

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)

Petitioner)

v.)

TROY AND TANI RAINEY)

Respondents)

ADMINISTRATIVE ORDER

Having found that Troy and Tani Rainey (collectively Respondents) 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:

VIOLATIONS

- I. The construction of a building and operation of a dog grooming business without approval from the District 7 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #7C0645 and Act 250 Rule 34(A).
- II. The construction of a parking area used for commercial contracting equipment without approval from the District 7 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #7C0645 and Act 250 Rule 34(A).
- III. The construction of an access onto Route 5 without approval from the District 7 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #7C0645 and Act 250 Rule 34(A).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- 1. Respondents own a home on Lot # 2 of the "Little Egypt Subdivision," located at 2561 Lynburke Road, in Lyndonville, Vermont (the project tract).
- 2. The "Little Egypt Subdivision," including the project tract, is subject to Land Use Permit #7C0645, issued October 14, 1986.
- 3. Condition No. 1 of Land Use Permit #7C0645 prohibits changes to the project tract without the written approval of the District 7 Environmental Commission

(the Commission).

4. Sometime between 2005 and March 13, 2008, Respondents constructed a building and commenced operation of a dog kennel and grooming business within that building on the project tract.
5. Sometime between 2005 and March 13, 2008, Respondents constructed a parking area for construction equipment associated with Respondents' contracting business on the project tract.
6. Sometime between 2005 and March 13, 2008, Respondents constructed a highway access onto US Route 5 from the project tract.
7. Land Use Permit #7C0645 does not authorize the construction set forth in paragraphs 4 through 6 herein.
8. The changes to the project tract set forth in paragraphs 4 through 6 herein were made without first obtaining written approval from the Commission.
9. On April 15, 2008, the District Coordinator for the Commission issued a jurisdictional opinion in the form of a Project Review Sheet, which found that the construction set forth in paragraphs 4 through 6 required an Act 250 Land Use Permit Amendment. That jurisdictional opinion was not appealed and has gone final.
10. Respondents violated Condition No. 1 of Land Use Permit #7C0645 by constructing the changes set forth in paragraphs 4 through 6 herein on the project tract without written approval from the District 7 Environmental Commission.

ORDER

- A. The Respondents shall pay a penalty of Six Thousand Two Hundred and Fifty Dollars (\$6,250.00) 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 Respondents pursuant to this paragraph 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. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondents' state or federal taxes.

- C. The Respondents shall cease and desist all operation of the dog grooming and boarding business on the project tract until the necessary permit approval from Act 250 is obtained.
- D. The Respondents shall file and diligently pursue a complete Act 250 Land Use Permit Amendment application seeking Commission approval for the above described improvements no later than June 26, 2009.
- E. The above penalty amounts do not include the costs incurred by the Land Use Panel of the Natural Resources Board (the Panel) for the enforcement of the above described violations, or the amount of economic benefit gained by the Respondents from the violations. 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 violations, the amount of economic benefit gained by the Respondents from the violations, 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 Respondents have 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 Respondents receive this Administrative Order. The Respondents 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	Clerk
c/o Ken Smith, Associate General Counsel	Environmental Court
National Life Records Center Building	2418 Airport Road
National Life Drive	Barre, VT 05641
Montpelier, VT 05620-3201	

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondents unless the Respondents file 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 Respondents shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondents do 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 Respondents fail or refuse to comply with the conditions of that Judicial Order, the Land Use Panel shall have cause to initiate an enforcement action against the Respondents pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: _____

5/19/09

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

