Comment on Arawn and Jessica Menard

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Sent: Wed 10/22/2014 9:17 AM
To: NRB – Comments
cc: precisionlc1@yahoo.com

As the consulting engineer for the Menards, I am posting, herewith, a letter written to NRB attorney Gill which outlines the facts and events of this matter as the Menards and I believe are true and accurate. I will be posting further comments on my behalf shortly.

Sincerely,

David A. Lawes P.E.
David A. Lawes Engineering, Inc.
P.O. Box 539, Barton, Vermont 05822
802 525 4900

Sent from Windows Mail

Arawn and Jessica Menard
P.O. Box
Barton, Vermont
05822

Peter Gill
Associate General Counsel
Natural Resources Board
Dewey Building
National Life Drive
Montpelier, Vermont
05620-3201

April 30, 2014

Re: Notice of Violation- Glover Garage

Dear Mr. Gill,

Thank you for speaking with me and our engineer Dave Lawes over the phone on April 17, 2014 regarding the above matter. We are also commenting on the April 23, 2014 phone call from you to Dave Lawes P.E.

This letter is intended to summarize, highlight, and comment on a few of the main topics of discussion as follows:

1. The Board believes that we commenced work in the fall of 2013 on a "commercial" garage for the purpose of storing "commercial excavation equipment and septic pumping trucks".

Comment:

a. We own a heated commercial garage in the Village of Barton where our commercial vehicles are maintained and stored.

b. Our initial intent for the subject garage was personal use including storage of large rv's, owned by us and a brother who is currently homeless (aside from his rv) as a result of a divorce proceeding, and for winter storage of business vehicles. In addition, the garage would likely store personal vehicles owned by my parents during their wintering in Florida. Their car is currently stored in a semi-open outbuilding on the subject property. We also indicated that we have built many spec. houses over the years and after the sale of these house we live in our rv until the next house is livable. The subject garage would be used for that purpose as a heated sheltered rv building. We indicated our plans to apply for a water and wastewater permit this spring to serve the building and to provide services to the rv if events and time so dictate. We advised that we have had discussions with a local farmer for storage of his farming equipment and possibly hay.

c. Prior to commencing the foundation work, we had discussions with the District 7 Environmental Coordinator regarding the subject garage Act 250 jurisdictional issues. We were advised that storage of commercial vehicles would require an Act 250 permit. That discussion led into more detailed use of the building. Questions about storing truck tires and small parts were discussed. Ultimately it came down to the possibility of whether a small percentage of the building could be utilized for business storage without the need for and Act 250 permit. At one point the coordinator indicted that 20% might be a possibility she could consider. The discussion was terminated without a final decision. This discussion and the notion of a "percentage figure" approach was confirmed via email by Dave Lawes our engineer. However, in a later correspondence, the coordinator was unable to recall such a discussion. An additional inquiry by the coordinator went to the proposed height of garage doors.

   The point being, here, is that we made a sincere effort to involve Act 250 in this matter from the beginning and at no time were we advised that a personal use garage could not be constructed or that if constructed it would be tagged as an Act 250 violation. The project as currently constructed is a personal use structure.

d. Subsequent to the foregoing events, we discussed this matter in greater detail with our engineer. He advised that, our current plans aside, the building would have greater value and use if approved for commercial use. And, as a commercial building, we would be able to transition our vehicles or vehicles of another business without a significant Act 250 permit delay. As a result of that advice and further thought, we stopped work and directed our engineer to apply for an Act 250 permit which is of record.

e. **You indicated that the Board has not interpreted our current Act 250 application as some sort of d-facto proof of a violation.**

   We do not believe that! This was a "eureka" moment for the Board. We believe our application is the essence and foundation of the notice of violation argument the Board is currently asserting and it would, without a doubt, form the "corner stone" of any argument the Board would make in a court of law. For the Board this is the ultimate proof. One only needs to read the proposed "Assurance of Discontinuance". (It is unfortunate that our show of good will is now being used against us.) Short of a misuse of the application itself, there is no evidence of an Act 250 violation. No obvious commercial building has been constructed, no commercial activity is occurring, and no correspondences exist, (i.e., jurisdictional opinion, informal advisory letter or email,) at the environmental office, that we are aware of, indicating that **we were in violation** of any Act 250 regulation.

2. General Discussion

   You agreed, when asked, that our engineer would have no problem constructing a personal use building of this size without the risk of being accused of an Act 250 violation. You also agreed, that under the right circumstances, an earthwork contractor could also build a personal use building of this size without being accused of an Act 250 violation. We believe we have defined those circumstance in great detail.

3. April 23, 2014 phone call from you to Dave Lawes P.E.

You called this date to advise us, through our engineer, that after further thought and in-house discussions, nothing has changed with respect to the Board's position. Further, you indicated that this matter is now simply one of negotiating the amount of money you want us to send to the state, in addition to signing your proposed "confession" of course.

One change that our engineer noted is that, contrary to your denial on April 17, 2014, you are now saying (as we suspected all along) should this matter go to court, the Board will be touting our Act 250 application as prima fascia evidence of this alleged violation.

We understand that, when asked, you agreed that our position regarding the events and facts of this case could have occurred exactly as we have explained them. However, at this point you or the Board have apparently chosen to pursue a course of action in a light least favorable to us.

4. Final Comments:

You noted that the Boards has limited staff and resources to pursue Act 250 violations that are real, on-going, and visible, many with serious on-going environmental impacts. We can name a least 6 on-going and active violations within 5 miles of our project. It is hard for us to understand how the Board would zero in on a project of this type. Lacking any physical evidence, this matter boils down to "people's thoughts and intent", yours verses ours, and ultimately what a judge might "think" not what anyone can see. With our permit in hand, is this really worth all the attention?

5. Proposed "Assurance of Discontinuance".

We cannot sign this document in its current form as we have a fundamental disagreement as to the background facts as elaborated above. In addition, except for the money, the "relief" being requested has already been accomplished.

Thank you for your consideration of this matter.

Sincerely,

Arawn and Jessica Menard