

Environmental Court of Vermont
State of Vermont

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E N T R Y R E G A R D I N G M O T I O N
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JLD Properties of St. Albans, LLC Docket No.s 92-5-07 Vtec & 116-6-08 Vtec
Project: Wal-Mart discount/retail store (mun. permit and Act 250 permit)
Applicant: JLD Properties of St. Albans, LLC

Title: Motion to Amend Judgment (filing No. __)
Filed: March 26, 2010
Filed by: Jon Anderson, Attorney for Appellants Commons Associates, Inc. and
 R.L. Vallee, Inc.

Response: none; Attorney Anderson represents that Applicant JLD consents.

X Granted ___ Denied ___ Other

Appellants Commons Associates, Inc. and R.L. Vallee, Inc. ("Commons" and "RL Vallee") have requested that this Court amend its Merits Decision of January 20, 2010, ("Merits Decision") concerning the consolidated appeals relating to the Wal-Mart retail store and related improvements proposed for a site off of U.S. Route 7 in the Town of St. Albans ("Town"). Commons and RL Vallee request that the Court amend its Merits Decision to include memorials in both the Act 250 permit appeal and municipal appeal proceedings to reflect that Applicant JLD Properties of St. Albans ("Applicant") has pledged to not include in its proposed development (1) gasoline sales or (2) retail floor space in excess of 10,000 square feet for the sale of food items similar to those sold in grocery stores. The attorney for Commons and RL Vallee has represented that Applicant does not object to these suggested revisions. No party has filed a response to Commons's and RL Vallee's pending motion.

We addressed both of these issues in our Merits Decision, at pages 37-38. Our Decision references similar or identical prohibitions as conditions in our approval of the municipal and Act 250 applications, respectively. However, both conditions are not specifically referenced in both approvals. It is for this reason, we understand, that Commons and RL Vallee have filed for amendment.

As addressed in the Merits Decision, the prohibitions concerning grocery and gasoline sales was not a consequence of the Court determining that Applicant had failed to fulfill its burdens of production or persuasion on the propriety of their project including such sales, but rather because Applicant had not proposed including gasoline or significant grocery sales in the first instance. Merits Decision, at 37 (noting that Applicant had "never requested approval to have its proposed Wal-Mart directly compete with nearby grocery stores, supermarkets, and gasoline stations.") These legal issues were a topic of discussion at trial and in our Merits Decision, because of concerns by Commons and RL Vallee, if such sales were to occur at the proposed Wal-Mart. Thus, we included conditions prohibiting gasoline and significant grocery store sales in our approval of the Act 250 and municipal applications, respectively. Commons and RL Vallee now seek to have both conditions included in both the Act 250 and municipal approvals.

For the same reasons, and on the same premise as we included one of these restrictions in each of the approvals in our Merits Decision, we hereby include both conditions in both approvals, thereby GRANTING the pending motion.

Our remand of the site plan, conditional use, and planned unit development proceedings in Docket No. 92-5-07 Vtec, and our remand of the Act 250 proceedings (LUP #6F0583) in Docket No. 116-6-08 Vtec, is hereby AMENDED to require both of the following conditions in both permit proceedings:

- There shall be no sale of gasoline for automobiles on Lot 3 without the permittee, its successors, or assigns first submitting an application for amendment of the underlying permit, and actual receipt and final disposition of all necessary permit amendments, for authority to sell gasoline on Lot 3.

And

- The proposed Wal-Mart discount store shall not devote more than 10,000 square feet of retail floor space (including aisle space) to the sale of food items (i.e., not including paper goods, cleaning items, and other non-edible items commonly available for purchase in both grocery and discount stores) without first submitting an application for amendment of the underlying permit, and actual receipt and final disposition of any necessary permit amendments, for authority to use more than 10,000 square feet of retail floor space in its Wal-Mart discount store to sell such food items.

The Court Manager is hereby directed to note on our original Merits Decision, as well as the electronic copy of it posted on the Vermont Judiciary web site, that we have hereby AMENDED our January 20, 2010 Merits Decision. In all other respects, except as further amended by the Entry Order on Appellant VNRC's motion to amend (also issued today), our January 20, 2010 Merits Decision remains in full force and effect, subject to appeals pending before the Vermont Supreme Court.

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Thomas S. Durkin, Judge	May 3, 2010 Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:

- Attorney Jon T. Anderson for Interested Person R.L. Vallee, Inc.
(with Co-Counsel David W. Rugh)
- Attorney Jon Groveman for Appellant Vermont Natural Resources Council, the
Northwest Citizens for Responsible Growth, Marie Frey and Richard Hudak
- Attorney Gerald R. Tarrant Esq. (co-counsel for VRNC)
- Attorney Stewart H. McConaughy for Appellee JLD Properties
(with Co-Counsel Robert F. O'Neill and Ross A. Feldmann)
- Attorney Mark L. Lucas for Interested Person Natural Resources Board
- Attorney John H. Hasen for the Natural Resources Board/LU Panel (FYI only)
- Attorney Judith L. Dillon for the Agency of Natural Resources
- Attorney David A. Barra for Interested Person Town of St. Albans
- Attorney Brian S. Dunkiel for City of St. Albans (FYI only)
- Attorney William H. Rice for Vt. Agency of Transportation (FYI only)
- Clerk, Vermont Supreme Court (FYI only)