

**STATE OF VERMONT
ENVIRONMENTAL COURT**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

Docket No.

v.

READING HEIGHTS, LLC,
Respondent

ADMINISTRATIVE ORDER

I. VIOLATION

Construction of a road without a permit amendment, in violation of Land Use Permit #2S0042, as amended, and in violation of Act 250 Rule 34(A).

II. ADMINISTRATIVE ORDER

Having found that Reading Heights, LLC (Respondent) committed violations as defined in 10 V.S.A. § 8002(9), the Environmental Court, pursuant to the authority set forth in 10 V.S.A. §§ 8008 and 8012, hereby issues the following Administrative Order:

III. STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Land Use Permit #2S0042-5A (the Permit), issued on March 25, 2005, authorizes the subdivision of a 424-acre tract in Reading and West Windsor, Vermont into two lots including a 164-acre lot, and the conveyance of the 164-acre lot.
2. Respondent Reading Heights, LLC purchased the 164-acre lot in 2005, and is the current owner.
3. A significant portion of the 164-acre lot was identified and mapped by the Department of Fish and Wildlife as critical deer wintering habitat.
4. Condition 6 of the Permit provides that:

There shall be no development or alteration of the land for either lot without an amendment to this permit. Forest

management activities, under a forest management plan approved in writing by the District 2 Environmental Commission, are permitted.

5. To date, Respondent has not submitted a forest management plan to the District 2 Environmental Commission.
6. In or around 2007, Respondent constructed a road on the 164-acre lot. This road is not authorized by the Permit.
7. The road is at least 2,100 feet long, and it has been ditched and graded. The road is in the mapped deer wintering area and crosses an intermittent stream.
8. Construction of the road had the potential for significant adverse impact on the mapped deer wintering area and on the intermittent stream. Any use of the road would have potential for significant adverse impact on the deer wintering area.
9. To date, Respondent has not applied for an Act 250 permit amendment for the road.
10. Respondent's failure to obtain an Act 250 permit amendment prior to commencing construction of the road on the 164-acre lot violates the Permit and Act 250 Rule 34(A).

ORDER

- A. Within thirty (30) days of the date upon which this Order becomes final, Respondent shall submit a complete Act 250 permit amendment application to the District 2 Environmental Commission, seeking approval of a forest management plan, and authorization for the road in question and any other changes Respondent plans to make to the 164-acre lot. Respondent shall diligently pursue this application and shall comply with all requests for information from the District 2 Environmental Commission and its staff.
- B. If the Respondent fails to file a permit amendment application in compliance with the preceding paragraph, or file a complete and timely application and the Commission denies said application and said decision becomes final, Respondent shall replant the road with hemlock trees and other vegetation and restore it to its natural condition in accordance with a plan approved by the Department of Fish and Wildlife. Respondent shall file the approved restoration plan with the Land Use Panel and with the District 2 Environmental Commission at least thirty (30) days prior to

commencing restoration.

- C. Said restoration shall be completed within two hundred and ten (210) days after this Order becomes final if Respondent does not file an application in accordance with Paragraph A, above, or within one hundred eighty (180) days of the date on which any decision denying the permit amendment application referenced herein becomes final.
- D. Respondent shall pay a penalty of \$10,000.00 within thirty (30) days of receipt of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and sent to:

Denise Wheeler, Business Manager
Natural Resources Board
National Life Records Center, National Life Drive
Montpelier, Vermont 05620-3201

This penalty does not include the costs incurred for enforcement or the amount of economic benefit gained by Respondent from the violations. The Panel reserves the right to augment this penalty through evidence presented at hearing. In accordance with 10 V.S.A. § 8010, the penalty may be increased by the costs incurred for the enforcement of the described violations, the amount of economic benefit gained by Respondent 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**

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 that Respondent receives this Administrative Order. 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:

Melanie Kehne, Associate General Counsel
Natural Resources Board, Land Use Panel
National Life Records Center, National Life Drive
Montpelier, VT 05620-3201

Ms. Jacalyn Fletcher, Court Manager
Vermont Environmental Court
2418 Airport Road, Suite 1
Barre, VT 05641-8701

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

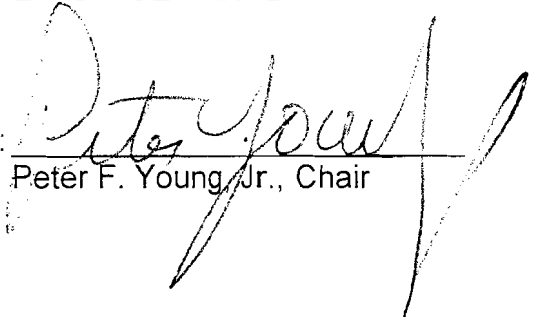
This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the 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 in Montpelier, Vermont, this 7th day of January, 2010.

LAND USE PANEL

By: 
Peter F. Young, Jr., Chair