

_____)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD)
 Petitioner)
)
 v.)
)
MARK COURCHAINE)
 Respondent)
 _____)

ADMINISTRATIVE ORDER

Having found that Mark Courchaine (Respondent) committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel, pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATION

- I. Subdivision, without approval from the District 5 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #5L1031.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. On May 17, 1989, the District 5 Environmental Commission issued Land Use Permit #5L1031 (the permit) to Respondent. The permit applied to the lands identified in Book 48, Pages 57 & 58 of the land records of Wolcott, Vermont. The permit specifically authorized Respondent to operate a commercial gravel pit. The project is located on a 30 acre tract of land located on Route 15 in the Town of Wolcott, Vermont (project tract).
- 2. Condition No. 1 of the permit prohibits changes in the project without the written approval of the District 5 Environmental Commission (the Commission).
- 3. On or about June 28, 1989, Respondent subdivided and sold 10± acres of the project tract to one Steve Wolff without first obtaining written approval from the Commission. Mr. Wolff sold this 10± acre property to Brian and Judy Rafferty in or around the year 2000.
- 4. On March 5, 2008, the Commission issued Land Use Permit Amendment #5L1031-1 to Respondent and Co-permittees Brian and Judy Rafferty authorizing changes to the project tract. The permit amendment in part retroactively approves Respondent's subdivision of the project tract.

5. Respondent violated Condition No. 1 of Land Use Permit #5L1031 by subdividing the project tract without written approval from the District 5 Environmental Commission.

ORDER

- A. The Respondent shall pay a penalty of Seven Thousand Dollars (\$7,000.00) 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
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- B. Any payment by the Respondent pursuant to this Order is made to resolve the violations set forth in this 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 Order from Respondent's state or federal taxes.
- C. The above penalty amounts do not include the costs incurred by the Natural Resources Board, Land Use Panel (Panel) for the enforcement of the above described violation, or the amount of economic benefit gained by the Respondent from the violation. 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 violation, the amount of economic benefit gained by the Respondent from the violation, 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.

RESPONDENT'S RIGHT TO A HEARING BEFORE THE ENVIRONMENTAL COURT

The Respondent has 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 Respondent receives this Administrative Order. The Respondent 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 Respondent unless the Respondent files 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 Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not timely file a Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order when filed with and signed by the Environmental Court. 10 V.S.A. § 8008(d).

COMPLIANCE WITH A JUDICIAL ORDER

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

Dated: _____

11/18/08

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

