

VERMONT ENVIRONMENTAL BOARD
10 V.S.A., Chapter 151

RE: C. W. Gregory Findings of Fact, Conclusions
d/b/a Marina Internation- of Law and Order
tionale, Inc. Land Use Permit Revocation
North Hero, Vermont 05474 #6G0220-5-EB

On May 29, 1985, the Environmental Board ("the Board") voted to initiate land use permit revocation proceedings, pursuant to 10 V.S.A. § 6090(b) and Board Rule 38(A), in respect to Land Use Permit #6G0220-5 issued to C. W. Gregory, d/b/a Marina Internationale, Inc. ("MI"). On June 5, the Board notified the parties of the commencement of these proceedings.

On June 20, 1985, the Board's Chairman convened a public hearing as administrative hearing officer pursuant to Board Rule 41 and 3 V.S.A. § 811, no party having objected to the use of this procedure. The following participated as parties at the hearing:

The Permittee by C. W. Gregory;
The Town of North Hero by John Miller, Selectman;
The North Hero Planning Commission by Joseph Scandore;
North Hero Zoning Board of Adjustment by Walter Page;
State of Vermont Agency of Environmental Conservation
("AEC") and Department of Health by Philip Dodd, Esq.;
Champlain Islands Lake Protection Association by Jed Ladd.

The hearing was recessed on the 20th pending the conduct of a site visit, the preparation of a proposed decision, and a review of the record and deliberation by the full Board. The Chairman took a site visit immediately following the hearing. A proposed decision was forwarded to the parties on June 26. No party having requested the opportunity to present oral argument before the full Board, the Board conducted a deliberative session on July 10, found the record complete and adjourned the hearing. This matter is now ready for decision. The following findings of fact and conclusions of law are based upon the record developed at the hearing.

I. AREAS OF NONCOMPLIANCE

The parties identified the following three areas of alleged noncompliance with the terms and conditions of Land Use Permit #6G0220-5 (hereafter "the Amended Permit"):

- 1) The Health Department expressed concern with the use of hoses on the Marina's docks without signs identifying the water source as not potable;
- 2) AEC and the Zoning Board were both concerned with the Permittee's failure to install an approved restroom facility at the site;
- 3) The Zoning Board expressed concern about extensive dust generated by traffic along the Marina's access road.

II. FINDINGS OF FACT

1. On March 17, 1980, Land Use Permit #6G0220 ("the Original Permit") was issued to John Roach, d/b/a Bay Harbor Yachts, Ltd., authorizing the installation of a marina on Pelots Point in North Hero including boat sales and storage, construction of a sales office and stores, installation of a boat lift, 75 boat slips, a boat pump-out facility, and restrooms, and regrading of the site to accommodate vehicle parking and boat storage. Exhibit #5. The project was never completed by Mr. Roach due to financial difficulties.
2. C. W. Gregory acquired the project in the Spring of 1983. On June 24, 1983, Amended Land Use Permit #6G0220-5 ("the Amended Permit") was issued to Mr. Gregory, extending construction completion dates and authorizing completion of the project. In addition to new conditions, the Amended Permit requires compliance with the Original Permit and all intervening amendments (#6G0220-2, -3, and -4).
3. In support of the Original Permit, the Permittee represented that no on-site water system would be used, no water from Lake Champlain would be used for drinking purposes, and that bottled water would be provided for marina employees and patrons for drinking. On the basis of these representations, the Original Permit incorporated the provisions of Certification of Compliance #6G0220 ("the Certification") issued January 30, 1980, and re-stated the following condition found in that Certification:

All sources of potable water on the project [sic] shall be from a supplier approved by the Vermont Department of Health. No other means of obtaining a potable water supply shall be authorized without prior written approval of the Protection Division.
4. Mr. Gregory has installed hoses along the floating piers at the marina which draw water from the Lake. Mr. Gregory does not intend patrons to use this water for drinking purposes and supplies the water for the purpose of washing boats. However, patrons are not currently warned, except by word-of-mouth, that the hose water is not potable. Mr. Gregory has agreed to install, within one week of the Board's hearing, warning signs in French and English indicating that water supplied at the docks is not drinkable. See Exhibit #6. He also intends to prepare plans for a water filtration system and will secure Protection Division approval prior to the installation of any such system.
5. The Original Permit required the removal of plumbing from existing structures (which were to be converted to marina uses) and the installation of a "comfort station"

consisting of an eight-unit concrete vault for the storage of waste. The vault would require periodic pumping and is similar in design to a seasonal facility at Knights Point State Park. The Act 250 approval was contingent upon installing the vault privy in accordance with plans approved by the Protection Division in the Certification.

6. The Permittee has not installed the vault privy approved in the Certification as required in the Original and the Amended Permits. However, the site visit revealed that a four-unit vault privy had been recently installed. Construction on this alternate design started four days prior to the Board's hearing and the shelter enclosing the privy was under construction during the site visit. See Exhibit 11. The alternate design has not been submitted to or approved by the Protection Division or the District #6 Commission. The Protection Division is expected to approve the alternate design.
7. In lieu of the approved privy, Mr. Gregory constructed an elaborate mound system and a restroom building containing two showers, four toilets, and four sinks with hot and cold running water. This facility was constructed at the end of the marina's 1983 season and was in use throughout the 1984 season, but it has not been approved by the Protection Division. Exhibit #7. Mr. Gregory has agreed to discontinue use of this restroom until it has been approved and at the site visit, the building's water line had been disconnected and the doors had been padlocked.
8. Condition #4 of the Amended Permit provides:

The permittee shall implement and maintain dust suppressing measures as needed on the gravel roads serving this project. At a minimum, these measures must be implemented each time the roads are graded.

A four mile road segment provides access to the project from Route 2; the first mile is paved, the next 2.5 miles consist of dirt-surfaced town roads, and the final .5 mile is dirt-surfaced private road. A large quantity of dust is generated by vehicles passing along the dirt portion of the town road, severely reducing visibility and creating intolerable conditions for pedestrians and bicycle riders. Dust also adversely affects the approximately 15 residences directly on the town road and, to a lesser extent, the approximately 40 residences off the road.

9. The .5 mile segment of private road is virtually free of dust because Mr. Gregory regularly applies waste oil to the road surface. However, Mr. Gregory apparently has not complied with applicable Vermont Hazardous Waste Regulations prior to applying waste oil. Mr. Gregory attempted

to comply with the requirements of Condition #4 by grading the town portion of the dirt access road but was directed by the Town Road Commissioner not to work on the public way. In 1983, the Town applied calcium chloride to road segments in front of residences but did not apply chloride to intervals between homes. In 1985, the Town plans on applying chloride the entire length of the dirt portion of the access route.

10. Proper maintenance to prevent undue dust generation requires a liberal application of calcium chloride at least once each summer after the road has been graded. Approximately one ton of chloride would be required for the 2.5 mile dirt section of the access route. Chloride currently costs approximately \$25 for an 80 lb. bag, making the chloride cost for the entire road approximately \$625 per application.
11. The Amended Permit directed Mr. Gregory to fulfill the requirements of items a. through h. listed on the face of that permit prior to commencing operation of the marina. On September 27, 1984, the Commission conducted a site visit and convened a hearing to ascertain the Permittee's compliance with those items. By order dated February 20, 1985, the Commission found the Permittee in compliance with all but item b. which required the installation of the approved, permanent restroom facilities. Exhibit #3. By way of a supplemental order dated April 5, 1985, the Commission directed the Permittee to install the approved restroom or secure approval of the existing restroom prior to opening the marina for the 1985 season. Exhibit #4.
12. The Permittee opened the marina in May, 1985, and was in obvious operation during the site visit, without first having installed the approved restrooms.

III. CONCLUSIONS OF LAW

No evidence was presented suggesting that the Permittee was providing drinking water to patrons or employees at the marina from a source which was not approved by the Protection Division. Rather, concern was expressed that a non-potable water source used for washing boats could inadvertently be used as a drinking water source. In order to allay these fears, the Permittee and the Health Department have agreed to language for warning signs and the Permittee will install the signs at appropriate locations on the marina docks.

The Permittee has been in continuous noncompliance with Land Use Permit and Certification requirements pertaining to installation of a vault privy. The Permittee installed and operated an unapproved restroom with a mound system and hot and cold running water, contrary to representations made to the

Commission and in violation of Land Use Permit and Certification limitations. While a vault privy was under construction as of the site visit, plans for that system had not been submitted to the Commission or the Protection Division and had not been approved by those entities.

The Permittee has been unable to comply with conditions pertaining to dust control because the Town has declined Mr. Gregory's offer to maintain the access road. However, this action by the Town does not absolve the Permittee from responsibility for dust control as required by Condition #4 of the Amended Permit. Mr. Gregory must either secure the Town's permission to perform road maintenance activities or contribute to the Town's expenses in performing those activities.

Finally, the record did not disclose any "clear threat of irreparable harm to public health, safety or general welfare or to the environment" resulting from the Permittee's noncompliance. See Board Rule 38(A)(3). Therefore, we will provide the Permittee with the opportunity to correct permit violations before revoking Land Use Permit #6G0220-5.

ORDER

The Permittee shall comply with the following requirements:

1. On or before July 10, 1985, the Permittee shall install metal signs bearing a message substantially similar to that depicted on Exhibit #6 in both English and French. A sign must be installed at each valve controlling the flow of hose water on the docks.

2. On or before July 22, 1985, the Permittee must file a complete application to amend its Certification of Compliance and Land Use Permit to authorize installation of the four vault privy. The Permittee must diligently pursue issuance of those amended permits and shall comply with all terms and conditions of those amended permits. The existing restroom facility served by the mound system must remain padlocked, and all water sources to that facility shall remain disconnected until such time as the Permittee secures an Amended Certification and Land Use Permit authorizing the use of that facility.

3. On or before July 22, 1985, the Permittee must secure approval from the Town to grade and apply calcium chloride at least once each year to the Town roads providing access to the project, or must make an annual payment to the Town on or before August 1, of each year in the amount of \$400 as compensation for the cost of maintaining the access roads. The Permittee shall not apply waste oil to the private segment of the access road without first complying with applicable Department of Water Resources Hazardous Waste Regulations.

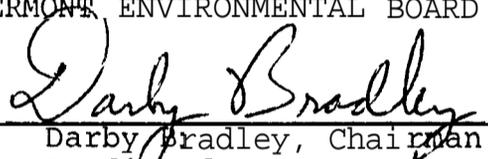
4. On or before September 1, 1985, the Permittee shall personally deliver to the Environmental Board at its Montpelier Offices, a written certification signed under penalty of perjury by C. W. Gregory, attesting to the Permittee's fulfillment of the above requirements. The permittee shall simultaneously file a written certification signed by a licensed Vermont professional engineer stating that the Permittee has installed the vault privy in full compliance with the Permittee's certification of compliance, that the privy is operating as designed, and that water service to the restroom/mound system has been disconnected.

The Board will retain jurisdiction pending the receipt of the certification referred to above. The Board reserves the right to convene further hearings or revoke the permit in the event the Permittee fails to comply with the requirements of this Order.

Dated at Montpelier, Vermont this 12th day of July, 1985.

VERMONT ENVIRONMENTAL BOARD

by:



Darby Bradley, Chairman
Ferdinand Bongartz
Roger N. Miller
Samuel Lloyd
Jan S. Eastman