

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 25-ENV-00081

Camara Slate Products, Inc. JO 1-502

ENTRY ORDER

Title: Motion for Summary Judgment (Motion: #1)

Filer: Nicholas A.E. Low, Esq.

Filed Date: June 5, 2026

Opposition to Motion, filed on July 6, 2026, by Benjamin J. Canellys, Esq.

Camara Slate Products, Inc. Reply in Support of Motion, filed on July 17, 2026, by Nicholas Low, Esq.

In this matter, Camara Slate Products, Inc. (Camara) appeals Jurisdictional Opinions #1-502 (the JO) issued by the District #1 Coordinator concluding that certain activities occurring at Camara's property located at 963 Main Street, Fair Haven, Vermont (the Property) constituted a material change to Camara's Act 250 permit and required a permit amendment.

Presently before the Court is Camara's motion for summary judgment. In relevant part the motion asks this Court to determine what party holds the burden of proving Camara's activities constitute a material change requiring a permit amendment. Camara asserts that the parties that initially requested the JO hold the burden of proof and by failing to participate in this matter, requestors have failed to meet that burden such that this matter must be dismissed and the JO voided. The Land Use Review Board (LURB) opposes the motion. The material facts in this matter are not in dispute.

As an initial matter, the LURB asserts that the Court cannot address Camara's burden argument because it was not explicitly raised by Camara's Statement of Questions.

This is a court of limited jurisdiction. In re DJK, LLC WW & WS Permit, 2024 VT 34, ¶ 25; 4 V.S.A. § 34 (identifying Environmental Division's jurisdiction). Our review is further limited to those issues identified through an appellant's Statement of Questions. See V.R.E.C.P. 5(f); see also 10 V.S.A. § 8504(h) (directing that, with respect to de novo hearings, legal issues to be addressed on appeal be limited to "those issues which have been appealed"). A Statement of Questions "functions like a

pleading to limit the issues that are to be heard on the appeal.” Atwood Planned Unit Dev., 2017 VT 16, ¶ 12 (quotation omitted). An “appellant may not raise any question outside of the statement” Id. (quotation omitted). Despite this, the Court can consider matters “intrinsic to a statement of questions” even if “the issue was not literally stated in the statement of questions.” Id. at ¶ 17.

Camara’s Questions 1 through 3 address whether various activities or impacts require an Act 250 permit amendment. While the Questions address specific activities or issues, they are broad enough to intrinsically address who bears the burden of proving whether an amendment is required. Allocation of the burden of proof is a necessary prerequisite to deciding whether an amendment is required here, which is the question that lies at the heart of this case. Thus, we conclude that Camara may permissibly challenge who has the burden of proving a material change has occurred.¹

Camara asserts that the Vermont Supreme Court has not adjudicated the issue of who holds the burden of proving a material change to a previously permitted project has occurred. It relies on In re Request of Jurisdictional Opinion re: Changes in Physical Structures & Use at Burlington Int’l Airport For F-35A, which includes a footnote stating that Vermont Supreme Court cases “do not delineate which party has the burden of proving there is a material change to [previously] permitted development.” 2015 VT 41, ¶ 26, n*7, 198 Vt. 510 (hereinafter F-35A). In Camara’s view, this statement establishes that the issue has not been conclusively resolved. Camara further seeks to have this Court adopt the shifting burden applicable when determining whether there has been a substantial change to a “preexisting development,” as defined by 10 V.S.A. § 6081(b). See In re N.E. Materials Grp., LLC Act 250 JO # 5-21, 2015 VT 79, ¶¶ 20-22 (explaining the applicable burdens when determining whether there has been a substantial change to a preexisting development). Camara urge this Court to find that on appeal, the burden of proof falls on the party who initially requested the JO. Because the initial requestors have not appeared in this appeal, Camara asserts they have failed to meet their burden. The LURB argues Camara bears the burden of proof because it is the appellant in this matter.

The burden of proof consists of both a burden of production and a burden of persuasion. See In re Rte. 103 Quarry, No. 205-10-05 Vtec, slip op. at 8 (Vt. Envtl. Ct. Nov. 22, 2006) (Durkin, J.), *remanded on other grounds by* 2007 VT 66, 182 Vt. 569, and *aff’d*, 2008 VT 88, 184 Vt. 283. In Re: Green

¹ The LURB also challenges whether Camara’s Statement of Questions adequately raises Camara’s challenge to the LURB’s role in this case. Based on the Court’s inclination to grant summary judgment to the LURB and conclude that Camara has the burden of proof in this appeal, it would appear that this legal issue would become moot. As such, the Court does not reach the issue in this Entry Order. Should it become necessary to address this argument, the Court will do so in its final decision on the pending motions which will be issued following the briefing requested below.

Mountain Power Corp. & Town of Wilmington, the former Environmental Board, the predecessor to the LURB, addressed allocation of the burden of proof in an appeal of a jurisdictional opinion concerning whether a material change had occurred to a previously permitted project. DR #405 (Envtl. Bd. Sept. 18, 2001). It recognized that the Environmental Board has “held that the burden of proof is on a permittee when the question is raised regarding jurisdiction over changes to an already permitted project.” *Id.* at 5. It went on to state:

Based on Board precedent, the burden of proof in a Petition for Declaratory Ruling concerning a permitted project which may have undergone a substantial or material change is on the permittee. Thus the permittee . . . must prove that the changes comply with the permits or are not substantial or material, and therefore, do not require permits [sic] amendments *Pizzagalli Properties* (Burger King), Declaratory Ruling Request # 361, Chair's Preliminary Ruling (Jun. 8, 1998); *Re: Pizzagalli Properties and Town of Colchester*, Declaratory Ruling # 374, Findings of Fact, Conclusions of Law, and Order (May 20, 1999); *Developer's Diversified Reality Corporation*, Declaratory Rulings # 364, # 371, and # 375 (consolidated), Findings of Fact, Conclusions of Law, and Order (Mar. 25, 1999); *Vermont Institute of Natural Science*, Declaratory Ruling # 352 (Feb. 11, 1999); *Ronald L. Saldi, Sr.*, Declaratory Ruling Request # 365 (Dec. 24, 1998).

Id. (quoting *Re: New England Container Co. & Roland Devost*, Declaratory Ruling # 393 Prehearing Conference Report and Order (Mar. 23, 2001)).

The above holding appears to settle the issue regarding which party holds the burden of proving whether a material change has occurred to a previously permitted project. Prior decisions of the Environmental Board “shall be given the same weight and consideration as prior decisions of the Environmental Division.” 10 V.S.A. § 8504(m). The former Environmental Board’s precedent on this issue is well-reasoned and persuasive. In the material change context, a permittee is already subject to Act 250 jurisdiction and, therefore, Act 250 jurisdiction is the status quo.² A permittee should understand the bounds of its preexisting Act 250 permit and the nature of its current operations. Thus, it should retain the burden of proving that its activities are consistent with their permitting and

² This jurisdictional difference distinguishes the “material change” analysis applicable to a previously permitted development and the “substantial change” analysis applicable to a development that pre-dated Act 250 and, therefore, was never subject to Act 250 jurisdiction.

do not require a permit amendment.³ Therefore, because prior Environmental Board decisions set forth the applicable burdens, the Court does not believe it appropriate to look to alternative burden shifting provisions related to developments preexisting Act 250 to establish who bears the burden of proof in this case.⁴

Thus, Court is inclined to grant summary judgment on this issue to the LURB, albeit on slightly different grounds, and conclude that Camara has the burden of proof in this matter.

Pursuant to V.R.C.P. 56(f), the Court may grant summary judgment for a non-moving party only after giving notice and reasonable time to respond. V.R.C.P. 56(f), applicable here through V.R.E.C.P. 5(a)(2). This is similarly true when the Court seeks to grant summary judgment on grounds not raised by the parties, because no party addressed this precedent in their briefing. Accordingly, we **ORDER** that the parties may submit filings responsive to this discrete legal issue within 21 days of the date of this Entry Order.⁵ The Court will thereafter take this matter back under advisement. Because the relevant facts are not in dispute, there is no need to file additional Statements of Undisputed Material Facts.

Electronically signed August 7, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink, appearing to read "Tom Walsh", with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

³ The party that requested the JO has not appeared in this matter. Their participation is not mandatory. They requested a JO and one was issued. They have no obligation to continue their participation. Camara is now challenging the JO. The Court sees no concerns with this process.

⁴ While F-35A, includes a footnote stating that Vermont Supreme Court cases do not delineate the burden of proving whether a material change has occurred to a previously permitted development, it does not address former Environmental Board precedent and the decision declines to rule upon the issue. 2015 VT 41, ¶ 26, n*7. It is true that the Vermont Supreme Court has not addressed this issue, but the Court does not believe that F-35A's footnote precludes the Court in this matter from adopting the reasoning set forth by the former Environmental Board.

⁵ As set forth above, the Court believes that the proffered ruling would render Camara's argument that the LURB cannot step into the requestor's shoes in their absence on appeal moot, because Camara, not the requestors, would bear the burden of proof. Should the parties disagree with the Court's inclination to conclude this argument moot, the parties may briefly address this issue in the requested filings.