

Shannon A. Bertrand
David R. Cooper
John A. Facey, III
James P. W. Goss
A. Jay Kenlan
Rodney E. McPhee
John C. Newman
Edward V. Schwiebert

James P. W. Goss
jgoss@kenlanlaw.com
Direct Dial: 802-665-2730

KENLAN
SCHWIEBERT
FACEY
& GOSS, P.C.
ATTORNEYS AT LAW

Christopher W. Blanchard*
Heather Z. Cooper
Jennifer L. Dudanowicz*
Matthew D. Getty
Matthew G. Hart*

*Admitted in MA and VT
*Admitted in VT and NY

Paula J. McCann, Of Counsel
Ron R. Morgan, Of Counsel

Candy Anderson, Paralegal
Holly Webb, Paralegal

January 2, 2013

Peter Keibel, District Coordinator
Natural Resources Board
111 West Street
Essex Junction, VT 05452

**RE: Dearborn Land Investment – Hinesburg Dollar General Store
Act 250 Jurisdictional Opinion
KSF&G File No.: 40399-310**

Dear Peter:

As you will recall, I represent Dearborn Land Investment which is in the process of acquiring and developing several parcels of land in Vermont for the construction of Dollar General retail stores. I am writing to request a jurisdictional opinion with respect to a parcel of land which Dearborn, or its assignee, intends to acquire at the intersection of Route 116 and Shelburne Falls Road in Hinesburg, Vermont. I enclose a location map with respect to the Project for your use. For the reasons noted below, I do not believe that the development of this parcel of land with a Dollar General Store will trigger Act 250 jurisdiction under the circumstances described below. I would thus request a jurisdictional opinion from your office confirming the same.

For purposes of analyzing this project with respect to “development” or “subdivision” activity pursuant to 10 V.S.A. Ch. 151, the group of persons owning or controlling the subject property consists of Joseph Bissonette, Barbara Bissonette, the Bissonette Revocable Trusts, and Haystack Crossing, LLC. Haystack Crossing, LLC is the current owner of the property which Dearborn is interested in. The Bissonette family owns or controls Haystack Crossing, LLC. The following recitation of facts reflects research which our office did in the Hinesburg Land and Permitting Records together with utilizing independent on-line resources we have at our disposal.

According to our research, as of November 28, 2007, due to subdivision activities by some of the above persons or entities, the subject control group had subdivided a total of six (6) lots in Hinesburg. This included two (2) lots which were created in 2003 and 2004. These latter two lots no longer counted toward the 10 lot total as of 2008 and 2009, respectively, when the five (5) year look back period under 10 V.S.A. 6001(19) for them expired. As a result, as of November 28, 2009 the total lot count for the subject control group was four (4).

In 2010, the control group subdivided an additional four (4) lots, totaling 91.3 acres in size. Thereafter, on September 22, 2011 the control group conveyed all of this land to Haystack Crossing, LLC. The deed description into Haystack Crossing, LLC indicated that the grantor was conveying the four (4) lots plus "three strips of land". On September 29, 2011, Lots 1 and 3 were sold to a third party. On that same date, Haystack dedicated the three strips of land referred to in the conveyance above to the Town for road purposes. Pursuant to the policy adopted by the Land Use Panel of the Natural Resources Board on May 18, 2004, lots which are subdivided solely for the purpose of establishing access roads are not counted as a "lot" for purposes of "subdivision" jurisdiction.

Thereafter, on November 20, 2012, lot 4 in the captioned subdivision was subdivided for conveyance for conservation purposes. I would ask you to assume in your decision that this was to a "qualified entity" for Act 250 jurisdictional purposes under 10 V.S.A. §6001(19). As a consequence, this conveyance did not create a "lot" for purposes of the jurisdictional total.

On November 28, 2012 the five (5) year look back period expired for the four (4) lots which were created on November 28, 2007. Therefore, as of the present time, the control group in question has subdivided a total of four (4) lots which would be counted toward Act 250 jurisdiction, being the four (4) which were subdivided in 2010.

It is presently the intention of Haystack to divide Lot 4 into two (2) lots for conveyance of one new lot to Dearborn. In light of the above totals, this lot would count as the fifth lot subdivided and will be less than ten (10) acres in size. Due to the fact that Hinesburg is a so-called 10-acre town, subdivision of this lot and sale to Dearborn and subsequent construction of a Dollar General Store on that lot should not trigger Act 250 jurisdiction provided that the lot is acquired in fee and in an arm's length transaction before the control group creates five (5) more lots within a five (5) mile radius of any point or any lot or within the same Act 250 District and provided that the lot to be acquired by Dearborn is acquired in fee before construction of the Dollar General Store commences.

I would appreciate it if you could issue a project review sheet similar to that which was issued in Jericho indicating that given the foregoing sequence of events no "development" or "subdivision" activity triggering Act 250 jurisdiction will occur in this transaction. I do wish to stress that the foregoing facts are based upon information which we developed on our own. If you have additional information which might change my analysis above or if you require additional information before issuing an opinion holding that Act 250 jurisdiction does not attach, I would appreciate it if you would contact me before you issue your decision.

Many thanks in advance for your attention to this.

Very truly yours,



James P. W. Goss

JPWG/lb

Encl.

cc: Dearborn Land Investments
Trudell Consulting Engineers
Town of Hinesburg Selectmen
Town of Hinesburg Planning Commission
Chittenden County Regional Planning Commission



Address Hinesburg, VT

Get Google Maps on your phone

Text the word "GMAPS" to 466453

