

STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

THE NATURAL RESOURCES)
BOARD,)
) Petitioner,)
))
) v.)
))
COMMON ACRES)
CAMPGROUND LLC,)
And EUGENE LEON,)
) Respondents.)

Docket No. _____

ADMINISTRATIVE ORDER

Having found that Common Acres Campground, LLC. And Eugene Leon (Respondents) committed a violation as defined in 10 V.S.A. § 8002(9), the Natural Resources Board, pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATION

Respondents have commenced an unpermitted activity: namely, hosting music festivals with amplified music in contravention of Respondents' Act 250 permit.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Land Use Permit 5L0826 (the Permit) was issued on September 27, 1985. The Permit authorized the construction of "a private recreation park."
2. The Permit was initially issued to Robert Houle, Jr. & Doris Houle.
3. The Permit applies to Mr. Houle's assigns and successors in interest.
4. Mr. Leon is the current owner of Common Acres Campground, LLC; consequently, he is bound by the Permit. Mr. Leon has been the owner at all times relevant to this Administrative Order.
5. Condition #13 of the Land Use Permit reads as follows: "The park may be operated no earlier than 8:00 a.m. and no later than 11:00 p.m."
6. Findings of Fact and Conclusions of Law and Order (dated September 27, 1985) pertaining to the Permit specifically found that: "No public address system or loud speakers will be used." (Finding 8n).

7. The Findings of Fact and Conclusions of Law and Order (dated September 27, 1985) pertaining to the Permit specifically found that: "***The only activities taking place after sunset will be miniature golf and go-cart rentals.*** Summer activity resulting in detectable noise will include bumper boats, go-cart and intermittent racing." (Finding 8j, Emphasis added).
8. On August 9, 2012, John Wakefield, the former Permit Compliance Officer of the Board, sent Mr. Leon a letter indicating that the NRB "has been made aware of an upcoming music festival occurring [at Common Acres] on Labor Day Weekend." That letter also advised that "the music festival is not authorized under the land use permit. The festival may affect several criteria that Act 250 protects and an amendment to the permit is required. Proceeding without the required amendment is a violation of Act 250 and may result in enforcement action by the Natural Resources Board including monetary penalties."
9. From Friday, August 31, to Sunday, September 1, 2012, Dragonfly Productions and Common Acres held a three-day music festival at Common Acres Campground.
10. Neither Common Acres, LLC nor Mr. Leon obtained the required amendment before the event was held; consequently, they violated the Permit. To date, neither Common Acres, LLC nor Mr. Leon have obtained a land use permit amendment and, therefore, any music festivals held at Common Acres Campground would continue to violate the Permit and Act 250.
11. On March 18, 2013, John Wakefield sent Mr. Leon a follow-up letter informing him that he must submit a complete Act 250 permit amendment application for all of the unpermitted activities to the District 5 Environmental Commission as soon as possible in order to avoid further violations of Act 250, and possible monetary penalties.
12. On July 13, 2013, Lt. Ronald R. Audet, Jr. (Lamoile County sheriff's Dept.) responded to a report of a loud band performing at Common Acres. Lt. Audet observed "a band playing music and people standing around them."
13. Lt. Audet advised Mr. Leon that the band can only play until 11pm.
14. These events are considered a material change to the permitted project pursuant to Act 250 Rules 2(C)(6) and 34(A), thus an Act 250 permit amendment was required.
15. To date, neither Mr Leon nor Common Acres, LLC have applied for a permit amendment.

ORDER

- A. The Respondents shall immediately cease any and all non-permitted activities on the Project Tract.
- B. No later than 30 days following the receipt of this Order, the Respondents shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Nine Thousand Dollars and Zero Cents (U.S.) (\$9,000.00)** for the violations noted herein, by good check made payable to: "Treasurer, State of Vermont."
 2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **Fifty Six Dollars and Zero Cents (U.S.) (\$56.00)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to: "Vermont Natural Resources Board."
 3. The amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Hyde Park land records, by good check made payable to: "Town of Hyde Park, Vermont."
- C. All payments and documents required by this Assurance shall be sent to:
- Vermont Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- D. Any payment by the Respondent pursuant to this Administrative Order is made to resolve the violations set forth in this Administrative Order and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Administrative Order from Respondent's state or federal taxes.

**RESPONDENT'S RIGHT TO A HEARING
BEFORE THE SUPERIOR COURT, ENVIRONMENTAL DIVISION**

Pursuant to 10 V.S.A. §8012, any Respondent has the right to a hearing before the Superior Court, Environmental Division concerning this Administrative Order, if such Respondent files a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondent receives this Administrative Order. The Notice of Request for Hearing must be filed

with both the Natural Resources Board and the Environmental Division at the following addresses:

Gregory J. Boulbol
Associate General Counsel
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Jackie Fletcher, Clerk,
Superior Court
Environmental Division
2418 Airport Road, Ste. 1
Barre, VT 05641-8701

If a hearing is requested, the Natural Resources Board reserves the right to seek additional penalties for additional costs of enforcement and other relevant penalty factors. 10 V.S.A. §8010(b).


EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order is effective as to a Respondent on the date it is received by such Respondent. However, if such Respondent files a Notice of Request for Hearing within **fifteen (15) days** of the date such Respondent receives this Administrative Order, such filing shall stay all of the provisions of this Administrative Order as to such Respondent, pending a hearing by the Environmental Division. Unless a Respondent files a timely Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order as to such Respondent when this Administrative Order is filed with and signed by the Environmental Division.

COMPLIANCE WITH A JUDICIAL ORDER

If this Administrative Order becomes a Judicial Order and a Respondent fails or refuses to comply with the conditions of that Judicial Order, the Natural Resources Board shall have cause to initiate an enforcement action against such Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: January 7, 2014



Ronald A. Shems, Chair
Natural Resources Board

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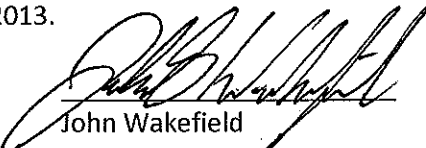
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AFFIDAVIT OF JOHN WAKEFIELD

I, John Wakefield, being duly sworn, hereby state the following:

1. I am of legal age and competent to testify to the facts stated herein, which are based upon my personal knowledge unless otherwise stated.
2. At the time of the violation discussed in Facts ## 8-11 of the Administrative Order were committed, I was employed by the Vermont Natural Resources Board as the Permit Compliance Officer.
3. As part of my job with the Natural Resources Board, I investigated complaints and wrote reports concerning with violations of the ACT 250 Program.
4. While employed by the Natural Resources Board, I personally investigated the violation discussed in the Administrative Order.
5. I have reviewed the Administrative Order in this matter, Facts ## 8-11 .
6. To the best of my knowledge, Facts # 1-11 stated in the Administrative Order are both accurate and truthful. I had left the employ of the Natural Resources Board prior to July 13, 2013 (Facts # 12-13).

DATED at Montpelier, Vermont, this 5th day of November, 2013.


John Wakefield

Subscribed and sworn to before me this 5th day of Nov., 2013.



Notary Public

Commission Expires: 2/10/15

Y:\NRB\NRB - Shared\Enforcement\Cases\OPEN CASES\Common Acres\affidavit of john wakefield -- common acres.doc

From: Audet, Ronald [Ronald.Audet@state.vt.us]

Sent: Tuesday, July 16, 2013 10:06 AM

To: Ron Rodjenski

Cc: Marcoux, Roger; Merrill, Eben

Subject: RE: Common Acres

Case #13LC02047

Officer: Deputy Corey Davis

Date: 07/13/13

Myself and Deputy Chris Jones responded to Common Acres for a report of a loud band. As I arrived on scene I noticed a large group of people and could hear a music coming from the campground. I drove into the campground to see what was making the noise. I came upon a band playing music and many people standing around them. I approached the band and asked who was in charge. I was advised that Eugenio Leon was in charge. Deputy Jones and myself found Leon and asked him if he had any permit for the music as it was becoming a nuisance to the neighbors. Leon advised he had paperwork back at the main building. He asked me why I hadn't called him about the noise. I told Leon that I came to investigate a noise disturbance and it wasn't my policy to call first.

Leon showed Deputy Jones and I documentation from a recent court hearing stating that Leon shall follow all Hyde Park ordinances and all state laws regarding noise. Leon showed me that it indicated an 11 pm time limit on noise. I advised Leon that 11 pm is the limit for the State statute for a criminal charge, but the Hyde Park noise ordinance does not have any time limits. I advised Leon that I would give him until 11 pm at which time he will have the music stopped or I would be issuing a noise ordinance violation.

I received no more complaints regarding the noise that evening. Nothing further.

Ronald R. Audet Jr
Windsor County Sheriff's Dept
P.O. Box 96
Hyde Park VT 05655
802-888-3502
ronald.audet@state.vt.us

From: Ron Rodjenski [ron@hydeparkvt.com]

Sent: Monday, July 15, 2013 3:54 PM

To: Audet, Ronald

Cc: Merrill, Eben

Subject: Common Acres

The town (and E-Court judge) and state (NRB Act 250 enforcement) are very interested in any incident report that LCSD might have written up for this past weekend at Common Acres. The legal folks are all set but they are requesting documentation. Do you have an incident report to share? Jim Grant reported that he called LCSD and received very good service but we are not sure exactly what happened or if there are any on-site observations to relay to the enforcement folks.

Thank you for your assistance!

Ron

*Ronald Rodjenski
Hyde Park Town Administrator
and Zoning Administrator*