

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

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**ENTRY REGARDING MOTION**

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**In re Chaves Londonderry Gravel Pit, LLC and David Chaves                      Docket No. 60-4-11 Vtec**  
**(Appeal of Act 250 District 2 Environmental Commission Decision)**

Title: Motion to Dismiss Thomas Ettinger (Filing No. 1)

Filed: August 15, 2011

Filed By: C. Daniel Hershenson, Attorney for Appellants Chaves Londonderry Gravel Pit, LLC  
and David Chaves

Response in opposition filed on 8/30/11 by Cross-Appellant Thomas Ettinger

Reply filed 9/9/11 by C. Daniel Hershenson, Attorney for Appellants Chaves Londonderry  
Gravel Pit, LLC and David Chaves

Granted                       Denied                       Other

Chaves Londonderry Gravel Pit, LLC and David Chaves (“Appellants”) appeal certain findings contained in the District 2 Environmental Commission’s (“the District Commission”) March 4, 2011 Findings of Fact and Conclusions of Law and Order concerning an Act 250 permit they obtained for the operation of a pre-existing quarry in the Town of Londonderry, Vermont. They also appeal the District Commission’s subsequent April 11, 2011 Memorandum of Decision on Motion to Alter. Thomas Ettinger, individually and as a representative of Riverside Farm, cross-appeals,<sup>1</sup> as does Nancy Kemper.

Appellants have now filed a motion to dismiss Thomas Ettinger, individually, as a party to this matter. They contend that he neither requested nor obtained individual party status before the District Commission, but rather was granted party status solely as a representative of Riverside Farm. In response, Mr. Ettinger quotes portions of the District Commission’s April 11, 2011 Memorandum of Decision on the motion to alter its original March 4, 2011 Findings and Conclusions.

The District Commission’s April 11, 2011 Memorandum of Decision references Mr. Ettinger’s motion as “a party” in the District Commission proceedings, but the referenced provisions in no way announced a new party status determination. The only relevant party status determination announced by the District Commission is that “Thomas Ettinger, representing Riverside Farm,” was granted party status. Re: Chaves Londonderry Gravel Pit, LLC, and David Chaves, Findings of Fact and Conclusion of Law and Order, at 4, ¶ 3 (District 2 Env’tl. Comm’n Mar. 4, 2011). The District Commission never specifically granted party status to Mr. Ettinger individually in its April 11, 2011 Memorandum of Decision.

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<sup>1</sup> We note that the issue before this Court on the Motion to Dismiss is whether Thomas Ettinger is a party to this action individually or solely as a representative of Riverside Farm. We use both terms here only because his statement of questions and his cross-appeal address him as such.

In light of the District Commission’s party status determination, we conclude that Mr. Ettinger was granted party status only as a representative of Riverside Farm. We are now left to wonder, given the limited record presently before us in this de novo appeal, what type of entity Riverside Farm is considered to be.

The Court is reluctant to announce its determination on Appellants’ pending dismissal motion until it receives some evidence on the legal status of Riverside Farm. Therefore, the Court directs that Mr. Ettinger, as representative of Riverside Farm, submit documentation by no later than **Friday, December 9, 2011** addressing the following: Riverside Farm’s status (corporate, partnership, sole proprietorship, or other); Mr. Ettinger’s position in or relationship to Riverside Farm; and documentation verifying Mr. Ettinger’s authority to speak on behalf of and bind Riverside Farm. The Court will thereafter render its final determination on Appellant’s motion to dismiss.

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Thomas S. Durkin, Judge

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November 23, 2011  
Date

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Date copies sent to: \_\_\_\_\_

Clerk's Initials \_\_\_\_\_

Copies sent to:

- C. Daniel Hershenson, Attorney for Appellants Chaves Londonderry Gravel Pit and David Chaves
- David Grayck, Attorney for Cross-Appellants Riverside Farm and Thomas Ettinger
- Hans Huessy, Attorney for Interested Persons Kraig Hart and Doreena Hart
- Cross-Appellant Nancy Kemper
- Interested Person Angelique Jarvis
- Interested Person David A. Jarvis
- Interested Person David M. Rathburn
- For Informational Purposes Only Natural Resources Board
- For Informational Purposes Only Agency of Natural Resources