

FILED**STATE OF VERMONT
ENVIRONMENTAL COURT**

JUN 8 2010

**VERMONT
ENVIRONMENTAL COURT**LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

Docket No. 17-1-10 Vtec

v.

READING HEIGHTS, LLC,
Respondent**STIPULATION AND ORDER**

NOW COME the Land Use Panel of the Natural Resources Board (Panel) and Reading Heights, LLC (Respondent), and hereby enter into this Stipulation and agree as follows:

I. STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

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. The Department of Fish and Wildlife identified and mapped critical deer wintering habitat on the 164-acre lot.
3. Respondent Reading Heights, LLC purchased the 164-acre lot in 2005, and is the current owner.
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. Respondent's forester prepared a forest management plan for the 164-acre lot in November 2005. This plan was reviewed, revised and approved by the Department of Forests, Parks and Recreation and the Department of Fish and Wildlife in January 2006. Respondent logged the 164-acre lot in 2006. To date, Respondent has not submitted a forest management plan to the

Settlement Stipulation and Order
Land Use Panel v. Reading Heights, LLC,
No. 17-1-10 Vtec

Page 2

District 2 Environmental Commission for the Commission's approval.

6. In or around 2007, Respondent constructed improvements on a road on the 164-acre lot. At least part of the road was an existing logging road at the time the improvements were constructed. This construction was not authorized by the Permit.
7. As improved, the road is at least 2,100 feet long, and sections of the road have been ditched and graded. The road is in the mapped deer wintering area and crosses an intermittent stream.
8. To date, Respondent has not applied for an Act 250 permit amendment for the improvements to or use of the road.
9. Respondent's failure to obtain an Act 250 permit amendment prior to constructing the improvements to the road violates the Permit and Act 250 Rule 34(A).

II. AGREEMENT

- A. Upon entry of this Stipulation as an Order by the Court, the Court may dismiss this enforcement action.
- B. The Panel shall file a notice of this Stipulation and Order in the land records of Reading and West Windsor, Vermont, at Respondent's expense. Within fifteen (15) days of the date upon which this Stipulation and Order becomes final, Respondent shall send two payments in the amount of ten dollars (\$10.00) for the recording fee for each notice, by check made payable to each municipality in question, to the Panel at the address listed below.
- C. Within one hundred and eighty (180) days of the date upon which this Stipulation and 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, authorization for the road improvements in question and any other proposed development or alterations Respondent proposes to make on the 164-acre lot. Respondent shall diligently pursue this application, including any necessary permits or approvals from the Agency of Natural Resources or other permitting authority, and shall comply with all requests for information related to the Act 250 permit amendment application from the District 2 Environmental Commission and its staff.
- D. If the Respondent fails to file a permit amendment application in compliance with the preceding paragraph, or files a complete and timely

Settlement Stipulation and Order
Land Use Panel v. Reading Heights, LLC,
No. 17-1-10 Vtec

Page 3

application and the Commission denies said application and said denial becomes final, including a decision on any reconsideration request or appeal, Respondent shall consult and work with the Department of Fish and Wildlife to develop a plan to replant the improved areas of the road with trees and other vegetation consistent with its use as deer wintering habitat, and shall submit said plan in a permit amendment application to the District 2 Environmental Commission for approval.

- E. Said restoration plan shall be implemented in a timely manner and as approved by the District Commission. If the District Commission does not specify an implementation deadline, then the approved restoration plan shall be implemented within two hundred and ten (210) days after the Commission issues its approval and said approval becomes final.
- F. The Panel may extend any deadline in this Stipulation and Order for good cause, including weather conditions and causes for delay that are beyond Respondent's control. Such extensions shall not be unreasonably withheld and shall be granted where the delay is caused solely by the action or inaction of the state or any of its agencies.
- G. Respondent shall pay a penalty of \$5,900.00 within thirty (30) days of issuance of this Stipulation as an Order by the Court. 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
- H. Any payment by the Respondent pursuant to this Stipulation and Order is made to resolve the violations set forth herein and shall not be considered to be a charitable contribution or business expense under federal or state tax laws.
- I. Respondent shall cause no further development or alteration of the land upon the 164-acre tract without approval from the District 2 Environmental Commission, or a determination by the district coordinator pursuant to 10 V.S.A. § 6007(c) and applicable Act 250 Rules that no permit amendment is required.
- J. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- K. Nothing in this Stipulation and Order shall be construed as having relieved, modified, waived or otherwise affected the Respondent's

**Settlement Stipulation and Order
Land Use Panel v. Reading Heights, LLC,
No. 17-1-10 Vtec**

- continuing obligation to comply with all other applicable state or local statutes, regulations, permits or directives.
- L. This Stipulation shall become effective only after it is signed by all parties and entered as an Order of the Environmental Court.
- M. Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court enters this Stipulation as an Order, provided that the Respondent fully complies with the agreements set forth herein.
- N. In the event of a future violation by Respondent, or by any individual or entity that constitutes the same person as Respondent as defined at Act 250 Rule 2(C)(1), the facts agreed to herein shall constitute a violation for purposes of 10 V.S.A. § 8010.
- O. This Stipulation sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Environmental Court. Alleged representations not set forth in this Stipulation, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- P. Any violation of any provision herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.

SIGNATURES

The provisions set forth in this Stipulation and Order are hereby agreed to and accepted.

DATED at _____, this _____ day of June, 2010.

READING HEIGHTS, LLC

By: 

President
Print name and title

**Settlement Stipulation and Order
Land Use Panel v. Reading Heights, LLC,
No. 17-1-10 Vtec**

DATED at Montpelier, Vermont, this 3rd day of June, 2010.

LAND USE PANEL


By:


Peter F. Young, Jr., Chair

ORDER

It is SO ORDERED, *effective as of receipt of all signatures above.*
DATED at Berlin, Vermont, this 4th day of June, 2010.

VERMONT ENVIRONMENTAL COURT


The Hon. Merideth Wright,
Environmental Judge