

**STATE OF VERMONT  
NATURAL RESOURCES BOARD  
DISTRICT #2 ENVIRONMENTAL COMMISSION  
100 Mineral Street, Suite 305, Springfield, VT 05156-3168 / Tel: 885-8855**

RE: Hermitage Inn Real Estate Holding  
Company, LLC  
P.O. Box 2210  
West Dover, VT 05356

Application #700002-25  
**Memorandum of Decision**  
10 V.S.A. §§ 6001-6093 (Act 250)

**I. Background**

Hermitage Inn Real Estate Holding Company, LLC, filed Application #700002-25 for approval for partial findings pursuant to Natural Resources Board Rule 21 for a master plan to include lands and construction involving the Hermitage Inn, East Tract, Hermitage Club Base Tract, and Deerfield Valley Airport (“the master plan tracts”). A site visit, pre-hearing conference, and two hearings followed.<sup>1</sup> On May 19, 2016, the Commission issued a Hearing Recess Order. On June 1, 2016, the Applicant filed a Motion to Alter that included a response to the Commission’s Hearing Recess Order (“the first motion”). On June 8, 2016, the Commission denied the first motion. On June 16, 2016, the Applicant submitted a document captioned “Motion to Amend Act 250 Permit Application #700002-25” (“the second motion”). On July 12, 2016, the Commission denied the second motion. On July 29, 2016, the Applicant filed a Motion to Alter the Commission’s July 12, 2016 decision (“the third motion”). The Commission’s ruling on the third motion follows.

**II. Summary of the Issues and Ruling on the Third Motion**

The third motion seeks to alter the Commission’s Memorandum of Decision which denied the Applicant’s Motion to Amend Act 250 permit application #700002-25. The Applicant now requests to amend the application because the Applicant “no longer owns the East Tract or the Airport Tract *and exercises no control over the future use or development of the East Tract or the Airport Tract.*”<sup>2</sup> The Commission has reviewed the third motion and finds or concludes as follows:

The Applicant has filed the third motion in violation of Act 250 Rule 31(A) which states in pertinent part: “Any party...may file within 15 days from the date of a decision of the district commission one and only one motion to alter with respect to the decision. No party...may file a motion to alter a district commission decision concerning or resulting from a motion to alter.”

The clear violation of the rule alone compels denial of the motion. However, the Commission also provides the following reasons for denial:

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<sup>1</sup> Please see previous Commission Memoranda for full background.

<sup>2</sup> Applicant’s Third Motion, pp. 1-2 [emphasis added].

The documents submitted by the Applicant in support of its motion include the Warranty Deeds for the East Tract and the Airport, conveyed to “Comtuck, LLC” and “4V8 LLC” respectively. The deed for the East Tract contains the following provisions:

Reserving unto the Grantor, Hermitage Inn Real Estate Holding Company LLC, its successors and assigns...a blanket easement for the placement of airport related facilities, which facilities may include, but which are not limited to, landing lights, wind socks, AWOS systems, weather systems, radar, and other airport related facilities and equipment. By acceptance of this deed, Grantee, its successors and assigns covenants and agrees not to contest or oppose the expansion of the airport runway and its associated facilities and agrees not to oppose the operation of a regional airport.

The deed for the Airport contains the following provisions:

Also conveying to Grantee, 4V8 LLC, its successors and assigns, a blanket easement upon Grantor’s lands and premises lying and situate east of the airport runway extension...for placement of airport related facilities, which facilities may include, but which are not limited to, landing lights, wind socks, AWOS systems, weather systems, radar, and other airport related facilities and equipment.

The deeds also contained easements for all utilities (sewer, water, water wells, septic systems, phone, internet) and rights of way for travel. As evidenced by the easements cited above, the Applicant continues to exercise control over the future use and development of the East Tract and Airport Tract for the project applied for in Act 250 application 700002-25. Accordingly, the Commission cannot agree that the Applicant exercises no control over the future use or development of the East Tract or the Airport Tract.

For reasons outlined above, the third motion is **denied**.

### **III. Appeal**

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date of this decision, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$265.00 entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Dewey Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B). For additional information on filing appeals, see the Court’s website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-

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1660. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, and Burlington, VT 05401.

Dated at Springfield, Vermont on the 5<sup>th</sup> of August, 2016.

By:



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Leslie Hanafin, Vice-Chair  
District #2 Environmental Commission  
Natural Resources Board

Other Commissioners Participating: Julia H. Schmitz and J. Christopher Callahan

**E-Notification CERTIFICATE OF SERVICE #700002-25**

I hereby certify that I, the undersigned, sent a copy of the foregoing Memorandum of Decision on August 5, 2016, by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail to the following with email addresses. All email replies should be sent to [NRB.Act250Springfield@vermont.gov](mailto:NRB.Act250Springfield@vermont.gov).

**Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.**

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**FOR INFORMATION ONLY**

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