

**STATE OF VERMONT
ENVIRONMENTAL COURT**

In re Appeal of Michael Kokell

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Docket No. 26-2-09 Vtec

Judgment Order

Appellant-Applicant Michael Kokell (“Applicant”) is the present owner of a 15.18± acre tract of undeveloped land that was once subdivided pursuant to a state land use permit (Act 250 Land Use Permit #4C0436-11). The subject property is part of the original SnowPond subdivision and located in the vicinity of the Bolton valley Ski Resort. When Applicant sought to further subdivide his parcel of land into six lots, he filed an application for an amendment to the pre-existing Act 250 Land Use Permit. This application was assigned Act 250 Case Number 40C0436-11F.

The District Environmental Commission #4 (“Commission”) conducted a number of evidentiary hearings and deliberative sessions before the Commission issued its January 20, 2009 Findings of Fact, Conclusions of Law, and Permit. The Commission conditioned its approval of the permit amendment application upon fifty conditions specifically listed in the Permit. Applicant thereafter filed a timely appeal, challenging the propriety of Conditions 11, 21, 22, 24, 25, 26, 27, 28, 34, 36, 41, 42, and 43.

Applicant thereafter filed a motion for summary judgment. After a hearing held on July 28, 2009, the Court entered Findings of Fact and Conclusions of Law on the record of the hearing, **GRANTING** in part and **DENYING** in part Applicant’s summary judgment motion. The Court’s rulings are summarized below; a copy of the Commission’s January 20, 2009 Permit (Permit #4C0436-11F), with notations as to the revisions that this Court ordered, is attached to this Judgment Order:

1. Applicant’s motion to strike Condition 11 is **DENIED**. Condition 11 remains in full force and effect.

2. Condition 21, in its entirety, is amended as follows: “Prior to the commencement of site work for the road, the Permittee shall conduct a pre-construction conference on the site to review the details of the erosion control plan and to train the contractor on the use of the erosion control methods being employed. Fencing delineating the *Limits of Disturbance* shall be installed prior to

this site visit. The Permittee shall provide notice to the Agency of Natural Resources and the District Environmental Commission of at least five (5) business days prior to the pre-construction conference.”

3. Condition 22, in its entirety, is amended as follows: “Starting at the commencement of construction of the access road, a licensed Engineer or other qualified individual shall inspect the site at least once per week and at critical times (e.g., after any rain event) until the access road is completed to ensure that the erosion control plans are being followed.”

4. Condition 24, in its entirety, is amended as follows: “Permittee shall conduct all inspections required by any and all Agency of Natural Resources permits for the project. Permittee will also have a qualified engineer conduct annual inspections of slope stability for a period of five (5) years. Slope stability inspections will take place after construction of the road, prior to the commencement of construction of residential units on Lots #4 and #5, and following construction of the residential units on Lots #4 and #5.”

5. Condition 25, in its entirety, is amended as follows: “Prior to the commencement of site work for any of the approved residential units, the Permittee shall conduct a pre-construction conference on the site to review the details of the erosion control plan and to train the contractor on the use of the erosion control methods being employed. Fencing delineating the *Limits of Disturbance* shall be installed prior to this site visit. The Permittee shall provide notice of at least five (5) business days prior to the pre-construction conference to the Agency of Natural Resources and the District Environmental Commission.”

6. Condition 26, in its entirety, is stricken. Its provisions—to the extent that they are applicable—are incorporated into Condition 24, as amended above.

7. Condition 27, in its entirety, is amended as follows: “At the completion of construction of any residential units on Lots #4 and #5, and prior to the occupancy of these buildings, the Permittee shall certify to the District Commission, in writing, that the site improvements on each lot have been constructed in accordance with this permit pursuant to Act 250 Rule 32(A).”

8. Condition 28, in its entirety, is stricken. Its provisions—to the extent that they are applicable—are incorporated into Condition 24, as amended above.

9. Condition 34, in its entirety, is amended as follows: “Except for authorized stormwater and erosion control measures, wells and associated appurtenances, and driveways, no

disturbance of any kind (including but not limited to any ground disturbances either during or after construction, tree cutting, tree pruning, storage of property, etc.) is permitted on Lots #4 or #5 outside of the building envelope as depicted on the approved Overall Site Plan, Sheet SP1, revised 9/10/08.”

10. Condition 36, in its entirety, is amended as follows: “No disturbance of any kind (including but not limited to any ground disturbances not associated with the installation and maintenance of the channel Test Structures, trail cutting, tree cutting, tree pruning, storage of property, etc.) is permitted on Lot #6.”

11. Condition 41, in its entirety, is amended as follows: “The Permittee shall place \$10,000 in the Homeowner’s Association stormwater maintenance fund upon completion of the access road. The money shall be used solely for maintenance of the stormwater facilities.”

12. Applicant’s motion to strike Condition 42, in its entirety, is **GRANTED**.

13. Condition 43, in its entirety, is amended as follows: “In the event of non-compliance with Permit terms and conditions, or in the event of significant changes to the natural conditions of the site, the Commission reserves the right to evaluate and impose additional conditions with respect to Criteria 1B and 4. Imposition of additional mitigation conditions, if necessary, shall be made based on the applicable monitoring reports. The Commission reserves the right for a period of time commencing with the start of construction and expiring five years after all construction, including residences, is completed.”

14. All other terms and conditions of Land Use Permit #4C0436-11F remain in full force and effect.

Dated at Berlin, Vermont, this 31st day of July 2009.

Thomas S. Durkin, Environmental Judge