

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 22-3-15 Vtec

Gingras Act 250 Amend. Permit Application

ENTRY REGARDING MOTION

Count 1, appeal from Act 250 District Commission Decision (22-3-15 Vtec)

Title: Motion to Clarify or Dismiss SOQ (Motion 5)
Filer: Michael Gingras
Attorney: Nicole A. Killoran
Filed Date: September 30, 2016

Response filed on 10/12/2016 by Atty. Peter J. Gill for Interested Person Natural Resources Bd.

Response filed on 10/14/2016 by Attorney Joseph F. Obuchowski for Appellant Edward Baker

Reply filed on 10/31/2016 by Attorney Nicole A. Killoran for Appellee/Applicant Michael Gingras

The motion is GRANTED IN PART and DENIED IN PART.

Applicant Michael Gingras seeks to subdivide his developed 9.92±-acre property located on Lakewood Drive in the Town of Swanton, where he operates a wholesale fishing bait facility. The proposed subdivision divides the Gingras property into three lots, with Lot 1 hosting an expanded wastewater disposal system; Lot 2 hosting the bait facility, which would be expanded to include an additional 4,100 square foot structure for the bait operations; and Lot 3, which would host a single-family residence.

Appellant Edward Baker owns an adjoining 10.01±-acre property on which he resides, raises horses, and conducts agricultural activities. Mr. Baker appealed the District #6 Environmental Commission's determination to grant Mr. Gingras an amendment to his pre-existing Act 250 permit because of concerns about the adverse impacts the expanded bait and on-site waste disposal facilities would have on his property and his activities on his property.

By decision dated August 21, 2015, this Court granted Appellant's request for additional party status under Act 250 Criteria 1(B) and 9(B); Appellant now has party status in this proceeding under Act 250 Criteria 1(B) (waste disposal), 5 (traffic), 8 (aesthetics), and 9(B) (impacts upon prime agricultural soils).

The parties have had a long-running dispute about the proper scope of this appeal. That dispute has focused upon the Statement of Questions that Appellant has presented. Appellant

filed an original Statement of Questions on April 7, 2015. Pursuant to a discussion the parties and the Court had at a subsequent status conference, held on September 28, 2015, and in response to concerns raised by Applicant at that conference, Appellant agreed to file a Restated Statement of Questions, which he filed on February 16, 2016.

Applicant remains concerned about what he perceived to be ambiguity in Appellant's Restated Statement of Questions and therefore filed a motion for the Court to order dismissal or clarification of most of the restated Questions. Appellant objects to Applicant's pending motion.

The Vermont Natural Resources Board ("NRB") filed a responsive memorandum that appears to mostly favor Applicant's request for clarification or dismissal. The NRB also inserted an additional argument, suggesting that Appellant's Questions 5 and 7 from Appellant's February 16, 2016 Restated Statement of Questions appear to suggest that Appellant, and perhaps other neighbors, should be required to become "co-applicants" due to the project's alleged use of and impacts upon surrounding lands. Neither of the principal parties to this appeal adopted this reasoning.

The Court shares Applicant's belief that the Restated Questions do not provide sufficient clarity. We therefore direct that Appellant, **within the next 20 days (i.e.: by no later than Wednesday, February 1, 2017)**, file a Second Restatement of his Statement of Questions, in the following manner:

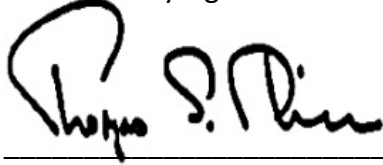
- a. There shall be no more than four Questions, each specifically referencing the Act 250 criteria under which Appellant has been granted party status (i.e.: Criteria 1(B) (waste disposal), 5 (traffic), 8 (aesthetics), and 9(B) (impacts upon prime agricultural soils)).
- b. To the extent that Appellant wishes to elaborate, in sub-parts to each Question, his concerns of the alleged impacts that the proposed project may have upon him or his property under the specified Criteria, he may do so in "a short and plain" manner, so as to conform to V.R.C.P. 8(a).
- c. Appellant is reminded that the pending application seeks an approval for a three-lot subdivision and an expansion of an already permitted and developed commercial bait facility. Therefore, he should not include in his Restatement of Questions claims that are solely related to the already permitted and existing facility. This appeal is not the proper forum for such concerns.

The Appellant must file with the Court and serve on all other parties his Second Restatement of Statement of Questions, in the manner prescribed by this Entry Order, **no later than February 1, 2017**. Failure to do so may result in dismissal of his Statement of Questions and this appeal.

The Court expects that this matter will soon be ready to set for trial. The Court therefore directs that all parties, **by no later than Wednesday, February 1, 2017**, shall provide the Court with a written list of their and their witnesses unavailable dates for a trial during the months of March or April, 2017. The parties shall also advise the Court in their filing of the number of days that they expect that the trial may take.

So ordered.

Electronically signed on January 11, 2017 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is written in a cursive style with a large initial "T".

Thomas S. Durkin, Judge
Environmental Division

Notifications:

Joseph F. Obuchowski (ERN 4591), Attorney for Appellant Edward Baker

Nicole A. Killoran (ERN 5727), Attorney for Appellee Michael Gingras

Peter J. Gill (ERN 4158), Attorney for the Vermont Natural Resources Board