

VERMONT SUPERIOR COURT

Environmental Division
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Docket Nos. 23-ENV-00093
24-ENV-00054

**Peacefield, LLC JO and Land Use Permit
Denial**

DECISION ON MOTIONS

These are two coordinated cross appeals involving Peacefield, LLC and Shade Maple, LLC’s (collectively referred to as Peacefield Farm or simply Peacefield) plan to operate an on-farm restaurant located at 650 & 651 Pomfret Road in Woodstock, Vermont (the Property). Neighboring landowners Tom Meyerhoff and Cynthia Volk (Neighbors) oppose the project and are cross-appellants in both dockets.¹

In Docket No. 23-ENV-00093 the parties cross appeal an August 8, 2023 Jurisdictional Opinion (the 2023 JO) issued by the District #3 Coordinator concluding that Act 250 jurisdiction had attached to Peacefield’s property by virtue of an unappealed 2018 Jurisdictional Opinion (the 2018 JO) and the construction of a barn structure (the Barn) on the Property. Additionally, the 2023 JO concluded that Peacefield failed to demonstrate that it could meet the farming exemption for Act 250.

In Docket No. 24-ENV-00054 the parties cross appeal a June 6, 2024 decision by the District #3 Commission concluding that Peacefield’s application for a more expansive version of the on-farm restaurant did not comply with Act 250. As part of this appeal, the parties seek a determination as to the scope, if any, of Act 250 Jurisdiction over a pond, waterline, and access road located on the Property.

In these matters, Peacefield is represented by Alexander LaRosa, Esq. Neighbors are represented by David Grayck, Esq. and Christopher Boyle, Esq. The Land Use Review Board did not participate in the pending motions.

¹ Additional neighboring landowners include Albert and Debra Alessi, Rich Bennet, Bj Dunn, and Mary Margaret Sloan. These neighbors are interested parties who oppose the project but who did not file a cross-appeal.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc’ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332. In determining whether there is a dispute over any material fact, “we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” White v. Quechee Lakes Landowners’ Ass’n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A).

Factual Background

We recite the following facts solely for the purposes of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts a trial. Fritzeen v. Trudell Consulting Eng’r, Inc., 170 Vt. 632, 633 (2000) (mem).

1. John Holland is the owner of Peacefield Farm, LLC and co-owner of Shade Maple, LLC which together operate Peacefield Farm.
2. Peacefield Farm is certified as a farm by the Vermont Agency of Agriculture, Food and Markets.
3. Peacefield Farm is located at 650 and 651 Pomfret Road in the Town of Woodstock.
4. Peacefield Farm is comprised of several parcels of land, totaling approximately 190± acres.
5. The barn structure at issue in these appeals is located on Parcel 1 of the Property, which is a 13.3± acre parcel on the eastern side of Pomfret Road.
6. Prior to 2012, the Property contained an old barn with an associated driveway, parking area, grain crib, and manure pond.
7. In 2012, Mr. Holland acquired the Property, which had not been well managed or actively cultivated for some time.
8. On September 15, 2013, Mr. Holland demolished the old barn.
9. On October 16, 2015, Mr. Holland obtained a permit to construct a new 36’x72’ post and beam barn (the Barn).²

² The parties dispute whether the Barn should be referred to as a barn structure or a restaurant. We refer to it as the Barn because it replaced an old barn on the Property and is styled/designed to look like a barn regardless of its intended use as an on-farm restaurant.

10. In November and December 2015, the Barn foundation was laid along with the construction of parking areas and roadways around the Barn.

11. The Property is encumbered by multiple conservation easements held by the Vermont Land Trust.

12. In 2016, Mr. Holand began discussions with the Vermont Land Trust for how to engage a farmer to work the Property.

13. In March 2017, Mr. Holland received a permit to build a farm pond on the Property. Also around this time a farm road was constructed.

14. When the pond was constructed, Mr. Holland installed a waterline running downhill from the pond, passing across the farm road, and running to a point behind the Barn.

15. In September 2017, the Barn frame was erected and the driveway/parking areas were completed.

16. Construction of the Barn was completed in early 2018.

17. The Barn is equipped with a kitchen that includes a sink, dishwasher, and stove.

18. In May of 2018, Peacefield obtained a Project Review Sheet (the 2018 PRS) from the State of Vermont.

19. The 2018 PRS described the proposed project as involving the construction of the Barn for agricultural use, living space, and a gathering space for events.

20. The 2018 PRS also described a proposal to host “farm suppers” which would occur no more than 60 times per year in a 20-seat restaurant.

21. At that time, Mr. Holland was not seeking to serve meals “principally produced” on the Property because he thought it would be too restrictive. Holland Declaration at ¶ 43.

22. In response to Peacefield’s request for the 2018 PRS, then District 3 Coordinator Linda Matteson issued an Act 250 Jurisdictional Opinion (the 2018 JO) concluding that an Act 250 permit was required because the project involved the construction of improvements for commercial purposes on more than one acre in Woodstock, which triggers Act 250 jurisdiction.

23. Peacefield did not appeal the 2018 JO.

24. Mr. Holland was unable to find a suitable farmer to work the Property in 2018.

25. Mr. Holland eventually connected with farmer/chef Matt Lombard who was interested in developing a farm-based restaurant and running farming operations at Peacefield Farm.

26. Mr. Lombard is a member of Shade Maple, LLC (Shade Maple) with Mr. Holand.

27. Shade Maple is the tenant of Peacefield Farm.

28. Shade Maple leases the farming operations, including use of the Barn, from Peacefield Farm to run a food-service operation.

29. Mr. Lombard is the head chef and head farmer of the operation.

30. Since Mr. Lombard began working, Peacefield Farm has raised pigs, chickens, and beef cattle for consumption.

31. Peacefield Farm actively raises and manages a breeding herd of about a dozen heritage sows, which yield approximately 100 hogs.

32. Peacefield Farm has a breeding herd of brood cows, which it intends to grow in size.

33. Peacefield Farm raises laying hens and intends to introduce a new flock that will produce at least 50 dozen eggs per week.

34. Peacefield Farm generally uses its beef for braising cuts and burgers.

35. Peacefield Farm produces over 10,000 pounds of pork, in dressed weight,³ per year from its products, and expects to double this number. Each hog is harvested at about 280-300 lbs live weight and roughly 50% of that weight is returned to the farm.

36. Thirty-eight acres of land are currently used to grow hay to feed the animals.

37. Peacefield Farm also grows all its own cattle feed, which results in about 60-80 tons of feed per year.

38. Currently, approximately three acres of land are used for growing crops for human consumption. Peacefield expects this area to expand to five acres. Presently, this land produces more than ten tons of consumable produce.

39. Peacefield has also constructed several hoop-house/high tunnel-style buildings to aid in vegetable production.

40. Peacefield grows, and plans to grow, the following crops: sweet corn, potatoes (all varieties), tubers, sweet potatoes, yams, nightshades (including tomatoes, peppers, eggplant), edible salad greens, cabbages, winter squashes, summer squashes (and all forms of Cucurbitaceae), cucumbers, apples, peaches, pears, plums, berries (raspberry, blueberry, strawberry), melons (all varieties), brassica (cauliflower, broccoli, etc.), kale, collard greens, chard, radishes, beans, onions, garlic, asparagus, beets, celery, lettuces, peas, fennel, leeks, and herbs of all varieties including oregano, basil, thyme, marjoram, parsley, mint, sage, and cilantro.

³ Dressed weight is the weight of the meat when it comes back from the butcher. By contrast, live weight is the weight of the animal before it goes to the butcher. Live weight is approximately double the finished dressed weight.

41. The produce is harvested and broken down, cleaned, sorted, and packed in the Barn kitchen for use or sale off-site.

42. There is no on-site retail on Peacefield Farm.

43. Peacefield seeks to use its farm grown products to serve meals to people by operating a farm-to-table dining experience.

44. To date, Peacefield has not conducted dining operations out of the Barn.

45. Peacefield has prepared four sample menus of what typical evenings at the restaurant may serve. Ex. 1 to Lombard Declaration.

46. The sample menus include a steak night, pasta night, barbeque night, and taco night.

47. The sample menus include sample meals which are broken down into their main component ingredients.

48. Each ingredient is labeled as to whether it is produced on Peacefield Farm and its relative weight in ounces.

49. The sample menus do not reflect every item that will be sold at the restaurant, including desserts, beverages, and bread.

50. The sample menus do not include other secondary ingredients that may be necessary to prepare the dishes, such as salt, cooking fats, and vinegars.

51. On May 14, 2021, Peacefield submitted an Act 250 application form, which was assigned application number 3W1122 (the 2021 Application).

52. The 2021 Application sought approval to operate two accessory on farm businesses out of the Barn for (1) farm-to-table dining and (2) the storage/preparation/processing and sale of farm products.

53. The 2021 Application was eventually denied under Criterion 10 for failure to comply with the Woodstock Town Plan.

54. The denial also included the following statement on jurisdiction: “[a]s determined in a project review sheet issued on May 9, 2018 jurisdiction attaches because construction of improvements for commercial purpose on more than one acre in Woodstock triggers Act 250.”

55. Peacefield initially appealed the District Commission’s denial but ultimately withdrew the 2021 Application. Peacefield, LLC Act 250 Permit Application, No. 21-ENV-00113 (Vt. Super. Ct. Envtl. Div. June 20, 2023) (Durkin, J.) (dismissing the appeal as moot).

56. On August 24, 2023, Peacefield submitted a second Act 250 Application (the 2023 Application) which has been assigned application number 3W1122-1.

57. The 2023 Application seeks approval for an “On-Farm Restaurant” as that term was created and defined by the Woodstock Zoning Regulations.

58. In a decision dated June 6, 2024, the District 3 Commission denied Peacefield’s 2023 Application.

59. The denial included a statement concluding that “the pond, pond access road, and piping... also support the development and therefore must be included in the jurisdictional area.” Findings of Fact, Conclusions of Law, and Order 3W1122-1, at 8 (June 6, 2024).

60. Back in 2019, Mr. Holland sent a letter to the Vermont Division of Fire Safety requesting a variance from the fire suppression water storage capacity requirements for the Barn. Specifically, Mr. Holland sought a reduction from 23,000 gallons of storage capacity to 10,000 gallons.

61. In a decision dated October 10, 2019, the Division of Fire Safety approved Peacefield’s variance request with the condition that Peacefield install a dry hydrant to supply additional water.

62. Peacefield installed a dry hydrant to comply with the variance approval.

63. The dry hydrant receives water from a pond on Parcel 2B of the Property via a piped connection. There is an access road leading to the pond.

Discussion

In Docket No. 23-ENV-00093, the parties dispute the preclusive impact of the unappealed 2018 Jurisdictional Opinion and whether jurisdiction attached to the Property when Peacefield constructed the Barn without a permit. Separately, the parties dispute whether Peacefield’s proposed use of the Barn for an on-farm restaurant meets the principally produced standard to claim an agricultural exemption from Act 250.

I. 2018 JO

The failure to appeal a jurisdictional opinion within 30 days renders that opinion “the final determination regarding jurisdiction under [Act 250].” 10 V.S.A. § 8504(e)(2). An unappealed jurisdictional opinion, however, is only final and binding as to the facts upon which it was based. Laberge Shooting Range JO, No. 96-8-16 Vtec, slip op. at 18 (Vt. Super. Ct. Env’tl. Div. Aug. 15, 2017) (Walsh, J.) (citing In re Catamount Slate, Inc., 2004 VT 14, ¶ 20, 176 Vt. 284). This is because jurisdictional opinions are, by their nature, based on hypotheticals. WhistlePig, LLC Act 250 JO, No. 21-3-13 Vtec, slip op. at 11 (Vt. Super. Ct. Env’tl. Div. Apr. 11, 2014) (Durkin, J.) (citing Lake Champlain Bluegrass, No. 204-11-10 Vtec, slip op. at 11 (Vt. Super. Ct. Env’tl. Div. Jan. 3, 2012) (Durkin, J.)). Accordingly, when evaluating the implications of the 2018 JO, we must look to the facts

upon which it was based and determine whether Peacefield has sufficiently changed its proposed project such that those facts are no longer applicable.

The 2018 Project Review Sheet was for a more expansive project than what Peacefield currently seeks approval for. Most notably, Peacefield did not seek a farming exemption as part of its 2018 PRS. At that time, Peacefield had not yet found a farmer to work its land, and Mr. Holland felt that serving principally produced meals would be too restrictive on the restaurant. Since 2018, Peacefield has contracted the services of Matt Lombard, a local chef and farmer, who has greatly expanded the farm capacity and operations.

Neighbors argue that because both the 2018 and 2023 JOs sought approval to serve meals in exchange for money, the 2018 JO should be considered a final decision regarding jurisdiction. This argument overlooks the crucial difference between the JOs. Peacefield now seeks to operate its on-farm restaurant under Act 250's farming exemption. In doing so, Peacefield has agreed to limit what it may sell in its restaurant. Thus, the facts have materially changed from those which supported the 2018 JO. As a result, the 2018 JO is not final and binding with respect to Peacefield's current proposal to operate an on-farm restaurant which sells meals principally produced on the farm.

Similarly, Neighbors argue that jurisdiction attached to the Property following a jurisdictional determination in the October 22, 2021 Partial Findings of Fact, Conclusions of Law, and Order denying Peacefield's 2021 Application. That determination provided that "[a]s determined in a project review sheet issued on May 9, 2018 jurisdiction attaches because construction of improvements for commercial purpose on more than one acre in Woodstock triggers Act 250." Thus, the 2021 jurisdictional determination relied on the 2018 JO as the grounds for establishing jurisdiction over Peacefield's lands. The 2021 Application was also for a more expansive proposal and was not relevant to Peacefield's plans to operate using the principally produced standard. For the same reasons, we decline to extend the 2021 jurisdictional determination to Peacefield's current plans to operate under the Act 250 farming exemption. Peacefield is not bound by previous determinations which do not apply to the facts and circumstances presently proposed.

II. Construction of the barn

The 2023 JO concluded, and Neighbors maintain, that jurisdiction was also triggered by the construction of the Barn. Because jurisdiction attached to the Property, Neighbors argue that it cannot be lifted by subsequent changes to the scope of the project.

Under Act 250, no person shall commence construction on a development without a permit. 10 V.S.A. § 6081(a). Development is defined, in part, as “the construction of improvements for commercial or industrial purposes.” 10 V.S.A. § 6001(3)(A).

It is undisputed that Peacefield has constructed the Barn and plans to use the Barn for a commercial purpose — the service of on-farm dinners in exchange for money. Therefore, the proposed project satisfies the definition of development such that it is subject to the permitting requirements of Act 250 unless it is otherwise exempt. See In re Ochs, 2006 VT 122, ¶ 10, 181 Vt. 541 (explaining that farming activities which would ordinarily constitute development may still be exempt from jurisdiction). If the proposed use of the Barn qualifies for an exemption and has not been used for a jurisdictional triggering activity, then it cannot be said that jurisdiction has attached and may not be lifted. This would defeat the purpose of the Act 250 farming exemption.

The mere act of construction does not trigger Act 250 jurisdiction if the use of the structure is otherwise exempt from Act 250. By example, if Peacefield sought to use the barn simply for the processing and storage of agricultural products this would undoubtedly be an agricultural use that is exempt from Act 250. The construction of the Barn, in that case, could not trigger Act 250 jurisdiction. Conversely, if Peacefield began operating a restaurant without sourcing any of its ingredients from the farm, that would necessarily trigger the need for an Act 250 permit. However, the current proposed use of the Barn is somewhere in-between those two examples and requires an evaluation of the principally produced standard. If we find that the principally produced standard is satisfied, then we cannot conclude that Act 250 jurisdiction exists over the lawfully exempt use of the Property. Thus, the appropriate analysis regarding jurisdiction is not based on construction, but on the use of the Barn.

Peacefield has not yet used the barn to serve on-farm dinners in exchange for money. Because the Barn has not been used for such dinners, there has been no jurisdictional triggering event. In reaching this conclusion, we answer Questions 5 and 6 of Peacefield’s Statement of Questions in Peacefield’s favor.⁴ We will therefore consider Peacefield’s request for a jurisdictional opinion as to

⁴ Peacefield’s Statement of Questions raises alternate theories for why jurisdiction cannot attach to the Property. Because we answer the ultimate issue in Peacefield’s favor, we decline to rule on Peacefield’s alternate theories for avoiding jurisdiction. Similarly, Neighbors 12-Question Statement of Questions functionally asks about the same issue, which is whether Peacefield is barred from challenging jurisdiction by failure to appeal the 2018 JO and 2021 Findings of Fact, Conclusions of Law, and Order. Neighbors have also submitted questions unrelated to the JO request currently on appeal. Accordingly, our conclusions herein functionally answer all of the issues raised in both parties’ Statements of Questions.

whether the service of limited operations of on farm dinners qualifies for the farming exemption to Act 250.

III. Principally Produced Standard

Peacefield is requesting a jurisdictional opinion that an on-farm dining facility which meets the principally produced standard is exempt from Act 250. As framed, this is simply a request for a restatement of the law. If Peacefield can meet the principally produced standard, it does not need a jurisdictional opinion or Act 250 permit to authorize its operations. Instead, we interpret Peacefield's request for a jurisdictional opinion to be specifically asking whether its proposed project satisfies the principally produced standard.⁵

The term development under Act 250 does not include “the construction of improvements for farming.” 10 V.S.A. § 6001(3)(D). Act 250 defines farming to include “the on-site storage, preparation and sale of agricultural products *principally produced* on the farm...” 10 V.S.A. § 6001(22)(E) (emphasis added). The term “principally produced” has been further defined to mean:

[M]ore than 50% (either by volume or weight) of the ingredients or materials contributing to a final agricultural product or products which results from the activities stated in 10 V.S.A. § 6001(22)(A) – (D), and which is stored, prepared or sold at the farm, is grown or produced on the farm.

Act 250 Rule 2(C)(19)(b).

In WhistlePig, this Court interpreted the above-referenced statutory and regulatory definitions to require an accounting of all the ingredients used in the preparation of a final agricultural product. WhistlePig, LLC, No. 21-2-13 Vtec, slip op. at 7 (April 11, 2014). Accordingly, we look at whether Peacefield can demonstrate that more than 50% of the ingredients used in the preparation of on-farm dinners, by weight or volume, are grown or produced on Peacefield Farm.

The parties dispute the scope of what the Court should consider in our analysis of the principally produced standard. Neighbors argue that the Court must consider more than the ingredients used in preparation of the food being sold to customers. Specifically, Neighbors argue

⁵ We note that in at least two other cases, District Coordinators have concluded that no Act 250 permit is required for the operation of an on-farm restaurant. See Peacefield Ex. 13 (Cloudland Farm Project Review Sheet and Associated Documents); Peacefield Ex. 15 (Fable Farm 2020 JO Request and JO). In neither case does it appear that the District Coordinator analyzed whether the actual proposal met the principally produced standard. Instead, they concluded that any products sold would need to meet that standard based on the representations made by the applicant. Here, Peacefield has provided sample menus listing the weight of each primary ingredient that goes into each meal. We evaluate these sample menus for compliance with the principally produced standard but note that this evaluation goes further than previous JOs issued for similar projects. Similarly to those other on-farm restaurants, Peacefield maintains that any products sold will need to meet the principally produced standard.

that Peacefield is selling a “dining experience” which includes amenities such as: aesthetics, lighting, service, location and history, beverages, and seating. Neighbors argue that the Court must evaluate whether each of these components meet the principally produced standard.

With the exception of beverages, Neighbors argument is unreasonable. Unless Peacefield directly bills its customers for such amenities, we will not consider whether the “dining experience” meets the principally produced standard. Rather, we focus on the meals themselves, and any other products which will be served in exchange for money.

Neighbors’ argument is further unworkable when considering 10 V.S.A. § 6001(22)(E) and Act 250 Rule 2(C)(19)(b). Both of these definitions focus on a product, not an experience. While an experience may improve a customer’s view of a product, the experience itself is not a product. Consider a traditional Vermont farmer that sells produce grown from their farm directly to consumers. The farmer may undertake efforts to make their sales more successful by constructing a farmstand that would be attractive to consumers. This may include painting signage or providing materials describing the farm’s history and agricultural practices. Under Neighbors’ interpretation of the principally produced standard, the Court would need to consider the weight of the lumber, nails, paint, and paper, each of which are not specifically sold to a consumer but make the farmstand “experience” more attractive. We will not adopt such an expansive and unreasonable interpretation of the statute. See Westcott v. Mack Molding Co., Inc., 2024 VT 85, ¶ 23 (when construing statutes courts must avoid results that are irrational or unreasonable.).

Peacefield has provided four sample menus demonstrating that it can meet the principally produced standard for four different themed dinner events. Those sample menus include a steak night, pasta night, barbeque night, and taco night. Each of those sample menus include sample meals that could be served, which are then broken down into their individual ingredients. Each ingredient is labeled whether it comes from Peacefield Farm and its relative weight. In reviewing the sample menus, it is clear that for each proposed menu item, the weight of ingredients that will be produced on the farm outweighs any off-farm products by more than 50%. The sample menus speak for themselves and clearly demonstrate that Peacefield can meet the principally produced standard for those listed items.⁶

⁶ It is undisputed that the sample menus do not include certain secondary ingredients such as salt, cooking oils, vinegars, etc. We conclude that these are de minimis ingredients which, for no meal, would cause the listed menu item to fall below the 51% threshold.

Neighbors argue that Peacefield Farm does not have the capacity to produce enough ingredients to serve the sample menus. It is not this Court's role in the context of this jurisdictional opinion to evaluate the capacity of Peacefield Farm. Rather, we are limited to assessing whether the sample menus, if served, would satisfy the principally produced standard, which we conclude they clearly would.

Both parties recognize that Peacefield intends to serve items not listed on the sample menus, including beverages, desserts, and other ingredients. Because these meals/ingredients have not been presented to the Court, we cannot evaluate their compliance with the principally produced standard. As explained in WhistlePig, "it is not this Court's role to advise a developer on what set of facts would or would not trigger Act 250 jurisdiction, but instead to decide whether the proposal put before it does or does not trigger Act 250 jurisdiction." WhistlePig, LLC, No. 21-2-13 Vtec, slip op. at 12, n.4 (April 11, 2014). To render a jurisdictional opinion, we must receive a clear, unambiguous description of the proposed project and all of its components. Id. at 11. To the extent that Peacefield intends to sell meals, ingredients, and other products beyond those listed in the sample menus, we are unable to render a jurisdictional determination for those items at this time.⁷

The operation of an on-farm restaurant is an inherently uncertain endeavor. The menu may need to be amended for a variety of reasons, including those related to the farm operations and its productivity. Furthermore, the approach to considering on-farm restaurant operations and whether they trigger Act 250 jurisdiction is becoming increasingly more complex and uncertain. The analysis under current law is extremely burdensome and impractical. This Court's analysis in WhistlePig only considered three ingredients — water, grains, and yeast. With respect to the ever-changing operations of an on-farm restaurant, adding up the weight of all ingredients used in the preparation of meals sold becomes an onerous endeavor. As demonstrated by this case, if neighboring landowners seek to challenge the restaurant's compliance with the principally produced standard, the burden on the restaurant to demonstrate compliance could become unmanageable. Thus, the Court strongly encourages the LURB or the Legislature to address this issue.

IV. Scope of Jurisdiction

In Docket No. 24-ENV-00054, the parties dispute the scope of Act 250 jurisdiction over a pond, waterline, and access road. This dispute arises out of Peacefield's 2023 application for an Act

⁷ We also decline to rule on whether the sale of alcohol and other beverages satisfies the principally produced standard. This is because the Court has not been presented with a proposal for what those beverage sales may look like. Absent a formal proposal, we decline to consider Peacefield's vague references of wanting to sell alcohol.

250 permit to operate the on-farm restaurant without being restricted by the principally produced standard. Thus, our determination is limited to whether the pond, waterline, and access road support a development which is otherwise subject to Act 250.

Pursuant to 10 V.S.A. § 6001(3)(E), “[w]hen development is proposed to occur on a parcel ... that is devoted to farming activity... only those portions of the parcel ... that support the development shall be subject to regulation under this chapter.” This provision limits the scope of Act 250 regulation over a farmed parcel to only the portion of land dedicated to and supporting a non-exempt commercial development. WhistlePig, LLC Act 250 Land Use Permit 9A0348, No. 58-5-14 Vtec, slip op. at 6–7 (Vt. Super. Ct. Envtl. Div. Sept. 2, 2015) (Durkin, J.). The provision is triggered when land devoted to farming is subsequently developed for other purposes. In re Eustance Act 250 Jurisdictional Opinion, 2009 VT 16, ¶ 18.

Here, the pond, waterline, and access road would all be used to support the commercial operation of the restaurant by providing the water supply necessary to satisfy a permitting requirement. Each of these elements serves a dry hydrant located on the Property, which was a condition of the variance approval by the Vermont Division of Fire Safety. Without this water supply, Peacefield would not comply with its variance approval. Even if the pond is used separately for farm irrigation, it is also used as a necessary water source for the commercial development and is therefore subject to Act 250 jurisdiction. Unless Peacefield supplies the dry hydrant from another water source, the existing proposal in Docket 24-ENV-00054 to utilize the pond, water line, and access road would trigger Act 250 jurisdiction over those aspects of the project.

As explained above with respect to the 2023 JO, if Peacefield only conducts limited operations of the restaurant such that it satisfies the principally produced standard, this supporting infrastructure would not be subject to jurisdiction as it would remain part of the farming operations. If Peacefield pursues a more expansive version of the restaurant such that it exceeds the principally produced standard, then this supporting infrastructure would be part of a commercial development and be subject to Act 250 jurisdiction.

Because it is undisputed that the pond, waterline, and access road would all be used to supply water to the Barn for a commercial development, we conclude that Act 250 jurisdiction would attach to these aspects of the Property should Peacefield pursue the more expansive version of the restaurant.

Accordingly, we **GRANT in PART** Neighbors motion for summary judgment on this issue and in doing so resolve Docket No. 24-ENV-00054.⁸

Conclusion

In conclusion, because Peacefield has modified its proposed project to seek an agricultural exemption, and because it has not used the Barn for a commercial purpose, Peacefield is not bound by the jurisdictional determinations set forth in the 2018 JO and 2021 Partial Findings of Fact, Conclusions of Law, and Order. Instead, Peacefield is entitled to operate an on-farm dining facility that meets the Act 250 principally produced standard. Accordingly, we **GRANT in PART** Peacefield's motion for summary judgment and **DENY in PART** Neighbors' motion with respect to the preclusive impacts of those prior decisions.

As part of its request for a jurisdictional opinion, Peacefield has demonstrated that its four sample menus can easily meet the principally produced standard. To the extent that Peacefield seeks to serve additional menu items, including beverages, which are not listed on the sample menus, those items have not been presented to the Court for an opinion regarding compliance with the principally produced standard.

With respect to Docket No. 24-ENV-00054, we conclude that the pond, waterline, and access road are necessary to support Peacefield's more expansive use of the Barn, such that those items would be subject to Act 250 jurisdiction should Peacefield move forward with pursuing this version of the project. Thus, we **GRANT in PART** Neighbors' motion for summary judgment and **DENY in PART** Peacefield's motion for summary judgment with respect to the scope of jurisdiction.

This concludes the matter before the Court. A Judgment Order accompanies this Decision. Electronically signed this 5th day of August 2025 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

⁸ Neighbors Statement of Questions raises several theories for why jurisdiction attaches to the pond, waterline, and access road. Because we resolve the issue in their favor, we decline to address these alternate theories of jurisdiction.