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LAND USE PANEL of the )  
NATURAL RESOURCES BOARD )

Petitioner, )

v. )

LARKIN REALTY, and )  
JOHN LARKIN, )  
Respondents. )  
\_\_\_\_\_

**EMERGENCY ADMINISTRATIVE  
ORDER**

**VIOLATION**

- 1) Failure to obtain an amendment to Land Use Permit #4C1138 prior to performing blasting in violation of Act 250 rule 34 (A).

**EMERGENCY ADMINISTRATIVE ORDER**

Having found that Larkin Realty and John Larkin (collectively Respondents) committed a violation as defined in 10 VSA § 8002[9], the Land Use Panel of the Natural Resources Board (the Panel), having duly considered all pertinent factors, and pursuant to the authority set forth in 10 VSA §§ 8008 and 8009, hereby issues the following Emergency Administrative Order:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

- 1) On November 3, 2005, the District 4 Environmental Commission (the Commission) issued Land Use Permit #4C1138 (the Permit) to John Larkin, Larkin Realty and Cupola Golf Course, Inc. specifically authorizing “the Permittees to create a three-lot subdivision and construct 64 apartments in two buildings.” This permit applies to the lands described and identified in Book 107 Page 84 of the land records of the City of South Burlington. (the project tract) The project tract is located on Quarry Hill Road in South Burlington, Vermont.
- 2) The Commission has amended the Permit on three occasions with Amendments #4C1138-1, issued December 1, 2005; #4C1138-1A, issued February 16, 2007; and #4C1138-3, issued May 18, 2009.
- 3) Land Use Permit Amendment #4C1138-3 specifically authorizes modifications of the project approved in the Permit to allow the enlargement of the building footprints, relocation of the parking lots, revision of the stormwater system, revision of the roadway width and revision of the landscaping plans.

- 4) Condition No. 3 of Land Use Permit Amendment #4C1138-3 states: “[t]he project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #4C1138, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit.”
- 5) Condition No. 6 of Land Use Permit Amendment #4C1138-3 states: “[n]o changes shall be made to the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under Act 250 Rules.”
- 6) Condition No. 7 of Land Use Permit Amendment #4C1138-3 states: “[p]ursuant to Act 250 Rule 51(G), the permit application and material representations relied upon during the review and issuance of this permit by the District Commission shall provide the basis for determining future substantial and material changes to the approved project and for initiating enforcement actions.”
- 7) Nowhere in the Findings of Fact and Conclusions of Law #4C1138, the plans and exhibits on file with the Commission for the Permit or its subsequent amendments, or the conditions of the Permit or its subsequent amendments did the Commission address or consider the possibility that Respondents would undergo blasting during the construction phase of this project.
- 8) Upon information and belief, Respondents have blasted numerous times since August 1, 2009.
- 9) On August 28, 2009, District Coordinator Peter Keibel became aware of said blasting and informed Respondents’ engineer that blasting was not approved by the Permit or its subsequent amendments and that such blasting is a material change to the approved project that requires a permit amendment.
- 10) On September 18, 2009, the Panel’s Permit Compliance Officer (PCO), John Wakefield, became aware that Respondents were continuing to blast on the project tract.
- 11) On September 21, 2009, PCO Wakefield became aware that Respondents blasted that afternoon.
- 12) To date, Respondents have not obtained, nor applied for an amendment to the Permit which would allow them to blast on the project tract.
- 13) Respondents violated Condition No. 6 of Land Use Permit Amendment #4C1138-3 by blasting on the project tract without the written approval of the District Coordinator or the District 4 Environmental Commission.
- 14) Respondents, by blasting on the project tract, have created a material change to the development permitted in Land Use Permit #4C1138 and its subsequent amendments.

- 15) Respondents have violated Act 250 Rule 34 (A) by failing to obtain the required permit amendment to Land Use Permit #4C1138 for a material change to the permitted development.

**ORDER**

Having found that Respondents have committed a violation as defined in 10 V.S.A. § 8002(9), it is hereby **ORDERED**:

- A) Respondents shall immediately cease all blasting activities on the project tract until Respondents obtain an Act 250 Land Use Permit Amendment approving any blasting.
- B) Respondents shall comply with Land Use Permit series #4C1138.

**RESPONDENTS' RIGHT TO A HEARING BEFORE THE ENVIRONMENTAL COURT**

Respondents have the right to request a hearing on this Emergency Administrative Order before the Environmental Court under 10 VSA § 8009 by filing a Notice of Request for Hearing within **FIVE (5) days** of receipt of this Emergency Administrative Order. A **request for a hearing shall not stay this Emergency Administrative Order**. 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:

Ken Smith, Associate General Counsel  
Natural Resources Board  
National Life Records Center Building  
Montpelier, VT 05620-3201

Clerk, Environmental Court  
2418 Airport Road, Suite 1  
Barre, VT 05641-8701

**COMPLIANCE WITH THIS ADMINISTRATIVE ORDER**

This Order will remain in effect until further order of the court. If Respondents fail or refuse to comply with the conditions of a final Administrative Order, the Land Use Panel shall have cause to initiate an appropriate enforcement action against Respondents pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

DATED in Montpelier, Vermont, this 22<sup>nd</sup> day of September, 2009

LAND USE PANEL

By: Peter F. Young, Jr.  
Peter F. Young, Jr., Chair

by John H. Hannon