

E N T R Y R E G A R D I N G M O T I O N

Timberlake first presents its arguments for why it is entitled to party status under criteria 5 and 9(K), which concerns a proposed development's

possible impact on traffic and public investments, including investments in public highways. These arguments are strong, since Timberlake's commercial property also depends upon safe and clear access to the Roosevelt Highway, just as Costco does for its nearby commercial facility. For these reasons, we conclude that Timberlake is entitled to party status under Act 250 criteria 5 and 9(K).

Timberlake next offers its arguments for party status under Act 250 criteria 1 (whether a proposed project will result in undue water or air pollution), 1(B) (whether the proposed development meets applicable waste disposal regulations); 1(E) (whether the proposed development will allow adjacent streams to be maintained in their natural condition "and will not endanger the health, safety, or welfare of the public or of adjoining landowners"); and 1(G) (whether proposed development will violate applicable wetlands rules). 10 V.S.A. §§ 6086(a)(1), (1)(B), (1)(E), and (1)(G).

Timberlake presents persuasive arguments under these collective criteria, alleging that the Costco facility may contribute to the discharge of stormwater and the pollutants and hazardous materials that sometimes flows with stormwater. But the evidence presented leaves uncertainties as to what is alleged and a gap in the causal connection to a particularized interest held by Timberlake. For example, Timberlake's expert seems to allege that wetlands violations exist at the current Costco facility; we are left to wonder what allegation is made as to the proposed Costco expansion, which is the only development over which we have jurisdiction in this appeal. To the extent violations exist at the current facility, the jurisdictional authority over such violations rests with the Natural Resource Board, under its enforcement authority. Further, Timberlake makes numerous references to a shared stormwater basin, but we are left to wonder the relative proximity between the multiple wetlands and discharge basins Timberlake references. Timberlake makes no reference to specific streams and regulated wetlands on the Costco project site, and no specific reference to a measurable increase in stormwater runoff that will be caused by the project expansion proposed in this application. To the extent Timberlake makes reference to possible harm from future development at the Costco site, or adjoining commercial sites, such concerns can be addressed in those future permit proceedings; we have no jurisdiction to address such future possible concerns in this proceeding.

To receive or maintain party status, the requesting party must present some connection between the project under review and an interest that is protected by the various Act 250 criteria particular to them. 10 V.S.A. § 6085(c)(1)(E). Since we cannot discern from the evidence Timberlake has thus far presented what impact, if any, may be caused by the Costco expansion under the identified Act 250 criteria, we must DENY their request for party status under Act 250 criteria 1, 1(B), 1(E), and 1(G). In so ruling, we conclude that without an offer that identifies specific streams or protected wetlands on or near the Costco project site that the proposed expansion may impact, Timberland has not met the particularized showing required in 10 V.S.A. § 6085(c)(1)(E).

Thomas S. Durkin, Judge

December 4, 2009
Date

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