 34) on the remaining 114.62 acres, as depicted in Exhibit E. Additionally, the boundary lines for Lots 1 and 51 will be adjusted.
5. Two site plans depicting the 9 lots, the first by J.H. Stuart and Associates dated February 2008, last revised February 27, 2019 and the second by David J. Peatman, dated March 1, 2019, last revised March 4, 2019, were filed with the Fairfax Development Review Board. However, prior to the Board's consideration of the proposed subdivision, the Morins withdrew all site plans. Neither of the 9 lots site plans have been approved by the DRB, nor has a 9 lots site plan been filed or recorded in the town's land records. The Morins have not filed an application for a State Wastewater System and Potable Water Supply Permit.
6. Exhibit F depicts the lots created by Morin in 2004, 2014 and the 9 lots proposed to be created in 2019.
7. The Town of Fairfax is a ten-acre town for purposes of Act 250 jurisdiction.

Conclusions

10 V.S.A. § 6001(19) defines subdivision in pertinent part as:

A tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same District Commission, within any continuous period of five years. In determining the number of lots, a lot shall be counted if any portion is within five miles or within the jurisdictional area of the same District Commission.

Pursuant to Act 250 Rule 2(B)(1), a subdivision is deemed to have been created for the purpose of resale with the first of the following events:

- (a) *the filing of a plot plan in the town land records depicting the subdivided lot or lots;*
- (b) *the issuance of any required municipal approval for the subdivided lot or lots that becomes final;*
- (c) *the issuance of a wastewater system and potable water supply permit for the subdivided lot or lots by the Agency of Natural Resources or delegated municipality;*
- (d) *in the absence of any of the above, the conveyance of a lot or lots created by a person.*



The record in this matter demonstrates that the Morins created less than ten lots in 2004 and 2014. Additionally, more than five years have elapsed since the Morins created the 8 lots subdivision in 2014. (those lots “rolled off” the Morin “count” on April 18, 2019). Therefore, there is no current lot count that can be assessed to Morin.

Furthermore, neither the proposed 9 lots subdivision site plan by Stuart dated February 2008, last revised, February 27, 2019, nor the 9 lots subdivision site plan by Peatman, dated March 1, 2019, last revised March 4, 2019 were filed in the town records; neither plan was approved by the town; and no Wastewater System and Potable Water Supply Permit has been issued by the State of Vermont for a Morin 9 lots subdivision. Therefore, no subdivision is deemed to have been created.

Based on the foregoing, it is concluded that the proposed subdivision of 9 lots from the balance of the Morin tract does not constitute a subdivision as defined in 10 V.S.A. 6001(19). Accordingly, an Act 250 permit is not required for the Morin’s proposed 9 lots subdivision.

Sincerely,



Susan Baird, District 6 Coordinator
cc: Certificate of Service

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. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, 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 Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 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.



CERTIFICATE OF SERVICE

I hereby certify on this 16th day of July, 2019 a copy of the foregoing **JURISDICTIONAL OPINION 6-018 (Reconsideration)** was sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to nrb.Act250Barre@vermont.gov

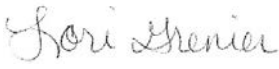
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By: 

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