

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Natural Resource Board,
Petitioner,

v.

LBCMT 2007-C3 Dorset Street, LLC,
Respondent.

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Docket # 90-8-18 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on July 23rd, 2018, and filed with the Superior Court, Environmental Division, on August 27th, 2018, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 29th day of August 2018.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

LBCMT 2007-C3 Dorset Street, LLC,
Respondent

VIOLATION

Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A) for a material change to a permitted development. Commencement of demolition at 155 Dorset Street, South Burlington, Vermont, prior to issuance of an Act 250 Permit Amendment by the District 4 Commission.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and LBCMT 2007-C3 Dorset Street, LLC ("Respondent") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent, a corporation with a principal mailing address of c/o KeyPoint Partners, One Burlington Woods Drive, Burlington, MA 01803, owns a property at the University Mall, located at 155 Dorset Street and recorded in the land records of the City of South Burlington, Vermont at Book 1349, Page 219 (the Subject Property).
2. The Subject Property is subject to Act 250 Land Use Permit 4C0219 (series), as amended (the Permit).
3. Paragraph 8 of the Permit (4C0219) states:

"No changes in the project shall be made without prior approval of the District Office."

4. On March 2, 2018, the Respondent filed minor application 4C0219-2A for a project generally described as upgrades to an existing 60,000 s.f. store at the University Mall shopping center to include parking modifications and sidewalk improvements, updates to façade and signage and interior renovations.
5. On March 20, 2018, the District 4 Commission posted draft amendment 4C0219-2A for 30 days of public comment. The draft amendment included conditions that pertained to the proposed demolition and construction planned for the site. In addition, District 4 Coordinator Stephanie Monaghan issued a Notice stating that “No hearing will be held and a permit may be issued unless, on or before April 13, 2018, a person notifies the Commission of an issue or issues requiring the presentation of evidence at a hearing or the Commission sets the matter for hearing on its own motion.”
6. On April 11, 2018, District 4 Coordinator Stephanie Monaghan visited the Subject Property and noted that the Project was under construction.
7. On April 12, 2018, the Respondent’s engineer confirmed that interior renovations had commenced, and demolition was 98% complete.
8. Subsequent to the violations discussed herein, the Permit relative to application 4C0219-2A was issued on April 16, 2018.
9. The Respondent has violated Act 250 Rule 34(A) [Failure to obtain a permit amendment for a material change to a permitted development].
10. Respondent admits the factual findings described above, solely for purposes of resolving this case.
11. The Board alleges that the above conduct constitutes a violation of Act 250 Rule 34(A).
12. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed claims and is in the public interest.

AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

- A. Respondent shall comply with Permit series 4C0219.
- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay, by separate checks, the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Six Thousand Six Hundred (\$6,600.00) Dollars (U.S.)**, for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Hundred Twenty Two Dollars and Twenty Cents (\$122.20) (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 3. the amount of **Ten (\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the South Burlington land records, by check made payable to the "Town of South Burlington, Vermont."
- C. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above to resolve all outstanding disputes.
- D. Respondent agrees that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- E. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board a notarized, written acknowledgement of receipt of the Court's Order.
- F. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- G. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

- H. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- J. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
- L. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond either Respondent's control.
- M. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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 Superior Court, Environmental Division.
- N. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- O. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- P. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at So. Burlington, Vermont, this 23rd day of July, 2018.

LBCMT 2007-C3 Dorset Street, LLC

By Heather Tremblay

Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 23rd day of July, 2018, personally appeared Heather Tremblay, individually and as the duly authorized agent of **LBCMT 2007-C3 Dorset Street, LLC** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of **LBCMT 2007-C3 Dorset Street, LLC** and that (s)he has the authority to contract on behalf of **LBCMT 2007-C3 Dorset Street, LLC** and that (s)he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Julia Clarke

Notary Public

My Commission Expires: 2-10-2019

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 27 day of August, 2018.

Natural Resources Board

By:



Diane B. Snelling, Chair