

Vermont Natural Resources Board

Notice of Act 250 Jurisdictional Opinion

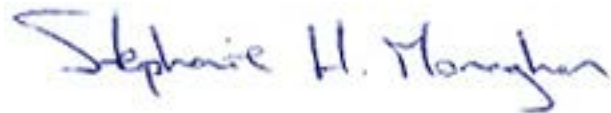
#4-246B

On January 29, 2019, the District #4 Coordinator issued Act 250 Jurisdictional Opinion #4-246A pursuant to 10 V.S.A. 6007(c) and Act 250 Rule 3(C), in response to a request made in a letter dated November 16, 2018 from Graham McAfee. The Jurisdictional Opinion affirms JO #4-246A, stating that, pursuant to the requirements of Act 250 Rule 2(B)(2), Mr. Atwood has successfully retracted and abandoned his Project (Norton Meadows) that was to be located at 44 Raceway Road in Jericho, VT.

Copies of this jurisdictional opinion have been served on all persons specified in 10 V.S.A. 6007(c) and Act 250 Rule 3(C). A copy of the jurisdictional opinion may be obtained by contacting the District Coordinator at the address/telephone number below. Reconsideration requests are governed by Act 250 Rule 3(C)(2) and should be directed to the District Coordinator at the address listed below.

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 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50. 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.

Dated at Essex Junction, Vermont this 29th day of January, 2019.



Stephanie H. Monaghan, District Coordinator
District #4 Commission
111 West Street
Essex Junction, VT 05452
802-879-5662
stephanie.monaghan@vermont.gov

**Natural Resources Board
111 West Street
Essex Jct., VT 05452**

**Act 250 Jurisdictional Opinion
#4-246B**

This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/Agent or Other Person. Any Notified Person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator (10 V.S.A. § 6007 (c) and Act 250 Rule 3 (b)) or an Appeal with the SUPERIOR COURT, Environmental Division within 30 days of the issuance of this opinion

☒ I hereby request a jurisdictional opinion from the District Coordinator or Assistant District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below: **Graham McAfee, 13 Meadow Drive, Jericho, VT 05465**

Project Description:

Original facts from JO #4-246A, dated 9/25/2018:

On October 8, 2015, District #4 Coordinator issued JO #4-246 concluding that the creation of eight residential lots for Norton Meadows triggered Act 250 jurisdiction as a subdivision pursuant to 10 V.S.A. §6001(19). The principals were Dean Davis (landowner) and Atwood Enterprises, Ltd. (Steve Atwood). No Land Use Permit was procured, and no construction was commenced. Recently, Steve Atwood has taken the following steps to fully abandon Act 250 jurisdiction on this Project.

1. 8/8/18 Revocation of Permit WW-4-4309;
2. 8/27/18 letter from Town regarding abandonment with 8/30/18 Recording Stamp, Misc. Vol. 341, Page 199;
3. 8/29/18 Notice of Recording of Voluntary Abandonment of Planned Unit Development with 8/30/18 Recording Stamp, Misc. Vol. 341, Page 200;
4. 8/9/18 Boundary Plat – Of a portion of Lands Owned by Dean C. Davis (To depict no Subdivision);
5. 9/5/18 receipt of Recording 8/9/18 Boundary Plat, filed on Glide 465A.

New Facts:

An Application for Access Permit was made by Mr. Atwood to the Town of Jericho on 8/14/19. Mr. McAfee, an adjoining landowner, states that this application constitutes a permit approving the subdivision and should have been abandoned with the others under Act 250 Rule 2(B)(2).

Mr. McAfee alleges that a Mr. Atwood has submitted a substantially identical development plan to the Town of Jericho and that Act 250 cannot allow this kind of permit evasion.

AN ACT 250 PERMIT IS REQUIRED: ☐ YES ☒ NO

BASIS FOR DECISION:

Based on Act 250 Rule 2(B)(2), the Norton Meadows subdivision has been officially retracted. The principals have officially retracted or abandoned all state and local permits which originally approved the subdivision and have also filed a revised plot plan in the town land records depicting the final retraction.

The District Coordinator, in consultation with the Town of Jericho, finds that the Application for Access Permit is not an actual permit from the Town of Jericho and, therefore, does not fall into the category of a local permit that must be officially retracted or abandoned. That said, Mr. Atwood voided his Application for Access Permit on 1/16/19, to remove any question on this topic.

The Norton Meadows project that was addressed in JO #4-246 was subject to Act 250 jurisdiction in 2015 because, when added to an earlier project involving Mr. Atwood and Mr. Davis in Essex Junction, the total lot count for these individuals was greater than 10, thus triggering pursuant to 10 VSA §6001 19(A). Now, and since late 2018, the Essex Junction project no longer counts toward the total lot count for these individuals because five years have passed since that project was created. Therefore, the resulting current lot count for each Mr. Atwood and Mr. Davis is zero.

Based on an Act 250 Disclosure Statement from Mr. Atwood and Mr. Davis, dated 1/16/19, neither has subdivided any lots in the same town, environmental district, or within five miles, in the last five years. Therefore, Mr. Atwood and Mr. Davis may create up to 9 lots and/or units, pursuant to 10 VSA §6001 19(A), without triggering Act 250 jurisdiction.

However, should Mr. Atwood and/or Mr. Davis propose a project or projects involving the creation of 10 or more lots or housing units, pursuant to 10 VSA §6001 19(A), Act 250 jurisdiction will be triggered. Until then, Act 250 cannot reach beyond the law and take jurisdiction over a project that doesn't meet jurisdictional thresholds.

The conclusion under JO #4-246A stands.

SIGNATURE: 

Stephanie H. Monaghan, District Coordinator
stephanie.monaghan@vermont.gov

DATE: January 29, 2019 ADDRESS:

Environmental Commission District #4
111 West Street, Essex Junction, VT 05452
Telephone: (802)879-5662

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.

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CERTIFICATE OF SERVICE

I hereby certify on this 29th day of January 2019, a copy of the foregoing JURISDICTIONAL OPINION #4-246B GRAHAM MCAFEE, 13 MEADOW DRIVE, JERICO, VT, 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.Act250Essex@vermont.gov

Graham McAfee
13 Meadow Drive
Jericho, VT 05465

Steve Atwood
c/o David Burke
O'Leary-Burke Civil Associates
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Essex Jct., VT 05452
dwburke@olearyburke.com

Chair, Selectboard/Chair, Planning Commission
Town of Jericho
PO Box 67
Jericho, VT 05465
Jerichovermont@yahoo.com

Chittenden County Regional Planning Commission
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Regina Mahony, Planning Program Manager
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Agency of Natural Resources
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Barry Murphy/Vt. Dept. of Public Service
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Craig Keller/John Gruchacz/Jeff Ramsey/C. Clow
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Vt. Agency of Agriculture, Food & Markets
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Division for Historic Preservation
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scott.dillon@vermont.gov
james.duggan@vermont.gov

FOR YOUR INFORMATION

District #4 Environmental Commission
111 West Street
Essex Junction, VT 05452

Seven Days/Classified Ad Section
255 South Champlain Street, PO Box 1164
Burlington, VT 05402
classifieds@sevendaysvt.com

Diane Snelling, Chair
Donna Barlow Casey, Executive Director
Greg Boulbol, General Counsel
Evan Meenan, Associate General Counsel
Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201

ADJOINING LANDOWNERS

Available via:
<https://anrweb.vt.gov/PubDocs/ANR/Planning/JO%204-246B/Letter%20by%20D.%20Burke%20re%20Request%20for%20JO%20Dated%201-2-19.pdf>

Dated at Essex Junction, Vermont, this 29th day of January, 2019.



Natural Resources Board Technician
879-5614
christine.commo@vermont.gov

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