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Comments By: David A. Lawes P.E.

RE: Proposed Vermont NRB draft "Administrative Order" regarding Arawn and Jessica Menard- Glover, Vermont.

Date: October,

I, David A. Lawes P.E., currently practice civil engineering at an office located in Barton, Vermont and have practiced in other locations including Rutland and Springfield, Vermont. I have been involved with civil engineering for over 40 years. During that time period I have assisted clients with the preparation of countless environmental type permits including Act 250 permits. During those 40 years I have had the opportunity to witness the evolvement of the Act 250 process including various rule changes as well as new rule implementation. I have found, with almost no exception, that the decision by my clients to seek an Act 250 permit normally comes with a great deal of forethought. I would like to believe that I have given them a fair and honest preview of the "process" in hopes of assisting them with formulating the scope of their project and planning. It would be accurate to state that some clients elected to go forward with Act 250 permitting and others felt that it would be too complex, time consuming, and last, but not least, costly.

With respect to Arawn and Jessica Menard's Glover project, I also provided them (I thought) with the benefit of my experience with the process. It was, in no small part, my advice that influenced their decision to seek an Act 250 permit for a commercial garage. During the initial stage, their project involved a proposed 70' x 100' building intended for personal use. (See letter to Peter Gill- dated). However, concurrently, the Menards were independently seeking advice from the Act 250 coordinator as to the permissibility of utilizing the building for winter storage of construction vehicles and trucks. They were advised that this use would constitute a commercial activity needing a permit. It is my understanding that their questions also included what, if any, tools, repair parts, or similar small items could be stored there? No immediate decision was made at the time regarding that question. Mr. Menard recalls there being a discussion as to perhaps the possibly of a small percentage of the building might be allowable for storage without need for a permit. When I was later briefed by Mr. Menard, as to the scope of their recent discussions, I advised him to confirm the conversation by email for the record. He asked me if I would do so on his behalf. (Included in that confirmation email was an update on a gravel extraction actively that was anticipated for the same property which had been subject to communication with the district coordinator for many weeks and also awaiting a jurisdictional decision.) After review of the coordinators response to my confirmation email, it was evident that she was "struggling" a bit with the concept of storage of small tools and parts in a small portion of the building. Subsequent to that return email, I had further discussions with the Menards about the best course of action. Mr. Menard indicated that he would ultimately like to have the building approved for more commercial purposes but he could not, at the current time, afford the "$10,000- $20,000" cost of obtaining an Act 250 permit.

I advised Mr. Menard that the permit should cost nowhere near that because his project scope did not seem to have serious hurdles. The events from that point forward are not in dispute. Mr. Menard stopped foundation work on his "personal use" garage and our office commenced the preparation of an Act 250 application for a commercial use garage. We also advised the Act 250 coordinator of the same. There was no mention of a violation at any time.

It was only after the application was filed, several weeks later, that the Menards were advised by the NRB they were in violation of Act 250 regulations. No prior notice or indication of a violation was received from the district office nor the NRB. As previously indicated in other documents, the only "argument" that Mr. Gill and the NRB has that there has been an Act 250 rule violation is the Act 250 application itself. The first notice came in the form of an proposed "Assurance of Discontinuance" (AOD) demanding that the Menard's, in addition to paying a substantial fines, prepare an application and apply for, forthwith, an Act 250 permit for a commercial use garage by a date certain. At that date the application had been in process for several weeks was moments from issuance by Act 250.

Let look at a hypothetical situation. Suppose Menards never had any discussion with the district environmental office regarding construction of a proposed personal use storage building. And suppose they suddenly received a generous offer to buy their commercial storage building in Barton Village. They would be out a location for maintenance of their commercial equipment. They then make the decision to move to the current structure under construction. Again, in this scenario, they would need to stop work on the project and apply for an Act 250 permit. Would this sequence of events results in a notice of violation by the NRB after the Act 250 application was filed? If so, why?

So now, in summary, we have a situation where the Menards were in constant contact with the Act 250 office regarding their intentions at all times. They, in good faith, will, and intention took the advice of a professional engineer with his 40 years of experience and filed an Act 250 application. They stopped work on the project and lost the benefit of use of the building for any and all purposes despite substantial initial investment in the property and costs to date for the project including the foundations frost walls. They realized no benefit, financial or otherwise, for their act of good faith. In fact, it is clear that with the cost of permitting and lost time, it clear the Menards have incurred substantial monetary losses associated with their good faith decision. To add insult to injury, now comes the NRB and uses, **of all things**, the actual Act 250 application itself as prima face evidence that a violation has occurred. This is the ultimate insult to the very process itself. It is a sad day when Act 250 uses it's own permit application and process against applicants as the sole evidence of intent. Do all people who file and Act 250 have ill intent in their minds? This case is nothing more than trying to prove what was in someone's mind at any given time. No tangible evidence exists of an obvious Act 250 violation. There has been no environmental harm done. Does that possibly explain why the NRB did nothing until the application was filed? They had nothing. Will the application be the only evidence it will present to a court as so called proof of the Menard ill intent? The Menards will surely present the application as proof of good intend. Is this what the Legislature intended? What is this overreach and abuse of the process for? Is the NRB looking to refresh state coffers and justify their existence at the expense of innocent people?

When one reviews the various and numerous cases that the NRB is perusing, it is clear that there are individuals out there that have clearly violated Act 250 rules and/or permit conditions for simple monetary or business gains. These people should rightfully be perused and held to standards including imposition of fines. Mr. Menard is aware of numerous on-going violations in his area that have been ongoing for some time. However, all these people reside at the far other side of the spectrum from Mr. Menard. It is hard to conceive why the NRB would pursue this case? Is it a situation of easily acquiring thousands of dollars with very little effort using threats and intimidation of people not having the knowledge or resources to defend themselves? We know the "fat cats" will hire lawyers to do their bidding and ultimately settle with the NRB out of court for a small fraction of the proposed fines.

This engineer, is in hind sight, is ashamed of the Act 250 process and regretting the advice he offered to the Menards. Had the Menards just continued with their personal use garage, there would have been no accusation of a violation and they would be utilizing the building.

They could have applied for a change of use at a later date. However, no doubt, unless the Menards waited for a year of two, the district commission would likely question the timing of the application. It is possible then the application process might become a little more difficult than necessary at that point. It is a sad when people do the wrong thing a get away with it and even worse when they do the right thing and get crucified. What do I tell my next client in a similar situation? What is the message the NRB would have this case convey to the outside viewer? Be careful what you "think" and for sure what you "say" for you could be prosecuted for those thoughts and words.

Sincerely,

Dave Lawes P.E.
David A. Lawes Engineering, Inc.