

STATE OF VERMONT  
ENVIRONMENTAL COURT

<b>In re: Rivers Dev. Con. Use Appeal</b>	}	
	}	<b>Docket No. 7-1-05 Vtec</b>
	}	
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<b>In re: Rivers Dev. Act 250 Appeal</b>	}	
	}	<b>Docket No. 68-3-07 Vtec</b>
	}	
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<b>In re: Rivers Dev. ANR UIC JO</b>	}	
	}	<b>Docket No. 183-8-07 Vtec</b>
	}	
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<b>In re: Rivers Dev. Indirect Discharge JO</b>	}	
	}	<b>Docket No. 248-11-07 Vtec</b>
	}	

**Decision on Rivers’s Motion to Compel Discovery**

Appellant-Applicant Rivers moved to compel disclosure of Neighbors’ unverified transcripts of proceedings before the Act 250 District Commission. Neighbors opposed the motion, asserting that the requested records constituted attorney/client work product and thus were privileged and not subject to disclosure.

At the January 16, 2008 hearing on multiple discovery disputes, the Court reserved judgment on Rivers’s motion to compel disclosure of the purported Act 250 unverified transcripts. Rather, the Court ruled that Neighbors must file an electronic copy of the disputed records with the Court, so the Court could conduct an in camera review of the documents.

Upon completing the in camera review, the Court concludes that the documents in dispute can best be described as unverified transcripts of most, if not all, of the proceedings before the Act 250 District Commission. They were prepared by two transcriptionists, one who is a party to these proceedings, the other her employee, apparently at the request of Neighbors’ attorney. The unverified transcripts take a format similar, if not identical, to the unverified transcripts of the municipal proceedings prepared by the same party.\* The Court saw no

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\* Neighbors voluntarily disclosed to Rivers the unverified transcripts from the municipal proceedings, but refused to voluntarily disclose the unverified transcripts from the Act 250 proceedings.

evidence of any material transcription of attorney work product or other notes that could legitimately be claimed to be privileged attorney/client work product.

None-the-less, Rivers's motion to compel disclosure is hereby DENIED at this time, for the following reasons:

The unverified transcripts were prepared by a party, for their own use, at their own expense. While voluntary disclosure would have been preferable, as happened with the municipal transcripts, the Court is not aware of any rule provision mandating disclosure. Rivers had the same opportunity to retain a transcriptionist for the Act 250 proceedings and now has the opportunity to have a transcript prepared from the authenticated tapes of the Act 250 proceedings.

Additionally, Neighbors' interrogatory question that allegedly relies upon to the unverified Act 250 transcripts is not so significant or substantially unique as to require disclosure of the disputed transcripts. Rivers has not been unfairly prejudiced by whatever nominal reliance the Neighbors' question had upon the unverified Act 250 transcripts.

However, in the event Neighbors make reference to, or use of, the material contained in the unverified transcripts in future Court proceedings, the Court will retain an electronic copy of the unverified transcripts for an in camera inspection and reserves the right to compel future disclosure to Rivers and other parties to this proceeding.

Accordingly, based on the foregoing, it is hereby ORDERED and ADJUDGED that Cross-Appellant Rivers's motion to compel disclosure of the unverified Act 250 transcripts is **DENIED** at this time.

Done at Berlin, Vermont, this 5<sup>th</sup> day of February, 2008.

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Thomas S. Durkin, Environmental Judge