

Pisgah Properties LLC

2380 Ridge Road
East Burke VT 05832

May 19, 2022

State of Vermont
Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-320

Re: Proposed Civil Citation 2021_48

This letter is in response to the proposed civil citation for our property located at 5768 VT Route 5A in Westmore, Vermont. In the description of the Civil Citation, it is stated that Act 250 District 7 Coordinator Kirsten “Sultan received a complaint in May of 2021 that the parcel in question was operating a wedding venue and campground without seeking necessary permits from the State, including commercial use of the reconstructed barn.” This claim is entirely false. The shell of the barn hadn’t even been fully raised yet in May of 2021. We had just started the construction of the barn frame that month with clear understanding from the Act 250 office (Kristen Sultan) and the Dept of Historic Preservation (Elizabeth Peebles) that the project would be done in two phases. The first phase — reconstructing the old, collapsed barn with a foundation, walls, roof and electric — would not require an Act 250 permit. The second phase — adding a separate bathhouse and four cabins to the property and adding plumbing to the barn, and bringing it up to code to use as an event barn — would require an Act 250 permit.

Here is the timetable of the events and our open communication with the State agencies on this project.

May of 2009: Pisgah Properties, LLC formed by Jamie and Polly Yerkes to purchase the Cheney House property from the State of Vermont. The house has been vacant for over 4 years, boarded up with plywood and has been basically condemned. The State of Vermont had been using the house as a base to run Youth Conservation Camps (Housing and Meals) and for Rental Events. The house has a commercial license to sleep 25 people. The Yerkes run summer arts and adventure camps as their main business and consider the idea of opening a summer youth camp at the property – someday.

2009-2013: It takes four years of blood, sweat and tears and lot of money to renovate the house and make it habitable in the summertime. Yerkes work with Delvin Coleman at the VT DOHP to tastefully restore the house. The Yerkes and DOHP have a great working relationship and mutual respect for one another and the historic preservation process.

2014 – 2019: The Yerkes operate the house mostly as a summer vacation rental collecting and paying the VT DOT room tax on rentals. The property continues to host small events, a few services, and occasional small weddings in the house and on the lawn. The State of Vermont rents the house for a few staff meetings.

March 2020: Pandemic lockdown. Quarantine blues. The Yerkes are forced to cancel all summer youth camps for 2020 normally hosted at Burke Mountain Academy, Champlain College and out of State. Most Notch House vacation rentals cancel too so the property is vacant. We have time on our hands and vacancy at the house to do some upgrades on our property.

April 2020: Jamie Yerkes contacts Kristen Sultan to inquire about the Act 250 process.

JAMIE: Our dream is to rebuild the barn and add a few summer cabins and a bathhouse where the old climbing wall and activities area was. We don't have the time or the money to do it all right now. Can we do it in stages? Should we do a separate Act 250 for the proposed barn and then do another one for the cabins and bathhouse someday when we have the money? Do we even need an Act 250 permit for the barn if we just rebuild the barn and don't do the cabins and bathhouse?

KRISTEN: Only if you are changing the use. You can rebuild the barn to support the commercial activities of the existing house and property (storage for boats, furniture, equipment, lawn care, etc.), but you cannot use it as an Event Barn until you get the Act 250 permit.

JAMIE: Okay, great. So we can rebuild the barn without an Act 250 permit. We have a catamaran, a motorboat, six kayaks, a canoe, lawn chairs, lawn mowers, a small tractor. Regardless of what happens in the future, we need to rebuild the old barn, at least for storage. So Phase One will be that we rebuild the barn, just foundation, frame, roof, electrical. Then we will start to come up with a plan for Phase two: the cabins, the bathhouse, and a "change of use" for permitting the barn as an "event barn" with plumbing and we'll submit it all together as one Act 250 permit. If the Act 250 permit for Phase two doesn't get approved, we'll at least have a much-needed storage barn.

KRISTEN: Just make sure to get it approved by DOHP first. Let them know. And the town of Westmore.

May 2020: Jamie reaches out to Kristen to say that for now, we just intend to rebuild the old barn to support the existing business – not a new venture "change of use" yet. Hopefully someday we'll have the time and money to do more. But if we can legally rebuild a barn on the property that we own and pay taxes on, we will do that for now, and tackle Act 250 when we are ready to change use.

May 5, 2020: Kristen writes back:

If the barn is to support the "lodge", i.e. is to be constructed as a component of the "lodge", which appears to be the case (and the "lodge has fewer than 10 separate bedrooms) then the

*barn, as a component of the “lodge” does not qualify as “development” pursuant to §6001(3)(A)(iv) – fewer than 10 “units” or bedrooms – **thus does not require an Act 250 permit.** ...*

*... I’m understanding, based on your description, that the barn is to be constructed (or re-constructed, in the same general location), as a component of the “lodge” which has fewer than 10 units, **thus does not require an Act 250 permit.***

May 2020: Jamie reaches out to DOHP, lets her know about the project, and gets written approval to rebuild the barn from the DOHP.

May 6, 2020: The Yerkes hire Nate Sicard of Ruggles Engineering to help determine if it is even possible to build cabins, a bathhouse on the property. He will need to dig test pits, analyze soil for septic, measure for leach field. Lots of work to do over the summer of 2020 to determine whether Phase two of the project is even possible. Water flow and pressure. It seems unlikely that it can be done. The Yerkes still move forward with barn to support existing business.

June 2020: Pisgah Properties, LLC files Zoning permit to build the barn with the Town of Westmore. Receives zoning permit within a month. The go-ahead and deposit is given to builders to build the barn frame and erect it on the property.

July/Aug 2020: Ruggles Engineering digs test pits to determine viability of Phase 2. After a lot of delays and initial doubts, Nate determines that property can handle the septic for Phase 2 if we decide to go that route. Nate is given the go ahead to start the Act 250 permit application for Phase 2 to see if it is even feasible. Nate and Kristen talk a lot about the project and both agree that it is doable.

Sept 2020: The Yerkes are told that it we could have the Act 250 permit for Phase 2 in as little as 2 months, before the winter!

Fall of 2020: The Yerkes meet with a web designer to start updating website for the Notch House. Although website link is not given out to the public or listed on any wedding sites, web designer advises getting “keywords” on the site months in advance so that they start being recognized by Google search engines. Web designer does mock-up of the future pages and makes mention of the “wedding barn” and future “cabins.” The Yerkes think nothing of it knowing that

- a) nobody has the link to the site
- b) weddings are booked at least a year in advance and the couples always visit the property for a tour first.
- c) The Yerkes were given every reason to think the Act 250 permit was coming shortly, just months away. Yes, we were very naïve but this is what we were told by our engineer and the Act 250 office, they always said there was light very close at the end of the tunnel.

Fall of 2020: Construction delays due to pandemic supply chain and increased cost of materials. Engineers are overwhelmed. Builders are overbooked, can't get job done. Delays and more delays on barn raising and Act 250 permit submission. Still need to do water supply test before submitting permit and can't do that until spring. No one can test the well and deepen it. Everyone is booked 6-8 months out.

Nov 2020: Foundation is poured for barn

April/May 2021: Barn frame is raised, Phase One (no Act 250 permit needed) starts.

May 2021: Complaint that we are operating weddings in the barn and operating a campground??? We are not. Barn does not have a roof yet. Our engineer has been working on the Act 250 permit for almost a year during a pandemic. Act 250 office knows this. We have the right to build the barn to support existing business. We do not have a campground or an event barn yet, not even close.

June 2021: Well drillers finally show up and deepen the well so we can do show that we have the water supply gallons/minute necessary to file water permit. Act 250 permit is filed, at last.

After speaking with Kaitlin Hayes, Compliance and Enforcement Officer for Vermont Natural Resources Board, it has become clear that the confusion surrounding this project came from the reference on our website to a future wedding barn and cabins. Again, the barn was not raised yet when the complaint was made in May of 2021 and the cabins and so-called "campground" still do not exist. We were told by the Act 250 office that we had every right to build the barn as part of Phase One of the project. Yes, we may have gotten a little ahead of ourselves by referring the future barn and cabins on our website after we were given promising news that the Act 250 permit would be approved within months but "hopeful thinking" and "planning for the future" should not constitute a crime or even a civil violation. Anyone who bothered to make a site visit could clearly see that barn was just being raised and no cabins or campground exist even to this day.

We apologize for any confusion caused by the reference to the future event barn and cabins on our website. That was an oversight but we honestly did not expect the State, the public or anyone else except Google's spiders and web bots to be visiting the site for information on weddings until we started promoting and advertising the link.

We respectfully ask that you rescind this citation.

Sincerely,

Handwritten signatures of Jamie and Polly Yerkes. The signature on the left is 'Jamie Yerkes' and the signature on the right is 'Polly Yerkes'.

Jamie and Polly Yerkes
The Notch House
Pisgah Properties, LLC