

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

RONALD CARPENTER;
DORSET MOTOR COMPANY;
EAST DORSET MOTOR COMPANY;
Respondents

ADMINISTRATIVE ORDER

Having found that Ronald Carpenter, Dorset Motor Company and East Dorset Motor Company (collectively Respondents) committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel (Panel), pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATIONS

- I. Failure to maintain a 50-foot undisturbed vegetated buffer from a pond or wetland in violation of Condition No. 10 of Land Use Permit Amendment #8B0124-8/8B0392-3.
- II. Failure to maintain the undisturbed, naturally vegetated buffer in violation of Condition No. 1(B) of the Wetlands Conditional Use Determination #93-496.
- III. Failure to monument the wetland buffer zones with fencing or landscape plantings in violation of Condition No. 13 of Land Use Permit Amendment #8B0124-8/8B0392-3.
- IV. Failure to narrow the curb cut onto Rt. 7 as proposed; failure to install three regular size "STOP" signs; and failure to restore topsoil, seed and mulch over former access/parking area on or before July 1, 2007 all in violation of Condition No. 14 of Land Use Permit Amendment #8B0124-8/8B0392-3.
- V. Failure to paint proposed white lines along Blue Spruce Lane delineating the right of way, and failure to post signage on or before July 1, 2007 in violation of Condition No. 15 of Land Use Permit Amendment #8B0124-8/8B0392-3.
- VI. Failure to close off the unauthorized access from the rear of the north dealership onto the Lane in violation of Condition No. 17 of Land Use Permit Amendment #8B0124-8/8B0392-3.

- VII. Failure to keep the rear entrance of the body shop closed except during movement of a vehicle in or out in violation of Condition No. 12 of Land Use Permit Amendment #8B0124-8/8B0392-3.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Ronald Carpenter owns an approximately 6.4 acre parcel of land located on Route 7 in East Dorset, Vermont, described in Book 92, Page 645 of the Town of Dorset land records (project tract). Respondents Dorset Motor Company and East Dorset Motor Company (Vermont corporations controlled by Respondent Ronald Carpenter) operate two car dealerships on the project tract. Respondent Carpenter operates an apartment building on the project tract. The northern dealership was originally permitted under Land Use Permit #8B0392, the southern dealership was originally permitted under Land Use Permit #8B0124-6-EB, and the apartment building was originally permitted under Land Use Permit #8B0124-1.
2. On March 7, 2007, the District 8 Environmental Commission (Commission) issued Land Use Permit Amendment #8B0124-8/#8B0392-3 (the Permit) to Respondent Carpenter specifically authorizing "the Permittee to change the parts department/residential building to become a 4-unit apartment and subdivide it on 1.4 acres with 5.0 acres remaining with the southern car dealership approved under 8B0124-6-EB." The Permit also grants after-the-fact approval for an auto body spray booth constructed within the northern dealership building.

I - II - III

3. Condition No. 10 of the Permit states: "Since Lot "A" (apartment building) now contains a portion of the stream and wetland buffer originally required for the southern dealership, no vegetation disturbance is allowed within 50 feet of the stream bank, pond, or wetland."
4. Condition No. 13 of the Permit states: "The Permittee shall monument the wetland buffer zones with fencing or landscape plantings, and leave these buffers undisturbed as required by the Wetland Conditional Use Permit #93-496."
5. On December 27, 1994, the Department of Environmental Conservation issued Wetland Conditional Use Determination #93-496 (the CUD) to Respondent Carpenter specifically authorizing the Respondent to construct "a portion of a paved way in 520 square feet of the wetland buffer zone on the western side of the wetland and [to excavate] a 7500 square foot pond on the eastern side of the wetland, partially within the wet meadow portion of the wetland and partially within the buffer zone."
6. Condition No. 1(B) of the CUD states in relevant part: "After the plantings have

been manually planted in accordance to the proposed site plans, the buffer zone and wetland shall be allowed to revegetate naturally. "Mowing, brush hogging or other removal of vegetation shall not be allowed in this area."

7. On or about November 5, 2007, District Coordinator Warren Foster conducted a site visit at the project tract. Coordinator Foster observed that the area immediately around the pond, which is within the delineated wetland buffer zone, had been mowed and not allowed to revegetate naturally. Coordinator Foster also observed that the required fencing or landscape plantings to monument the wetland buffer zones were no installed.
8. Coordinator Foster issued a Notice of Alleged Violation (NOAV) to Respondent Carpenter on November 5, 2007 indicating that this disturbance of the wetland and pond buffer as well as the failure to monument the wetland buffer zones were violations of the Permit.
9. On or about January 10, 2008, Coordinator Foster and the Land Use Panel's Permit Compliance Officer (PCO) John Wakefield conducted a site visit at the project tract. PCO Wakefield observed that the area immediately around the pond had been mowed and not allowed to vegetate naturally. PCO Wakefield also observed that the required fencing or landscape plantings to monument the wetland buffer zones were not installed.
10. Respondents violated Condition No. 10 of Land Use Permit Amendment #8B0124-8/#8B0392-3 and Condition 1(B) of CUD #93-496 by failing to maintain an undisturbed, naturally vegetated buffer around the pond and wetland buffer zones.
11. Respondents violated Condition No. 13 of Land Use Permit Amendment #8B0124-8/#8B0392-3 by failing to monument the wetland buffer zones.

IV

12. Condition No. 14 of the Permit states that: "On or before July 1, 2007, the Permittee shall narrow the curb cut onto Rt. 7 as proposed; install three regular "STOP" signs; and restore topsoil, seed, and mulch over former access/parking area."
13. On or about November 5, 2007, during his site visit, Coordinator Foster observed that the curb cut onto Rt. 7 had not been narrowed as proposed, no stop signs had been installed, and the topsoil has not been restored to the access/parking area.
14. Coordinator Foster issued a NOAV to Respondent Carpenter on November 5, 2007 indicating that the failure to narrow the curb cut onto Rt. 7 as proposed, failure to install three regular "STOP" signs, and failure to restore topsoil, seed, and mulch over former access/parking area all on or before July 1, 2007 were all

violations of the Permit.

15. On or about January 10, 2008, during his site visit, PCO Wakefield observed that the curb cut onto Rt. 7 had not been narrowed as proposed, no stop signs had been installed, and the topsoil has not been restored to the access/parking area.
16. Respondents violated Condition No. 14 of Land Use Permit Amendment #8B0124-8/#8B0392-3 by failing to narrow the curb cut onto Rt. 7 as proposed, failing to install three regular size "STOP" signs, and failing to restore topsoil, seed and mulch over former access/parking area all on or before July 1, 2007.

V

17. Condition No. 15 of the Permit states that: "On or before July 1, 2007, the Permittee shall paint the proposed white lines along Blue Spruce Lane to the rear property line, delineating the 24' wide travelway, and post signage on the right side of the Lane, approximately 100 feet from the Rt. 7 ROW, stating 'Do not stop on travelway to load or unload.'"
18. On November 5, 2007, during his site visit, Coordinator Foster observed that no white lines along Blue Spruce Lane to the rear of the property line had been painted, and no signage on the right side of the Lane had been posted.
19. Coordinator Foster issued a NOAV to Respondent Carpenter on November 5, 2007 indicating that the failure to paint the proposed white lines along Blue Spruce Lane to the rear property line, delineating the 24' wide travelway, and failure to post signage on the right side of the Lane, approximately 100 feet from the Rt. 7 ROW, stating "Do not stop on travelway to load or unload" all on or before July 1, 2007 were violations of the Permit.
20. On or about January 10, 2008, during his site visit, PCO Wakefield observed that no white lines along Blue Spruce Lane to the rear of the property line had been painted, and no signage on the right side of the Lane had been posted.
21. Respondents violated Condition No. 15 of Land Use Permit Amendment #8B0124-8/#8B0392-3 by failing to paint proposed white lines along Blue Spruce Lane delineating the right of way, and failing to post signage all on or before July 1, 2007.

VI

22. Condition No. 17 of the Permit states that: "The Permittee shall close off the unauthorized access from the rear of the north dealership onto the Lane with plantings or split rail fence."
23. On or about November 5, 2007, during his site visit, Coordinator Foster observed

that the unauthorized access from the rear of the north dealership onto Blue Spruce Lane had not been closed off.

24. Coordinator Foster issued a NOAV to Respondent Carpenter on November 5, 2007 indicating that the failure to close off the unauthorized access from the rear of the north dealership onto the Lane with plantings or split rail fence was a violation of the Permit.
25. On or about January 10, 2008, during his site visit, PCO Wakefield observed that the unauthorized access from the rear of the north dealership onto Blue Spruce Lane had not been closed off.
26. Respondents violated Condition No. 17 of Land Use Permit Amendment #8B0124-8/#8B0392-3 by failing to close off the unauthorized access from the rear of the north dealership onto Blue Spruce Lane with plantings or split rail fence.

VII

27. Condition No. 12 of the Permit states in relevant part: "The rear entrance to the body shop shall remain closed except during movement of a vehicle in or out."
28. On several occasions during the summer of 2007, an adjacent landowner observed the rear entrance to the body shop being left open for extended periods of time other than for the purpose of moving vehicles in and out.
29. Coordinator Foster issued a NOAV to Respondent Carpenter on November 5, 2007 indicating that the failure to keep the rear entrance to the body shop closed except during movement of a vehicle in or out was a violation of the Permit.
30. Respondents violated Condition No. 12 of Land Use Permit Amendment #8B0124-8/#8B0392-3 by failing to keep the rear entrance to the body shop closed except during movement of a vehicle in or out.

VIII

31. Respondents closed both car dealerships at the end of February 2008. Respondents no longer operate on the project tract.

ORDER

- A. The Respondents shall not operate on the project tract until they are in compliance with all conditions of Land Use Permit Amendment #8B0124-8/#8B0392-3.
- B. The Respondents shall pay a penalty of Thirty-Nine Thousand Six Hundred and

Twenty-Five Dollars (\$39,625.00) within thirty (30) calendar days of the receipt of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- C. Any payment by the Respondents pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- D. The above penalty amounts do not include the costs incurred by the Panel for the enforcement of the above described violations, or the amount of economic benefit gained by the Respondents from the violations. The Panel reserves the right to augment the above stated penalties through evidence presented at hearing. In accordance with 10 V.S.A. § 8010, the penalties may be increased by the costs incurred by the Panel for the enforcement of the described violations, the amount of economic benefit gained by the Respondents from the violations, the need for deterrence, and any and all other penalty factors enumerated in 10 V.S.A. § 8010(b), each according to proof at the hearing.

RESPONDENTS' RIGHT TO A HEARING BEFORE THE ENVIRONMENTAL COURT

The Respondents have the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. § 8012 by filing a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondents receive this Administrative Order. The Respondents must file, within the time limit, a Notice of Request for Hearing with both the Land Use Panel and the Environmental Court at the following addresses:

Natural Resources Board, Land Use Panel
c/o Ken Smith, Associate General Counsel
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Clerk, Environmental Court
2418 Airport Road
Barre, VT 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

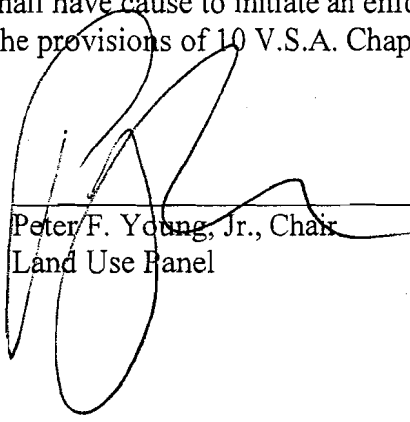
This Administrative Order shall become effective on the date it is received by the Respondents unless the Respondents file a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a

Notice of Request for Hearing by the Respondents shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondents do not timely file a Notice of Request for a Hearing, this Administrative Order shall become a final Administrative Order.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondents fail or refuse to comply with the conditions of a final Administrative Order, the Land Use Panel shall have cause to initiate an enforcement action against the Respondents pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: 4-11-08



Peter F. Young, Jr., Chair
Land Use Panel

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
Plaintiff)
)
v.)
)
Ronald Carpenter,)
Respondent)
_____)

Docket No.

**AFFIDAVIT OF
JOHN SCOTT WAKEFIELD**

AFFIDAVIT OF JOHN SCOTT WAKEFIELD

John Wakefield, being duly sworn, hereby deposes and states the following:

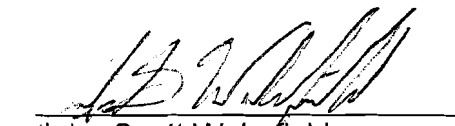
1. I am of legal age and competent to testify to the facts stated herein.
2. I make this Affidavit based upon personal knowledge, and my review of the Natural Resources Board files regarding this matter. As to those facts alleged upon information and belief, I believe them to be true.
3. I am the Natural Resources Board Permit Compliance Officer, and was so at all times relevant hereto.
4. As the Permit Compliance Officer, I am familiar with the facts and circumstances of the above-captioned matter, including the Land Use Panel's Notice of Alleged Violation dated November 5, 2007 which was issued to Respondent Ronald Carpenter.
5. On Thursday January 10th, 2008 I visited the Respondent's property for the purpose of determining compliance with Land Use Permit #8B0124-

8/8B0392-3.

6. While at the Respondent's property, I witnessed that the Respondent had failed to narrow the curb cut onto Rt. 7, install three regular sized "STOP" signs; and restore topsoil, seed, and mulch over former access/parking area, as required by Condition No. 14 of Land Use Permit #8B0124-8/8B0392-3
7. While at the Respondent's property, I witnessed that the Respondent failed to paint the proposed white lines along Blue Spruce Lane to the rear of the property line or post signage on the right side of the Lane as required by Condition No. 15 of Land Use Permit #8B0124-8/8B0392-3.
8. While at the Respondent's property, I witnessed that the Respondent had failed to close off the unauthorized access from the rear of the north dealership to the Lane with plantings or split rail fence as required by Condition No. 17 of Land Use Permit #8B0124-8/8B0392-3.
9. Immediately following the site visit, from VT Route 7 I witnessed that the Respondent has failed to monument a wetland buffer zone with split rail fencing or landscape plantings as required by Condition No. 13 of Land Use Permit #8B0124-8/8B0392-3. Additionally, I witnessed that the Respondent had failed to leave the buffer area undisturbed as required by Condition No. 13.
10. On Thursday April 3, 2008 I performed an additional compliance inspection of the property. I found the property to still be out of compliance with the

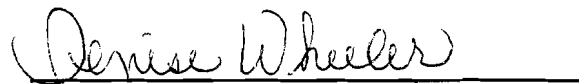
aforementioned permit conditions.

DATED at Montpelier, Vermont, this 8th day of April, 2008.



John Scott Wakefield

Subscribed and sworn to before me this 8th day of April, 2008.



Notary Public (exp. 2/10/2011)

STATE OF VERMONT
ENVIRONMENTAL COURT

<p>LAND USE PANEL of the NATURAL RESOURCES BOARD, Plaintiff</p> <p style="text-align: center;">v.</p> <p>RONALD CARPENTER; DORSET MOTOR COMPANY; EAST DORSET MOTOR COMPANY, Respondent</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No.</p> <p><u>AFFIDAVIT OF</u> Warren E. Foster</p>
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AFFIDAVIT of Warren E. Foster

Warren E. Foster, being duly sworn, hereby deposes and states the following:

1. I am of legal age and competent to testify to the facts stated herein.
2. I make this Affidavit based upon personal knowledge, and my review of the Natural Resources Board files regarding this matter. As to those facts alleged upon information and belief, I believe them to be true.
3. I am a Natural Resources Board District Coordinator and was so at all times relevant hereto.
4. As the Coordinator, I am familiar with the facts and circumstances of the above-captioned matter, including the Land Use Panel's Notice of Alleged Violation dated November 5, 2007 which was issued to Respondent Ronald Carpenter.
5. On November 5th, 2007 I visited the Respondent's property for the purpose of

determining compliance with Land Use Permit #8B0124-8/8B0392-3.

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7. While at the Respondent's property, I witnessed that the Respondent failed to paint the proposed white lines along Blue Spruce Lane to the rear of the property line or post signage on the right side of the Lane as required by Condition No. 15 of Land Use Permit #8B0124-8/8B0392-3.
8. While at the Respondent's property, I witnessed that the Respondent had failed to close off the unauthorized access from the rear of the north dealership to the Lane with plantings or split rail fence as required by Condition No. 17 of Land Use Permit #8B0124-8/8B0392-3.
9. Immediately following the site visit, from VT Route 7 I witnessed that the Respondent has failed to monument a wetland buffer zone with split rail fencing or landscape plantings as required by Condition No. 13 of Land Use Permit #8B0124-8/8B0392-3. Additionally, I witnessed that the Respondent had failed to leave the buffer area undisturbed as required by Condition No. 13.

DATED at Montpelier, Vermont, this 9th day of April, 2008.

Warren E Foster
Warren E. Foster

Subscribed and sworn to before me this 9th day of April, 2008.

Mary Howard
Notary Public