

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

RE: Rinaldo and Anne Vasquez
c/o George and Alice Araskiewicz
Land Use Permits #6000 16, #600016- 1, and #6000 16-2 (Revocation)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This Order pertains to a petition to revoke Land Use Permit #6000 16 filed by Lawrence White (“Petitioner”). As set forth in more detail below, the Vermont Environmental Board grants the petition to revoke subject to an opportunity to correct the violations.

I. BACKGROUND

On April 15, 1971, the District #1 Environmental Commission (“District Commission”) issued Land Use Permit #6000 16 to Michael and Zerrita Halligan together with supporting Findings of Fact, Conclusions of Law, and Order (“Original Permit”), pursuant to 10 V.S.A. §§ 6001-6092 (“Act 250”). The Original Permit authorized the construction and operation of a travel trailer park and campground on approximately ten (10) acres of land located between Otter Creek and U.S. Route 7 in Danby, Vermont (“Project”).

On May 28, 1979 and November 26, 1979, the District Commission issued Land Use Permits #600016- 1 and #6000 16-2, respectively, to Rinaldo and Anne Vasquez, successors in interest to the Halligans, together with supporting Findings of Fact, Conclusions of Law, and Order (“Dash 1 Permit” and “Dash 2 Permit”). The Dash 1 Permit and the Dash 2 Permit authorized the construction, renovation, and operation of a camp store and recreation room on the Project site.

On November 7, 1997, Petitioner filed a petition to revoke (“Petition”) the Original Permit, the Dash 1 Permit, and the Dash 2 Permit (collectively, the “Permits”). The Petition is based upon the allegation that George and Alice Araskiewicz (“Respondents”), as successors in interest to Michael and Zerrita Halligan and Rinaldo and Anne Vasquez, have violated the terms of the Permits and Board rules and that Petitioner’s property interests are directly affected thereby.

On December 17, 1997, then Board Chair John T. Ewing and current Board Chair Marcy Harding issued a joint memorandum requesting clarification of the grounds underlying the Petition and Petitioner’s standing to file the Petition,

On January 7, 1998, in response to the Chairs’ joint memorandum, Petitioner filed a memorandum in clarification of the Petition (“Clarification Memorandum”). The Clarification Memorandum also alleged, as an additional ground for revocation, that

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Respondents' predecessors in interest failed to comply with Environmental Board Rule 1 O(F).

On February 3, 1998, Susanne and Harris Peel filed a letter requesting party status in this proceeding.

On February 6, 1998, Board Chair Marcy Harding convened a prehearing conference with the following individuals participating: Petitioner by Nancy Brown; Respondents by George Araskiewicz and Stephanie Kaplan, Esq.

On February 10, 1998, Chair Harding issued the Prehearing Conference Report and Order ("Order"), which is incorporated herein by reference. The Order, in part, takes official notice of the Original Permit, the Dash 1 Permit, and the Dash 2 Permit, including the respective applications, plans, and exhibits on file relative to the Permits.

On February 17, 1998, Respondents filed an Objection to the Order ("Objection"), which included a request for an extension of time to supplement the Objection.

On February 17, 1998, Petitioner filed a Response to the Order.

On February 19, 1998, Chair Harding issued a Preliminary Ruling, which is incorporated herein by reference, denying Respondent's request for an extension of time in which to supplement the Objection.

On February 25, 1998, the Board deliberated concerning the Objection. On February 26, 1998, the Board issued a Memorandum of Decision which is incorporated herein by reference, affirming the Order and the Preliminary Ruling and denying the Objection in its entirety.

On March 10, 1998, Petitioner filed his direct testimony and exhibits.

On March 24, 1998, Petitioner filed supplemental direct testimony and exhibits. Also on March 24, 1998, Respondents filed rebuttal testimony.

On March 30, 1998, Chair Harding convened a second prehearing conference by telephone. The following individuals participated: Petitioner by Nancy Brown; Respondents by Attorney Kaplan.

On March 31, 1998, Chair Harding issued an Order ("Evidentiary Order"), which

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is incorporated herein by reference, ruling on evidentiary objections raised by Respondents at the prehearing conference.

On April 1, 1998, a three-member panel of the Board ("Panel") convened a hearing in Danby, VT. The following parties participated: Petitioner by Nancy Brown; Respondents by Attorney Kaplan. The Panel affirmed the Evidentiary Order, took a site visit, accepted documentary and oral evidence into the record, and heard opening and closing statements. After recessing the hearing, the Panel deliberated. The Panel conducted additional deliberations on April 9, 1998.

Based upon a thorough review of the record and related argument, the Panel issued a proposed decision on April 10, 1998 which was sent to the Parties. The Parties were allowed to file written objections and request oral argument before the Board on or before April 27, 1998. On April 27, 1998, Petitioner filed an objection to the proposed decision.

On May 26, 1998, the Board convened a deliberation concerning this matter. Following a review of the proposed decision and the evidence and arguments presented, the Board declared the record complete and adjourned. The matter is now ready for final decision.

II. ISSUES

1. Pursuant to Environmental Board Rule ("EBR") 38(A), whether the Original Permit should be revoked because Respondents have violated the terms and conditions of the Original Permit and its associated application by (i) placing trailers in locations not approved by the Original Permit, (ii) using more than the permitted number of campsites, (iii) allowing more than one trailer per campsite, and (iv) encroaching on and thinning the "Greenbelt" between the camping sites and U.S. Route 7.

2. If grounds for revocation exist, whether an opportunity to correct the violations should be provided pursuant to EBR 38(A)(3).

III. EVIDENTIARY OBJECTIONS

Upon review of the prefiled testimony and exhibits filed by Petitioner, the Board affirms the Chair's preliminary rulings regarding Respondents' objections for the reasons set forth in the Evidentiary Order, which has been incorporated herein by reference.

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IV. FINDINGS OF FACT

1. On April 15, 1971, the District Commission issued the Original Permit to Michael and Zerrita Halligan authorizing the construction and operation of a travel trailer park and campground on approximately ten (10) acres of land located between Otter Creek and U.S. Route 7 in **Danby**, Vermont ("Project").
2. On May 28, 1979 and November 26, 1979, the District Commission issued the Dash 1 Permit and the Dash 2 Permit to Rinaldo and Anne Vasquez, successors in interest to the Halligans, authorizing the construction, renovation, and operation of a camp store and recreation room on the Project site.
3. Respondents are the successors in interest to Michael and Zenita Halligan and Rinaldo and Anne Vasquez in respect to the Original Permit, the Dash 1 Permit, and the Dash 2 Permit.
4. The Original Permit authorizes the Project to have 31 camping/trailer lots ranging in size from approximately 2550 square feet to approximately 3500 square feet.
5. The Original Permit states that "subject to the findings of fact and conclusions of law attached [t]hereto, [permittee] may commence development ... on the land as specified in said application."
6. Included as part of the application for the Original Permit was a site plan dated March 15, 1971 prepared by professional civil engineers ("Site Plan").
7. The Site Plan establishes lot lines for each of the 31 sites, the location of the leaching field, bath house, internal roadways, and the site of future development. It also includes a so-called "greenbelt" adjoining Route 7 from Cascades Brook to the northern property line of the Project site.
8. The Site Plan provides the following "sanitary design criteria" regarding flows calculated in gallons per day ("gpd"):

30 trailer spaces @ 50 gpd	1500 gpd
Laundry waste 30 spaces @ 50 gal/use x 0.8	1200
Owners trailer	150
Dump Station- 30 spaces x 30 gal. x 0.33	<u>300</u>
Total Design Flow	3150 gpd

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9. The total flow attributed to each of the 30 "trailer spaces" of 100 gpd (50 gpd + 40 gpd for laundry waste + 10 gpd for the dump station) is less than the 150 gpd attributed to the space containing the owner's trailer, the 3 1 st trailer lot.
10. The building containing the camp store and recreation room approved by the Dash 1 and Dash 2 Permits is located on trailer lots #23, #24, and #25.
11. Respondents' mobile home is located on at least one trailer lot, in the vicinity of lot #30.
12. On the day of the site visit, 34 trailers were located on the Project site in addition to the Respondents' mobile home. One of the trailers left the site during the site visit.
13. Of the 34 trailers, 5 were stored in a meadow in the southeastern area of the Project site, the area shown by the Site Plan as being reserved for "future expansion."
14. The Site Plan establishes 9 lots on the north side of the Project site. On the day of the site visit, 14 trailers were parked in those 9 lots.
15. Lots #4 and #5, which are two of the 9 lots on the north side of the site, lay adjacent to the greenbelt to the north of the leaching field. On the day of the site visit, seven trailers were parked on those two lots.
16. On the day of the site visit, 9 trailers were located from the area south of the bathhouse to Route 7.
17. On the day of the site visit, 6 trailers were located along the east side of the Project site.
18. Of the 34 trailers, 7 trailers belong to Respondents or to their friends and family members. One of the 7 trailers, which is located in the far northwest corner of the Project site, belongs to Respondents but is no longer used. The 6 other trailers are not leased to third parties.

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19. Finding of fact #7, which is expressly incorporated into the Original Permit, states:

Applicant proposes that where existing vegetation does not provide a sufficient screen from the highway, a greenbelt will be created of fast growing conifers.

20. The District Commission's conclusions of law, which are expressly incorporated into the Original Permit, state:

The [Original Permit] ... should include and be subject to the following conditions:

- b. Applicant consult and cooperate with the Rutland County Environmental advisor in the matter of screening and landscaping.

21. The Site Plan establishes the greenbelt as approximately 33' deep. The Plan establishes the distance between the center line of Route 7 and the eastern edge of the greenbelt as approximately 66-67'.

22. The Original Permit's sole references to the greenbelt are those set forth in findings of fact #19, #20, and #21, supra.

23. In the vicinity of the Project site, Route 7 measures 16' from the center line to the pavement edge. A two foot gravel shoulder runs along the pavement.

24. Two measurements of 67' taken **from** the center line of Route 7 east to the Project site stretched through the greenbelt. The measurement taken to the North of the leaching field terminated at the eastern edge of a trailer parked in the site. The other measurement, taken to the south of the leaching field, terminated at a double tree growing on one of the trailer sites. A portion of one trailer was located within that 67' area.

25. The greenbelt running from the northern property line to the Project entrance is a mix of uneven-aged tree growth. Within the greenbelt is a relatively straight row of conifers that appears to have been planted.

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26. No trees grow on the Project site adjacent to Route 7 immediately south of the Project entrance. Further to the south, across from Cascade Road, is a row of conifers that are more mature than those within the greenbelt north of the Project entrance. No trailer sites lie to the south of the Project entrance. The Site Plan reserves this area for future expansion.
27. The **office** for Petitioner's construction business and a residence owned by Petitioner are located on the west side of Route 7, directly across from the Project site. No trees grow along the road between Petitioner's buildings and Route 7.
28. Petitioner purchased the property located across Route 7 from the Project site in 1982 and 1983.
29. Respondents purchased the Project site in 1984. They originally allowed trailers to be located on the sites as they had been used by the previous owners. They have since eliminated some lots that were close together. Respondents have not consulted the Site Plan's trailer site layout or tried to conform to that design.
30. Respondents often store trailers in the meadow to the south of the approved trailer sites. During the camping season, they rent trailer sites in the meadow as well.
31. Respondents do not know whether their predecessors in interest consulted with the **Rutland** County Environmental advisor in the matter of screening and landscaping. Respondents do not know whether their predecessors in interest planted a row of "fast growing conifers."
32. Respondents have not thinned the greenbelt. They have cleared fallen tree limbs that pose a danger to campers. The power company has cut some vegetation from the highway right of way when clearing and trimming around power lines.
33. The greenbelt screens the Project from Petitioner's property when leaves are on the trees.

V. CONCLUSIONS OF LAW

The Board has jurisdiction to consider revocation petitions pursuant to 10 V.S.A. § 6090(c) and EBR 38(A). Pursuant to EBR 38(A)(l), the Board treats a revocation petition as an initial pleading in a contested case, in accordance with the procedures of EBR 40. The person seeking revocation has the burden of proof. Re: Roger V. and

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Beverly Potwin, #3 W0587-1-EB, Findings of Fact, Conclusions of Law, and Order at 14 (July 15, 1997) [EB #655]; Re: Lawrence White, #1R0391-EB, #1R0391-3-EB, #1R0391-4-EB, #1R0391-5-EB, #1R0391-5A-EB, and #1R0391-6-EB (Revocation) and #1R0391-7-EB (Interlocutory), Findings of Fact, Conclusions of Law, and Order at 14 (Sept. 17, 1996) [EB #647]; Re: Putney Paper Co., Inc., #2W0436-6-EB (Revocation)(Altered), Findings of Fact, Conclusions of Law, and Order at 12- 13 (June 30, 1995) [EB #583R].

EBR 38(A) provides, in part, that the Board may revoke a permit if it finds that "the applicant or successor in interest has violated the terms of the permit or any permit condition, [or] the approved terms of the application." EBR 38(A)(2)(b). The Board is reluctant to revoke a permit when it is doubtful or uncertain about the grounds for revocation. Potwin, supra at 14; Re: Stokes Communications Corn., #3R0703-EB (Amendment Application Revocation), Memorandum of Decision at 9 (Mar. 20, 1996) [EB #644M2]. If the Board determines that a violation exists, then it must give the permit holder a reasonable opportunity to correct the violation prior to any order of revocation becoming final, unless there is "a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation." EBR 38(A)(3). When providing such opportunity to correct, the Board must clearly state in writing the nature of the violation and the steps necessary for its correction or elimination. Id.

A. Greenbelt

Petitioner alleges that Respondents have violated the Original Permit by encroaching on and thinning the greenbelt located between the camping sites and U.S. Route 7. Petitioner has presented no evidence tending to prove that Respondents have thinned or otherwise cleared trees in the greenbelt.

The Site Plan establishes the total distance between the center line of Route 7 and the eastern edge of the greenbelt as 67 feet. It represents that the depth of the greenbelt is roughly equal to the distance between the center line and the western edge of the greenbelt -- 33-34 feet. But measurements taken at the site reveal that the distance between the center line and the western edge of the greenbelt is 18 feet. If the Site Plan is read to require that the greenbelt's eastern boundary is 67 feet from the center line of Route 7, then two of the trailers are at least partially within the area reserved for greenbelt. The Board concludes, however, that it is more reasonable to read the Site Plan as designing a greenbelt that is 33 feet deep. No evidence was submitted that trailers are located within 33 feet of the eastern edge of Route 7, or 5 1 feet from the center line (18' +

33').

Petitioner has not met his burden of proof. Accordingly, the Board concludes that Respondents have not violated the Original Permit by encroaching on and thinning the greenbelt located between the camping sites and U.S. Route 7.

B. Siting of Trailers

Petitioner makes three interrelated allegations regarding the siting of trailers on the Project site. He alleges that Respondents have violated the Original Permit by allowing more than one trailer per campsite. Respondents have argued that the Original Permit contains no express limitation on the number of trailers per site. The Site Plan, which is expressly incorporated into the terms of the Original Permit, indicates that the septic flow for the Project is designed at 100 gpd for each of the 30 trailer sites not occupied by the owner and at 150 gpd for the owner's trailer site. Clearly the Project was designed to accommodate no more than one trailer per site. The Original Permit places a limit of one trailer per site: the Original Permit authorizes the Project "as specified in [the] application;" the Site Plan, submitted as part of the application, designs a Project that cannot be read to accommodate more than one trailer per trailer site. Accordingly, the Board concludes that the Original Permit authorizes no more than one trailer per site.

Petitioner alleges that Respondents have used more than the permitted number of campsites. The Original Permit authorizes 31 trailer sites. Subsequent permit amendments authorize the construction of the camp store and recreation room on three of the existing lots. Respondents' mobile home is situated on at least one of the lots approved by the Original Permit. Therefore, at a minimum, four of the 31 lots are currently used, leaving 27 lots available for trailer sites. Because of the Board's conclusion that the Original Permit authorizes no more than one trailer per lot, if there are only 27 lots available then there can be no more than 27 trailers located on the Project site. Thirty four trailers were located on the Project site on the day of the site visit. Even if the five trailers that were stored in the meadow are subtracted from the total, the number of trailers on the site exceeds the authorized maximum. The Board is unpersuaded by Respondents' argument that trailers belonging to friends and family should not be counted when determining whether the threshold has been exceeded. The Original Permit does not distinguish between trailers or trailer sites that are offered for lease and those that are used by the permittees' family and friends. It authorizes a specific number of trailer sites -- and thus a specific number of trailers. The number of authorized spaces does not expand simply because the campsite is occupied by non-paying guests. The Board concludes that Respondents use more than the authorized number of campsites

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and thus are in violation of the Original Permit.

Petitioner also alleges that Respondents allow more than one trailer per campsite. There are 27 available trailer sites and 34 trailers on the Project site. The obvious conclusion is that Respondents allow more than one trailer per campsite. For example, on the day of the site visit there were seven trailers on lots #4 and #5, which are authorized to contain no more than one trailer each. The Board concludes that Respondents are in violation of the Original Permit.

Finally, Petitioner alleges that Respondents allow trailers in locations not authorized by the Original Permit. Respondents have not attempted to follow the design specified by the Site Plan but have instead continued to use the lots basically as they were demarcated by their predecessors in title. This is evidenced by, for example, the presence of seven trailers in lots #4 and #5. In addition, during the camping season, Respondents rent trailer sites in the meadow to the south of the approved sites. This use of the meadow is not authorized by the Original Permit, which approves 3 1 specifically located trailer sites. Furthermore, Respondents regularly store trailers in the meadow. Respondents argue that nothing in the Original Permit forbids trailer storage or such use of the meadow. While the storage of five trailers in the meadow might be considered incidental to the use authorized by the Original Permit, any more than that number could be a material or substantial change requiring a permit amendment. The Board concludes that Respondents allow trailers in locations not authorized by the Original Permit and thus are in violation of the Original Permit.

Because the Board has determined that Respondents are in violation of the Original Permit, the Board grants Petitioner's petition to revoke. Based on the findings above, however, the Board concludes that there is no "clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation." EBR 38(A)(3). Therefore, the Board will revoke the Original Permit subject to Respondents' opportunity to correct the violations. The Board will allow Respondents 90 days from the date of this decision to correct the violations in one of two ways. They may either (i) file a statement with the Board detailing the manner in which they have corrected the violations or (ii) submit a complete amendment application with the District Commission. If Respondents choose to pursue option (ii), nothing in this decision precludes the Commission from processing the application pursuant to EBR 5 1, if it believes this is the appropriate way in which to proceed. EBR 10(E) and (F) shall apply to any such application.

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VI. ORDER

1. The Board **affirms** the Evidentiary Order.

2. Respondents have violated the Original Permit as set forth in V. above. The Original Permit is revoked subject to Respondents' opportunity to correct each of the violations, on or before ninety (90) days from the date of this decision, (i) by filing a statement with the Board detailing the manner in which they have corrected the violations and have complied with the requirements of the Original Permit and/or (ii) by filing a complete amendment application with the District Commission seeking authorization for any of the activities constituting violations that Respondents do not correct pursuant to (i).

3. Regardless of which option Respondents pursue under paragraph #2 above, Respondents may operate the Project until such time as (i) they file an affidavit with the Board that they are in compliance with the Original Permit as set forth in paragraph #2(i) above and/or (ii) the District Commission either issues a permit or denies Respondents' application for a permit amendment filed pursuant to paragraph #2(ii) above, PROVIDED THAT Respondents shall not allow more than a total of 27 campsites to be leased/used for the placement of tents and travel trailers during this period of time and shall not allow the storage of more than five (5) trailers on the Project site (32 trailers in all). Except for the location of the 27 trailer sites, Respondents shall comply with the Original Permit during this interim period.

Dated at Montpelier, Vermont this 26th day of May, 1998.

ENVIRONMENTAL BOARD

Marcy Harding
Marcy Harding, Chair
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William Martinez
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