



**State of Vermont**  
**Natural Resources Board**  
National Life Dewey Building  
Montpelier, VT 05620-3201  
[www.nrb.state.vt.us](http://www.nrb.state.vt.us)

*Re: Eric Savoy Auto Repair,  
Jurisdictional Opinion 2-291*

**Reconsideration Decision**

The Board issues this decision in accordance with 10 V.S.A. § 6007(d) and the Board's Interim Procedure on Jurisdictional Opinions and Reconsideration, effective July 9, 2013 ([www.nrb.state.vt.us/policies/recon.pdf](http://www.nrb.state.vt.us/policies/recon.pdf)) (Interim Procedure).

**I. Introduction**

Phillip Savoy (owner of Savoy engineering and father of landowner, Eric Savoy) requested the Board reconsider Jurisdictional Opinion 2-291 (JO), which held that the proposed auto repair shop (Project) requires an Act 250 Land Use Permit (Permit). Phillip Savoy principally argued that a Permit is not required because the Project fits the definition of a "home occupation" under Act 250 Rule 2(C)(17). Bob Barton (a neighbor) supported the JO and filed a timely reply. Neither Mr. Savoy nor Mr. Barton requested a hearing.

For the reasons set forth below, the Board supplements the record with all additional information submitted for this reconsideration and finds the Project requires a Permit.

**II. Whether to Supplement the Coordinator's Record**

Both Phillip Savoy and Bob Barton requested the Board supplement the coordinator's record with additional information. Under the Interim Procedure, the Board reconsiders jurisdictional opinions on the Coordinator's Record as supplemented on reconsideration. See Guidance on Compiling the Coordinator's Record for Jurisdictional Opinions ([www.nrb.state.vt.us/policies/recordguidance.pdf](http://www.nrb.state.vt.us/policies/recordguidance.pdf)). Requests to supplement the record must explain the materiality and whether good cause exists for failure to present the additional evidence to the Coordinator. *Interim Procedure* at 3. However, the Interim Procedure does not preclude the Board from supplementing the record with *any* evidence received for reconsideration. The Board supplements the record with all additional information submitted under the reconsideration process as follows:

**a. Phillip Savoy's request for supplemental evidence**

Mr. Savoy filed two requests for reconsideration. The first request (First Request) did not address the Interim Procedure, and because the Interim Procedure was not readily accessible to Mr. Savoy at that time, his request was deemed incomplete and an

extension to file a request was granted. The First Request contained a letter dated October 31, 2013 and a site plan by Savoy Engineering dated September 29, 2013. The site plan was also included in his second request (Second Request). It appears that the First Request addresses the same issues and provides duplicative information of the Second Request, therefore the Board supplements the record with the First Request without issue.

Mr. Savoy's Second Request attached the following:

1. An Appeal Letter (dated both 11/6/13 and 11/18/13 on Savoy Engineering letterhead),
2. JO 2-291 (copy of Coordinator's JO dated October 25, 2013 and Certificate of Service),
3. JO 2-291, info by others (copy of Coordinator's JO dated October 25, 2013 and exhibits, but does not include the last email chain included in the official JO)
4. New Evidence (email from Savoy Engineering to Terry Ranney dated October 28, 2013), and
5. Site Plan (elevations drawn by Savoy Engineering dated November 13, 2013).

In his Second Request Mr. Savoy argues the attachment labeled "new evidence," should supplement the record because "we were never informed of any action by anyone that had anything to do with Act 250" prior to the issuance of the JO on October 25, 2013. Mr. Savoy also argues that the information is material because "it clearly shows the decision was based on inaccurate information that was not researched or verified." Although not stated directly, it also appears that Mr. Savoy is seeking to supplement the record with the "site plan" and the assertions included in his "appeal letter." The other attachments (JO 2-291 and JO 2-291, info by others) are copies of materials already in the record and do not appear to be part of the request for new evidence.

In his reply (Reply), neighbor, Bob Barton, argues the Board should not consider Mr. Savoy's new evidence because Mr. Savoy had actual notice that a JO would be issued. Mr. Barton draws to the Board's attention to multiple communications with Mr. Savoy and particularly to the email correspondence regarding the project between Stephanie Gile and Mr. Savoy, which was attached to JO 2-291. It is unclear from this email exchange whether Mr. Savoy was aware the communication was being used for the purposes of a Jurisdictional Opinion. Mr. Barton does not address whether the "site plan" and assertions in the "appeal letter" should be included in the Board's reconsideration review.

Mr. Savoy also wrote an email dated December 18, 2013 to the Board's Attorney in which he further explained his perspectives.

The Board considered the arguments offered by both Mr. Savoy and Mr. Barton. Regardless of whether Mr. Savoy understood that his communications with the Coordinator were for the purpose of writing a JO, much of the evidence presented has material value in determining the jurisdictional outcome, and the Board does not find reason to exclude any information provided by Mr. Savoy. Therefore, the Board will supplement the record with all the additional evidence Mr. Savoy presented.

#### **b. Bob Barton's reply and request for Supplemental Evidence**

Bob Barton asks the Board to consider several new documents and materials in his reply letter dated December 5, 2013. Included with his letter is a response (Barton Response), which references several attachments as follows:

- (1) 9/23/13 Notice Letter to Savoy
- (2) 9/23/12 Potter Stewart Notice to Savoy (dated 9/25/2013)
- (3) 9/29/12 Revised Application
- (4) 10/7/2013 WZA Report
- (5) 12/4/13 WZA Email
- (6) JO-2-291-2, info by others
- (7) Savoy 11/6/13 Letter to NRB
- (8) Scanned 9/23/12 Certified Mail Unaccepted Letter
- (9) Site Plan for 9/29/13 Revised Application
- (10) Zoning Permit 12/2/13 for Savoy
- (11) New Evidence for Terry Ranney 28 October from Savoy
- (12) Scanned Copy of site plan for Wastewater and Potable Water Permit

The Board considered the December 5, 2013 letter, the Barton Response, and all attachments as part of Mr. Barton's request to supplement the record. The Board finds many of these documents contain material value, and the Board does not find reason to exclude any of the information from the record.

### **III. Jurisdictional Analysis**

The issue before the Board is whether the construction and operation of an automotive repair shop for a commercial purpose on a parcel larger than 10 acres requires an Act 250 Land Use Permit under 10 V.S.A. §6081(a) because it constitutes "development" as defined by 10 V.S.A. §6001(3)(A)(i). The statute, in relevant part, defines "development" as:

the construction of improvements on a tract of land, owned or controlled by a person, involving more than 10 acres of land ... for commercial ... purposes in a municipality that has adopted permanent zoning and subdivision bylaws." 10 V.S.A. §6001(3)(A)(i).

It is undisputed that Eric Savoy owns greater than 10 acres of land and the purpose of the Project as an automotive repair business is commercial. *Email from Savoy*

*Engineering to Terry Ranney dated October 28, 2013.* Therefore, the ultimate issue is whether the Project consists of the “construction of improvements.”

The Natural Resources Board Rules define “construction of improvements” as “any physical change to a project site except for... a home occupation.” Act 250 Rule 2(C)(3)(b). The Rules further define a “home occupation” as:

...the use, by a resident, of a minor portion of the residence, including ancillary buildings, for an occupation or business: (a) that is customary in residential areas; and (b) that does not have a potential for significant impact under the criteria of 10 V.S.A. §§6086(a)(1) through (10).

In order for the Project to qualify for the home occupation exception (and therefore an exception from the Act 250 permit requirement), the Project must meet this definition. The burden of proof to establish an exception to Act 250 resides with the party claiming the exception; therefore it is Mr. Savoy’s burden to prove that the Project fits within the definition of home occupation under the rules. *In re Ochs*, 181 VT 541,543 (2006). For the reasons below, the Board finds the Project does not meet the definition of home occupation.

**a. The Project is not “a minor portion of the residence” for an occupation or business in accordance with Act 250 Rule 2(C)(3)(b)**

The automotive repair garage portion of the Project is approximately 1,024 square feet and the living space is approximately 1,344 square feet. *New evidence, email from Savoy Engineering to Terry Ranney dated October 28, 2013, 10:23:19.* The original site plan indicates a 65’ x 40’ parking lot for “9+” cars. *9/29/13 Site Plan.* The site plan with building elevations shows a building with two large garage doors, a first floor approximately 14 feet high and a second story significantly shorter. *11/13/13 Site Plan.* Regardless of whether or not the living space footprint includes an outside deck, the Board finds the automotive repair garage portion of the Project is not a minor portion of the residence based on the foregoing evidence. Therefore, the Board finds insufficient evidence exists to prove the Project fits the home occupation exception under Act 250 Rule 2(C)(3)(b).

**b. The Project has potential for significant impacts under several Act 250 criteria.**

Under this element of the definition of home occupation, actual impacts to the Act 250 criteria do not need to be found, only the *potential* for significant impact. *In re: Snopeck & Telscher (Appeal of Act 250 Jurisdictional Opinion)*, No. 269-12-07 Vtec, Revised Decision on Motion for Summary Judgment at 6 (7/24/08) (quoting *In re: Hale Mountain Fish and Game Club, Inc.*, 2007 VT 102, ¶ 4)(emphasis added). Furthermore, “this consideration does not require an in-depth review of possible impacts, but simply a determination that significant impacts may occur. Once jurisdiction is asserted, the district Commission scrutinizes a proposed project to determine the actual impacts and

either denies the application or imposes conditions to mitigate the impacts." Re: Village of Ludlow, Declaratory Ruling 212, Finding of Fact, Conclusions of Law, and Order at 9 (Vt. Env'tl. Bd. Dec.29, 1989).

Several aspects of the Project have the potential for significant impact under various Act 250 criteria. For instance, the Project proposes to burn waste oil in a furnace, which may cause significant air pollution, and therefore, the Board finds the Project has potential for significant impact under criterion 1(air). *Zoning Permit 12/2/13 for Savoy* at 3. Concerns also exist under criterion 1(B) (waste disposal), which ensures a project will not involve the injection of waste materials, or any harmful or toxic substances into wells or ground water. A neighboring property has a dug well that is downstream of the Project. *Email from Bob Barton to Stephanie Gile October 20, 2013*. A dug well is susceptible to contamination through surface waters. As an auto repair shop, the Project will involve hazardous liquids including waste oil, gasoline, antifreeze, transmission fluid and windshield wiper fluid. *Zoning Permit 12/2/13 for Savoy and Barton Response* at 6. Because of the proximity between the stream, the dug well, and use of hazardous liquids on the Project tract, the Board finds potential for significant impact under criterion 1(B).

The *ANR Natural Resources Atlas map* and the *Site Plan for 9/29/13 Revised Application* shows a mapped wetland covering a portion of the Project property and a stream flowing through the property near the driveway. The Project includes a driveway within 15 feet of the stream, a cleared parking area for at least nine cars, and the installation of a double culvert. *Email from Savoy Engineering to Terry Ranney dated October 28, 2013 and Site Plan for 9/29/13 Revised Application*. These aspects of the Project have the potential to significantly impact several criteria. Criterion 1(E) (streams) protects the health, safety, and welfare of the public or adjoining landowners from development located on or adjacent to the banks of a stream, and this criterion could be impacted by the construction and existence of the driveway and the double culvert. Similarly, criterion 1(G) (wetlands) protects significant wetlands and criterion 4 (erosion) protects against dangerous or unhealthy conditions from unreasonable soil erosion or reduction in the capacity of the land to hold water. The Project requires the disturbance of soils and the creation of impervious surfaces, and therefore coupled with the proximity of the stream and wetland creates the potential for significant impacts under criteria 4 (erosion) and 1(G) (wetlands).

As an auto repair business, there will be some added traffic and tow trucks will likely deliver cars for service. The *ANR Natural Resources Atlas map* and the *Site Plan for 9/29/13 Revised Application* shows a curve in Quarry Road in front of the Savoy property. Criterion 5 (traffic), which ensures developments will not cause unreasonable congestion or unsafe conditions with respect to the use of existing or proposed means of transportation, may be significantly impacted by the delivery of cars for repair and maintenance.

According to Mr. Barton the Project is located closer to the road than other homes in the residential area and a number of trees have been cut on the property in preparation for

the construction of the Project. *Barton Response* at 6. The Westminster Development Review Board zoning permit requires a landscaping plan and requires that the garage doors remain shut during operations for noise reduction. *Zoning Permit 12/2/13 for Savoy* at 4. The Project also includes a parking lot for at least ten vehicles. *Zoning Permit 12/2/13 for Savoy* at 4 and *Site Plan for 9/29/13 Revised Application*. The configuration of that parking lot and its location are unclear from the materials submitted. Criterion 8 (aesthetics) ensures development does not cause an undue adverse effect on the aesthetics of the area including noise. The Board finds the noise from an auto repair shop, the removal of trees, the number and placement of cars on the property, and the location and appearance of the Project could create significant impacts under criterion 8 aesthetics.

In conclusion, the Board finds the Project could significantly impact more than one Act 250 criterion, and therefore insufficient evidence exists to prove the Project fits the home occupation exception under Act 250 Rule (2)(C)(3)(b).

#### IV. Conclusion

As set forth above, the coordinator's record, as supplemented on reconsideration, supports the conclusion that the Project constitutes development under 10 V.S.A. §6001(3)(a)(i) and does not meet the home occupation exception under Act 250 Rule (2)(C)(3)(b). Accordingly, the Project requires an Act 250 Permit under 10 V.S.A. §6081(a).

DATED in Montpelier, Vermont, this 28<sup>th</sup> day of January, 2014.

NATURAL RESOURCES BOARD



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Ronald A. Shems, Chair  
William B. Davies  
Martha Illick  
Donald Sargent  
Elizabeth Wilkel

Any appeal of this decision must be filed within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220, with the Superior Court, Environmental Division, 2418 Airport Road, Barre, VT, 05641.

The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.). The \$262.50 entry fee and surcharge must be filed with the Notice of Appeal. A copy of the Notice of Appeal must be sent to the Natural Resources Board, National Life Dewey Building, Montpelier, VT, 05620-3201, and to all other parties in accordance with V.R.E.C.P. 5(b)(4)(B).



## SERVICE LIST

Certificate of Service List from District Commission  
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