

**State of Vermont
Superior Court – Environmental Division**

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ENTRY REGARDING MOTION

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In re Barefoot et. al. Act 250 Application
(Appeal from District 5 Env'tl. Commission determination)

Docket No. 46-4-12 Vtec

Title: Motion to Dismiss Applicant-Appellants' Question 9 (Filing No. 2)

Filed: May 24, 2012

Filed By: Interested Person Francis Kincaid (Kinny) Perot

Response filed on 7/2/2012 by Applicant-Appellants

Granted

Denied

Other

On December 30, 2011 the District 5 Environmental Commission ("the Commission") denied an Act 250 permit application submitted by Applicants Tom Barefoot III, Joni Zweig, and True North Wilderness Programs, LLC ("Applicants") to operate a wilderness therapy program on a 25-acre tract owned by Barefoot/Zweig off Dana Hill Road in the Town of Waitsfield, Vermont. Applicants appealed the decision on April 2, 2012, and Interested Person Francis Kincaid Perot ("Ms. Perot") filed a cross-appeal on May 4, 2012.

On May 24, 2012, Ms. Perot filed a motion to dismiss Question 9 of Applicants' Statement of Questions.¹ Question 9 asks whether Ms. Perot "satisf[ies] requirements for Party Status on Criteria 4 and 10."² Simultaneously with this motion to dismiss Question 9, Ms. Perot filed a motion for party status under Act 250 criteria 4 and 10 as well as under criteria 1, 2, 3, 5, 8, and 9. On the same date, she also filed a Statement of Questions that we understand to encompass both her party status motion and her cross-appeal. On July 2, 2012, Applicants moved to dismiss all of the 27 questions in Ms. Perot's Statement of Questions.

The basis for the motion to dismiss Applicants' Question 9 (which questions the propriety of Ms. Perot's party status) was Ms. Perot's argument that party status may be challenged only through a motion to dismiss filed pursuant to V.R.E.C.P. 5(d)(2) and not in an appellant's statement of questions. We do not read V.R.E.C.P. 5(d)(2) so strictly as to impose such a constraint on how questions regarding party status may be raised. Challenging party status through a statement of questions has the same practical effect of moving to dismiss that party, and none of the Rules of Environmental Court Procedure prohibit a party from asking, in a statement of questions, whether an opponent satisfies party status requirements. In any case,

¹ Ms. Perot had previously filed a motion to dismiss Applicants' questions 1, 2, 3, 4, 5, 6, 7, and 9 on April 24, 2012, alleging that Applicants' notice of appeal referenced only the Commission's final action in this case (regarding a motion to amend) rather than the permit denial itself. We denied this motion to dismiss in an Entry Order also issued today.

² The Commission granted Ms. Perot final party status for criteria 4 and 10.

as Applicants did subsequently move to dismiss Ms. Perot’s motion for party status on criteria 4 and 10 (among others), Ms. Perot’s challenge to Applicants’ Question 9 is now moot. We intend to address the legitimacy of Ms. Perot’s party status in a separate decision that resolves the remaining motions pending in this appeal.

For the reasons stated above, Ms. Perot’s motion to dismiss Applicants’ Question 9 is **DENIED**.

Thomas S. Durkin, Judge	December 21, 2012 Date
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Date copies sent: _____ Clerk's Initials _____

Copies sent to:

- Atty Geoffrey H. Hand for Appellants Thomas Barefoot III, Joni Zweig, & True North Wilderness Program, LLC
- Attorney Rebecca Boucher, Co-Counsel for Appellants
- Attorney Catherine Gjessing for the Vermont Agency of Natural Resources
- Attorney David Grayck for Cross Appellant Frances Kincaid Perot
- Attorney Peter Gill for Interested Person Natural Resources Board/LU Panel.