

**State of Vermont**  
**NATURAL RESOURCES BOARD**  
**DISTRICT 4 ENVIRONMENTAL COMMISSION**  
111 West Street • Essex Junction • Vermont 05452

RE: Northern Vermont Financial Corporation      Application #300004-1 and #4C0828-2  
c/o Carl Lisman, Esq.                                      **Decision and Order**  
84 Pine Street    10 V.S.A. Chapter 151 (Act 250)  
Burlington, VT 05402-0728

**DECISION AND ORDER**

Currently before the District #4 Environmental Commission (“District Commission” or “Commission”) is a Petition to Abandon LUPs #300004 & #4C0828. A hearing was held on September 11, 2015. A second Notice was issued on September 15, 2015 due to an insufficient initial Notice per Act 250 Rule 38(A) and set October 8, 2015 as a deadline for parties to request a hearing. On October 1, 2015, the Town of Shelburne requested an extension for filing comments regarding the Petition to Abandon LUPs #300004 & 4C0828. The Commission issued a Memorandum of Decision and Order on October 2, 2015 granting that extension until November 16, 2015. A hearing was held on January 11, 2016 and a Hearing Recess Order was issued on February 5, 2016.

Findings of Fact & Procedural History

1. On September 18, 1970, Vermont Railway, Inc. was issued LUP #300004 for the subdivision of a 56-acre parcel into four (4) lots and the construction of a salt shed on the 5-acre lot and a future industrial park on the 23.6-acre lot.
2. On September 23, 1970, Vermont Railway, Inc. filed a timely appeal with the Environmental Board regarding LUP #300004. On November 5, 1970, The Environmental Board issued a revised permit - LUP #300004 and Findings of Fact, Conclusions of Law, and Order.
3. On March 28, 1990, Northern Land and Rail Company and Shelburne Realty were issued LUP #4C0828 “revised” for construction of a five building industrial park totaling 286,000 sf, and associated roadways and utilities, to be served by municipal sewage disposal and water on a 32-acre parcel. This parcel is the same as that authorized under LUP #300004 minus the 23-acre parcel (LaPlatte River buffer parcel), which had been conveyed to the Town of Shelburne.
4. On December 16, 1991, LUP #4C0828-1 was issued extending the construction completion date to October 15, 1997 for the previously authorized permit #4C0828.
5. In 1994, Northern Vermont Financial Corporation (“NVFC”) acquired the 32-acre parcel subject to permits #300004, #4C0828 and #4C0828-1.
6. On December 28, 2015, NVFC conveyed the subject parcel to Vermont Railway, Inc.

**DECISION**

The Petition to Abandon an Act 250 permit was made pursuant to Act 250 Rule 38, which states: “A petition to declare a permit abandoned may be filed by the permittee, by any person who was a party to the application proceedings, or by any person entitled to party status under 10 V.S.A. § 6085(c).” The current petition was initiated by NVFC. NVFC, by virtue of being the landowner, was the permittee, so it had the right to initiate the petition for Abandonment. *In re Edward E. Buttolph Revocable Trust*, No. 19-2-09 Vtec, Decision on Motion for Summary Judgment at 8.

According to NVFC, the land was conveyed to Vermont Railway, Inc. on December 28, 2015. At that time, the District Commission had not made a decision regarding the Abandonment petition. The Court has ruled that the abandonment must be documented by the District Commission. “When a permittee does not ‘use’ its Act 250 permit for three years following its issuance, the permit is deemed abandoned. 10 V.S.A. § 6091(b). While the language of § 6091(b) infers that abandonment occurs automatically, the NRB [Natural Resources Board], through the rulemaking authority vested in it by 10 V.S.A. § 6025, has wisely established procedures whereby district commissions may decide that an Act 250 permit has become abandoned and void.” *In re Edward E. Buttolph Revocable Trust*, No. 19-2-09 Vtec, Decision on Motion for Summary Judgment at 5 (October 1, 2009). Therefore, the two permits had not been abandoned at the time of the land conveyance.

At the January 21, 2016 hearing, the Town of Shelburne challenged the Standing of NVFC to continue the Petition to Abandon. The Commission, in its Hearing Recess Order, requested: “Although the Original Petitioner, Northern Vermont Financial Corp., had Standing to initiate the Petition to Abandon, pursuant to Act 250 Rule 38(C), the Original Petitioner, through conveyance of the subject parcel, may now lack Standing to pursue the Petition. The current owner must file a letter with the District Commission indicating its intent to proceed with the Petition to Abandon. Alternatively, the Original Petitioner may file a brief indicating why such a letter is not necessary.”

No letter was submitted by Vermont Railway, Inc. (current landowner) and the Commission found that the brief arguing for continuation of NVFC’s Standing was not compelling. *Re: Sports Venue Foundation, Inc.*, No. 168-8-07 Vtec, Judgment Order, and Decision and Order on Motion to Dismiss and Motion for Clarification at 4-5 (December 18, 2007) [Appellant lost his individual party status when his interest in the abutting commercial property was foreclosed.] Therefore, the Commission finds that NVFC no longer has Standing in this proceeding to continue the petition.

**ORDER**

1. The petition for Abandonment of LUPs #300004 and #4C0828 is DISMISSED.
2. The request by the Town of Shelburne for a site visit by the District Commission is DENIED as being moot.

Dated at Essex Junction, Vermont this 4<sup>th</sup> day of April, 2016

By: /s/Marcy Harding, Vice Chair  
Marcy Harding, Vice Chair  
District #4 Commission

Other Commissioners participating  
Parker Riehle  
Monique Gilbert

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

The applicant may file an application for reconsideration with the District Commission within six months of this decision, pursuant to Act 250 Rule 31(B).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$265 entry fee required by 32 V.S.A. § 1431.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

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E	DATE	E	A = Applicant
X	R	N	T = Town
H	E	T	O = Opponent
I	C	E	RPC = Regional Planning Commission
B	E	R	ANR = Agency of Natural Resources
I	I	E	VTRANS = Vt. Agency of Transportation
T	V	D	DPS = Department of Public Services
	E		M = Municipality
	D		DHP = Division for Historic Preservation
			WMD = Wastewater Management Division
N		B	L = Landowner
O.		Y	
			Nature of Exhibit and Date Entered

Ex 001	7/9/15	A	Petition by Northern Vermont Financial Corporation re Declare Void Land Use Permit #300004, Dated September 18, 1970 and Land Use Permit #4C0828 "Revised", Dated March 28, 1990 on Account of Nonuse of Permits
Ex 002	"	"	Memo by Carl Lisman, Esq, Lisman Leckerling re EBR 38 Petition (7/28/15)
Ex 003	9/11/15	"	Environmental Board Findings Regarding Appeal of 300004 by William Cowles, Chairman of Vt. Env. Board Dated November 5, 1970 [Applicant's Exhibit 1]
Ex 004	"	"	Environmental Board Permit Regarding Appeal of 300004 by William Cowles, Chairman of Vt. Env. Board Dated November 5, 1970 [Applicant's Exhibit 2]
Ex 005	"	"	Vt. Railway Application letter for a Land Use Permit (8/14/70)
Ex 006	"	"	Application for permit #300004 (8/14/1970) [Applicant's Exhibit 3]
Ex 007	"	"	Land Use Permit #300004 Issued September 18, 1970 [Applicant's Exhibit 4]
Ex 008	"	"	Notice of Appeal by Vt. Railway, Inc. Dated September 23, 1970 [Applicant's Exhibit 5]
Ex 009	"	"	Memorandum by Schuyler Jackson, Consultant, Agency of Environmental Conservation to Robert Babcock, Vt. Environmental Board re Notice of Appeal (10/20/70) [Applicant's Exhibit 6]
Ex 010	"	"	Letter by Ivan Edwards, Permit Monitor, Agency of Environmental Conservation re Complying w/Conditions of Land Use Permit #300004 (12/27/73) [Applicant's Exhibit 7]

Ex 011	“	“	Vt. Railway Note Regarding Status of Project [Applicant's Exhibit 8]
Ex 012	“	“	Letter by I. Edwards re Response for Additional Information from Vt. Railway (1/24/74) [Applicant's Exhibit 10]
Ex 013	“	“	Letter by T. Wulfson, Northern Vt. Financial Corporation re request for extension of completion date for Arrowhead Industrial Park in Shelburne (12/12/94) [Applicant's Exhibit 11]
Ex 014	“	“	Affidavit of David Wulfson, President of Vt. Railway, Inc. Dated September 4, 2015 [Applicant's Exhibit 12]
Ex 015	9/17/15	“	Proposed Findings of Fact and Conclusions of Law by Judith Dillon, Esq., of Lisman Leckerling, P.C. Representing Northern Vermont Financial Corporation (9/16/15)
Ex 016	11/13/15	T	Letter by Joe Colangelo, Town Manager, Town of Shelburne re Request for Hearing (11/13/15)
Ex 017	“	A	Opposition to Town of Shelburne's Request for Hearing by Judith Dillon, Esq., Representing Applicant – Northern Vermont Financial Corporation Dated November 13, 2015
Ex 018	1/11/16	T	Memorandum of the Town of Shelburne in Opposition to Petition for Abandonment
Ex 019	“	“	Corrective Recreation Path Easement Deed (4/26/1995)
Ex 020	“	“	Deed for 23 acre parcel of land conveyed to the Town of Shelburne by Vermont Railway, Inc. (2/11/1971)
Ex 021	01/13/16	“	Request for Site Visit, Affidavit and Site Photos (01/12/16)
Ex 022	“	T	Petitioner's Motion in Opposition to the Town of Shelburne and Further Support for its Abandonment Petition
Ex 023	02/19/16	A	Keibel Cover Letter by Lisman Leckerling PC (02/19/16)
Ex 024	“	“	Petitioner's Response to Recess Order (02/19/16)
Ex 025	“	“	Warranty Deed (12/28/15)
Ex 026	03/07/16	“	Town of Shelburne's Rebuttal to Petitioner's Response to HRO (03/07/16)
Ex 027	03/09/16	O	Petition for Party Status by Nature Conservancy (3/7/16)

## CERTIFICATE OF SERVICE

I hereby certify on this 4<sup>th</sup> day of April 2016, a copy of the foregoing ACT 250 DECISION AND ORDER #300004-1 & #4C0828-2 sent by U.S. mail, postage prepaid to the following individuals without email addresses and by email to the individuals with email addresses listed.

Note: any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes. All email replies should be sent to [nrb-act250essex@state.vt.us](mailto:nrb-act250essex@state.vt.us). Please note you can now fill out and submit the Act 250 survey online at: <http://permits.vermont.gov/act250-survey>.

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### FOR YOUR INFORMATION

District #4 Environmental Commission  
Marcy Harding, Vice Chair  
Parker Riehle/Monique Gilbert  
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Dated at Essex Junction, Vermont, this 4<sup>th</sup> day of April, 2016.



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