

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 66-4-10

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

Ronald and Sandra Brown
and
Town of Weathersfield, Vermont,
Respondents

CONSENT ORDER

Now come Petitioner Land Use Panel of the Natural Resources Board, and Respondents Town of Weathersfield and Ronald and Susan Brown, by and through their attorneys, and stipulate and agree that, pursuant to 10 V.S.A. §§8008 and 8012, the Superior Court, Environmental Division may issue the following Consent Order in this matter. *See, Natural Resources Board, Land Use Panel v. Sunrise Plaza, Inc.*, Dkt. No. 139-8-10, Consent Order (Sept. 7, 2010), Order (Sept. 13, 2010).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On May 14, 1991 the District 2 Environmental Commission (Commission) issued Land Use Permit #2S0818 (Permit) to Ronald and Sandra Brown.
2. The Permit authorizes the Browns, as permittees, to operate a gravel pit on land owned by the Browns in the Town of Weathersfield, Vermont.
3. Condition 18 of the Permit states:
 18. Each phase of the project shall be reclaimed prior to clearing or extracting gravel from the next phase. The permittees shall submit an affidavit stating all reclamation is completed in accordance with permit conditions. Clearing of the next phase may proceed only with the written authorization of the District II Environmental Commission.
4. Condition 27 of the Permit states:
 27. All gravel extraction and reclamation on this project must be completed by October 15, 2009.

5. The reclamation plan submitted by the Browns and approved by the Commission (Exhibit 11 to Land Use Permit #2S0818) states:

Gravel will be removed in five phases of about 3 acres each. The excavation and reclamation will be done in the following manner:

1. Clear land
 - a) Remove merchantable forest products
 - b) Chip or burn brush
2. Strip topsoil and stockpile.
3. Excavate gravel.
4. Install sedimentation pool and staked hay bales.
5. Grade banks 2.5:1 and floor of pit at 1/2%.
6. Reclaim previous phase before 5% of next phase is excavated.
 - a) Cover surface with 2" of topsoil
 - b) Seed with creeping red fescue and tall fescue grasses
 - c) Apply lime 2 tons/ acre
 - d) Apply fertilizer 10-10-10, 240 lbs/ acre
 - e) Mulch with hay 60 bales/acre

6. Under a written agreement between the Browns and the Town of Weathersfield, the Town has operated the Brown gravel pit since the late 1990s or early 2000s.

7. No affidavits stating that reclamation of the Brown gravel has been completed in accordance with permit conditions were ever submitted to the Commission by the Browns or the Town of Weathersfield.

8. The Commission never gave written authorization to the Browns or the Town to clear any phase of the Brown gravel pit subsequent to Phase 1.

9. Reclamation at the Brown gravel pit was not completed by October 15, 2009, but it has now been reclaimed in accordance with the Permit.

10. Ronald and Sandra Brown, as owners of the Brown gravel pit, and the Town of Weathersfield, as operators of the Brown gravel pit, violated Land Use Permit #2S0818.

ORDER

- A. Respondents shall comply with Land Use Permit #2S0818.
- B. Respondents Ronald and Sandra Brown shall not be responsible for paying any civil penalty in this matter.
- C. Pursuant to 10 V.S.A. Ch. 201, Respondent Town of Weathersfield shall be responsible for a civil penalty in the amount of Eighteen Thousand (\$18,000.00) Dollars (U.S.), for the violations noted herein.
- D. No later than 30 days following the entry of this Consent Order by the Superior Court, Environmental Division, Respondent Town of Weathersfield shall pay to the Natural Resources Board, pursuant to 10 V.S.A. 8010(e)(2), the amount of Six Thousand (\$6000.00) Dollars (U.S.), as partial payment of the civil penalty noted in Paragraph C, above.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and shall be sent to:

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

Any payment by a Respondent pursuant to this Administrative Order is made to resolve the violations set forth in this Administrative Order and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. No Respondent shall deduct, or attempt to deduct, any payments, penalties, contributions or other expenditures required by this Administrative Order from said Respondent's state or federal taxes.

- E. Respondent Town of Weathersfield shall contribute Nine Thousand (\$9000.00) Dollars (U.S.), of the civil penalty noted in Paragraph C, above, to a Supplemental Environmental Project (SEP), pursuant to 10 V.S.A. §8007(b)(2), for the remediation of the gravel pit site which has already occurred. Attachment A.

- F. Respondent Town of Weathersfield shall contribute Three Thousand (\$3000.00) Dollars (U.S.), of the civil penalty noted in Paragraph C, above, to a Supplemental Environmental Project (SEP), pursuant to 10 V.S.A. §8007(b)(2), for tree work at the Memorial Grove at the Weathersfield Center Meeting House. A more detailed description of this SEP Project is attached to this Consent Order as Attachment B; SEP funds from this Paragraph shall be used specifically for the project described in Attachment B. The SEP authorized under this Paragraph shall be funded by the Respondent Town of Weathersfield no later than 60 calendar days following the date this Consent Order is entered by the Superior Court, Environmental Division.

If, at the close of the 60 day period following the entry of this Consent Order by the Superior Court, Environmental Division, any of the monies allocated for the SEPs referred to in Paragraph E and this Paragraph have not been expended or committed by the Respondent Town of Weathersfield, any such unexpended or uncommitted amount shall be converted to a civil penalty and shall be immediately due and payable to the State of Vermont. The Respondent Town of Weathersfield shall then make said payment by check made payable to the "Treasurer, State of Vermont," which shall be forwarded to Denise Wheeler, at the address set out in Paragraph D, above.

- G. If any Respondent publishes by any means, directly or indirectly, the identity or result of an SEP that Respondent has funded, the Respondent shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Land Use Panel of the Natural Resources Board.
- H. Respondent Town of Weathersfield shall file a copy of this Consent Order or a notice thereof in its land records in the same manner as if the Respondents Ronald and Susan Brown are the grantors of a deed.
- I. The Administrative Order dated April 20, 2010 in this matter is dismissed.
- 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 Consent Order shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.
- L. This Consent Order 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

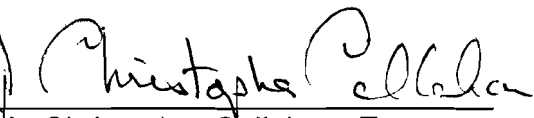
incorporated in an order issued by the Environmental Court. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.

- M. Any violation of this Consent Order 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.



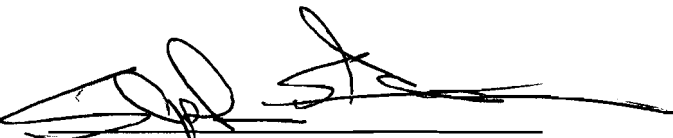
John H. Hasen, General Counsel
Attorney for the Land Use Panel, Natural Resources Board

Dated: 10/18/10



J. Christopher Callahan, Esq.
Attorney for Respondent Town of Weathersfield

Dated: 10/12/10



Steven S. Ankuda, Esq.
Attorney for Respondent s Ronald and Susan Brown

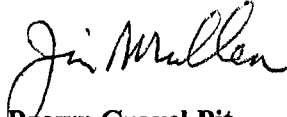
Dated: 10/13/10

RECEIVED SEP 22 2010

Town of WeathersfieldP.O. Box 550
Ascutney, Vermont 05030802.674.2626 (phone)
802.674.2117 (fax)

townmgr@weathersfield.org

To: J. Christopher Callahan, Esq.
From: Jim Mullen, Town Manager
Date: September 21, 2010
Subject: Costs Incurred Closing the Brown Gravel Pit



The following costs were incurred by the Town of Weathersfield to close the Brown Gravel Pit on Drumlin Road:

Highway Dept. Labor – 3 weeks @ \$10,000 week for payroll and benefits	\$30,000
Equipment expense – Grader 160 hours @ \$70/hour	11,200
Equipment expense – Loader 224 hours @ \$40/hour	8,960
Equipment expense – Dump Trucks 360 hours @ \$35/hour	12,600
Advertise seeding request for bids	85
Seeding, fertilizing, mulching (contracted out to Dollof Acres)	10,900
Relocate 2 utility poles	4,386
<u>Pre-2010 closure expenses documented in Town Reports</u>	<u>10,500</u>
Total cost to close pit	\$88,631

Note: Equipment expenses are based on latest FEMA's Schedule of Equipment Rates owned by public agencies (without operator):

<http://www.fema.gov/government/grant/pa/eqrates.shtm>

Town of Weathersfield

P.O. Box 550
Ascutney, Vermont 05030

802.674.2626 (phone)
802.674.2117 (fax)

townmgr@weathersfield.org

To: J. Christopher Callahan, Esq.
From: Jim Mullen, Town Manager
Date: September 23, 2010
Subject: Proposed Tree Work in the Weathersfield Center Memorial Grove

The following tree work is proposed for the Memorial Grove at the Weathersfield Center Meeting House.

The Memorial Grove is a grove of sugar maples on town-owned land planted by the citizens of Weathersfield immediately after the Civil War to honor those who lost their lives in the war. These very old trees are in need of professional care by a certified arborist.

The Town will hire a certified arborist to perform \$3,000 worth of work as recommended by the arborist. Work recommended by the arborist will likely include:

- Fertilize roots
- Crown clean 1" and larger branches and structural prune by removing crossing and rubbing branches to improve shape/structure.
- Install cables in trees that need mechanical support because of bad unions.