



May 22, 2020

Jeremy Seeger, President
Mountain View Water Association, Inc.
PO Box 193
Rochester, VT 05767
Jeremy@jeremyseeger.com

Re: Jurisdictional Opinion #3-206, Act 250 Permit #3W0069 and amendments, Rochester

Dear Jeremy:

This letter is a jurisdictional opinion in response to your question to me in an email dated May 15, 2020. You asked me if an Act 250 permit is required for connecting the existing residences at Mountain View Acres, currently connected to a public water system, operating under Water Supply WSID #5329, to individual drilled wells. It is my opinion that this would require an amendment to the Land Use (Act 250) Permit #3W0069 because it is a material change to the previously permitted subdivision permit. The facts I have relied on are from a phone conversation with you on Friday, May 15, 2020, emails from you dated May 15 and 19, and information in the Act 250 files.

Background:

1. Land Use Permit (LUP) [#3W0069](#), and Findings of Fact and Conclusions of Law (FFCL) #3W0069, issued on August 31, 1972, authorized the development of a 24-lot residential subdivision.
2. In order to make positive findings under Criterion 2 Sufficient Water Supply, the Commission relied on the fact that the applicant proposed to connect to an existing adjacent water supply system. (FFCL at 3).
3. In order to make positive findings under Criterion 3 Water Supply, the Commission relied on the fact that "the well supplying the existing water system is rating 60 gallons per minute." (FFCL at 4)
4. Condition 1 of the Findings required approval of the public water system from the Department of Health. (FFCL, page 2, Conditions at 1).
5. Condition 2 of the Findings required the applicant to obtain a subdivision permit from the Division of Environmental Protection prior to the sale of any lots. (FFCL, page 2, Conditions at 2).
6. The Division of Environmental Protection, issued (under the provisions of Chapter 5, Subchapter 10, of the Vermont Health Regulations, as amended) Subdivision Permit #EC-659 on March 1, 1973. Relevant conditions in Subdivision Permit #EC-659 include:
 - (1) Each lot is approved for connection to the public water supply system providing (prior to connection) the condition of the Health Department's approval letter of February 13, 1973 are complied with.

- (6) A copy of the Department of Health letter to operate the expanded municipal water supply services shall be filed with the Division by the applicant.
7. Because the water system is failing, owners of the developed lots propose to abandon connection to the shared water system and drill individual wells.

Statutes and Rules:

Act 250 Rule 2(C)(6), in relevant part, defines “material change” as any cognizable change to a development or subdivision subject to a permit under Act 250, 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 that Act 250 addresses under 10 V.S.A. § 6086(a)(1)-(10).

Act 250 Rule 34(A) states that a material change to a permitted development or subdivision requires a permit amendment.

Discussion:

Abandoning the shared water system that has served these lots and connecting to individual wells is a material change to the existing Act 250 permit. There may be impacts related to Criterion 2 with respect to sufficient water supply; Criterion 3 with respect to a burden on existing water supply; and Criterion 9(K) with respect to potential impact on public investments (water system).

Conclusion:

Abandoning the existing water system that serves the permitted residential subdivision, Mountain View Acres, and drilling individual wells to serve each residence is a material change to the permitted subdivision, therefore, a permit amendment is required.

If you send me the names and addresses of the other lot owners that are connected to the water system and plan on connecting to an individual private well, we will include them in any further correspondence related to obtaining an Act 250 permit amendment. Once each lot owner obtains the required Wastewater System and Potable Water Supply (WW) Permit from the VT Agency of Natural Resources, an application for the Act 250 permit amendment can be submitted. I cannot deem an Act 250 permit application complete without the WW permit. The WW permit creates a presumption that the project covered by WW permit satisfies Criteria 1(B) Waste Disposal, 2 and 3 (Water Supply), meaning that if a party was to oppose the proposed project related to Criteria 1(B), 2 or 3, they would have a higher threshold. Commissions give deference to many permits issued by the ANR.

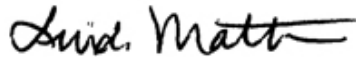
If possible, it would be expedient to submit one application with each landowner being a co-applicant.

The Commission will need information related to the abandonment of the shared water system. Also, if applicable, please describe solutions to satisfy reimbursement to the State that may be required for funding/loan that may have been made for previous maintenance and/or repair expenses.



The application is accessible on our website at <https://nrb.vermont.gov/act250-permit>. Do not hesitate to contact me if you have questions or need assistance.

Best regards,



Linda Matteson
District 3 Coordinator
802-289-0598
linda.matteson@vermont.gov

cc: Rochester Selectboard, Rochester Planning Commission, Two Rivers-Ottawaquechee Regional Commission, VT Agency of Natural Resources Office of Planning and Policy, John Fay, Permit Specialist, and Terry Shearer, Regional Engineer

Attachments: Emails dated 5/15/20 and 5/19/20

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Effective May 31, 2016, 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.

