

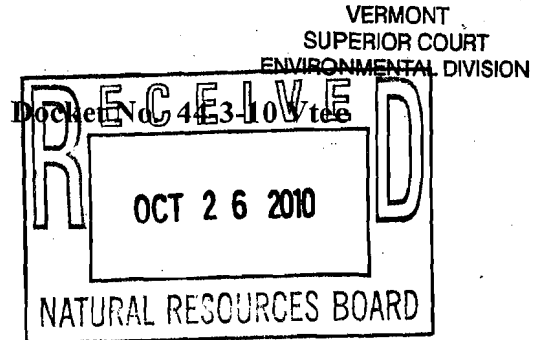
STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION

FILED

OCT 20 2010

Land Use Panel of the
Natural Resources Board,
Petitioner,
v.
Larry Drown,
Respondent

}
}
}
}
}



Judgment Order

This matter concerns the prosecution of an Administrative Order issued by the Vermont Natural Resources Board—Land Use Panel (“NRB”) against Respondent Larry Drown (“Respondent”) based upon a violation of the statutory obligation imposed upon a developer of a commercial structure to first apply for and receive a State land use permit, commonly referred to as an Act 250 permit.

Pursuant to 10 V.S.A. § 8012(a), Respondent requested that the Court conduct a de novo merits hearing, which was held on Tuesday, October 19, 2010.* Upon motion filed on behalf of NRB and unopposed by Respondent, the Court, by Entry Order filed July 29, 2010, entered judgment against Respondent as to the underlying violation. Thus, the October 19, 2010 merits hearing was held solely to address NRB’s claim that penalties should be assessed against Respondent. At the merits hearing, NRB was represented by its staff attorney, Ken Smith, Esq. (assisted by staff attorney Mark L. Lucas, Esq.), and Mr. Drown appeared representing himself, although he left the courtroom about an hour and a half after the proceeding commenced.

Based on the evidence presented at hearing, and in accordance with the criteria and requirements contained in 10 V.S.A. §8012, the Court finds as follows:

* Respondent waived his right to an expedited hearing, pursuant to 10 V.S.A. § 8012(c), so that the parties could have more time to prepare for trial.

1. In 2006, Respondent constructed a commercial building on a 1.4± acre tract of property he then owned, located at 11 Wall Street in the Town of Northfield. The building constitutes commercial “development” as that term is defined in 10 V.S.A. § 6001(3)(A).

2. To date, Respondent has never applied for or obtained an Act 250 Land Use Permit prior to construction of the commercial building.

3. Respondent violated state land use and development laws (10 V.S.A. chapter 151) by commencing construction of the commercial building on the property in question without applying for and obtaining the necessary state land use permit (an Act 250 Land Use Permit), as required by 10 V.S.A. § 6081. Respondent subsequently had the building removed in October 2009. Thus, the NRB has not requested any injunctive relief, given that Respondent no longer maintains the building on his property that gave rise to his land use violation. Respondent’s voluntary removal of the building does not, however, relieve him of all liability for his prior land use violation of constructing a commercial building without first obtaining a necessary Act 250 permit.

4. The Court does hereby exercise its discretion and authority under 10 V.S.A. § 8012(b)(3) to affirm the penalty provision in the Administrative Order issued by the DRB on March 30, 2010, in the amount of \$3,120.00. In addition to that order, the Court does hereby order Respondent to reimburse NRB for its fees and costs incurred in this proceeding, as follows:

Attorney fees incurred	\$1,240.55
Assistant District Coordinator fees	\$ 227.00
Service and mailing costs	<u>\$ 106.70</u>
Sub-Total:	\$1,574.25
Penalty for Act 250 violation	<u>\$3,120.00</u>
Grand Total:	\$4,694.25

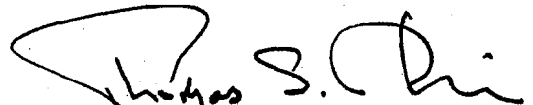
Rights of Appeal (10 V.S.A. §§ 8012(c)(4) and (5)):

WARNING: This Decision will become final if no appeal is filed within ten (10) days of the date this Decision is received. All parties to this proceeding have a right to appeal this Decision. The procedures for filing an appeal are found in the Vermont Rules of Appellate Procedure (V.R.A.P.), subject to superseding provisions in Rule 4(d)(6) of the Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.).

Within ten (10) days of receipt of this Order, any party seeking to appeal must file their notice of appeal with the Clerk of the Environmental Division of the Vermont Superior Court, together with the applicable filing fee. Questions may be addressed to the Clerk of the Vermont Supreme Court, 111 State Street, Montpelier, VT 05609-0801, (802) 828-3276. An appeal to the Supreme Court operates as a stay of payment of a penalty, but does not stay any other aspect of this Judgment Order or the Administrative Order affirmed and revised by this Court. 10 V.S.A. §8013(d). A party may petition the Supreme Court for any additional stay under the provisions of the Vermont Rules of Civil Procedure (V.R.C.P.) 62 and V.R.A.P. 8.

This completes the current proceedings before this Court concerning the environmental enforcement and penalty assessment action.

Done at Berlin, Vermont, this 20th day of October 2010.



Thomas S. Durkin, Judge

FILED

Vermont Superior Court
Environmental Division

OCT 19 2010

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ENTRY REGARDING MOTION

NRB Land Use Panel v. Drown

Docket No. 44-3-10 Vtec
NRB Enfc. Land Use Panel Admin

Title: Motion to Continue Trial, No. 5

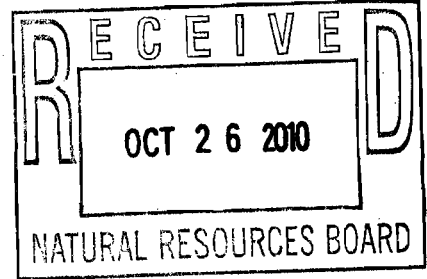
Filed: October 19, 2010

Filed By: Respondent Larry Drown

Response: Oral arguments taken on the record; Opposed

Granted Denied Other

Scheduled for hearing on: _____ at _____; Time Allotted _____



As stated on the record of the Oct. 19th hearing.

Thomas S. Dine
Judge

Oct. 19, 2010
Date

Date copies sent to: 10/21/10

Clerk's Initials dcc

Copies sent to:

Attorney Kenneth Smith for Petitioner Natural Resources Board/LU Panel
Respondent Larry Drown

FILED

Vermont Superior Court
Environmental Division

OCT 19 2010

===== VERMONT =====
ENTRY REGARDING MOTION SUPERIOR COURT
===== ENVIRONMENTAL DIVISION =====

NRB Land Use Panel v. Drown

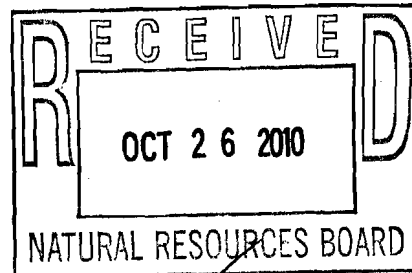
Docket No. 44-3-10 Vtec
NRB Enfc. Land Use Panel Admin

Title: Motion to Recuse, No. 4

Filed: October 19, 2010

Filed By: Respondent Larry Drown

Response: NONE



Granted Denied Other
 Scheduled for hearing on: _____ at _____; Time Allotted _____

Referred to Chief Administrative Trial Judge.

Shops D. Drown

Judge

Oct. 19, 2010.

Date

=====
Date copies sent to: *10/21/10*
Copies sent to:

=====
Clerk's Initials *lee*

Attorney Kenneth Smith for Petitioner Natural Resources Board/LU Panel
Respondent Larry Drown