

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,
Petitioner,

v.

Nathaniel Court Condominium
Association,
Respondent.

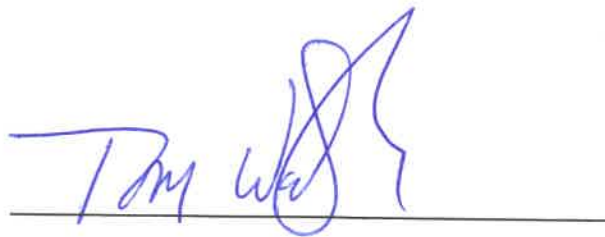
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Docket # 93-7-17 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on June 8th, 2017, and filed with the Superior Court, Environmental Division, on June 24th, 2017, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 25th day of July 2017.



Thomas Walsh, Judge
Vermont Superior Court
Environmental Division

**STATE OF VERMONT
SUPERIOR COURT - ENVIRONMENTAL DIVISION**

NATURAL RESOURCES BOARD,)	
Petitioner)	
)	
v.)	Docket No.
)	
Nathaniel Court Condominium Ass'n,)	
Respondent)	

VIOLATIONS

Failure to complete, operate, and maintain the Project in accordance with the Findings of Fact and Conclusions of Law, in violation of Condition 17 of Land Use Permit 8B0401.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Nathaniel Court Condominium Ass'n (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Nathaniel Court Condominium Ass'n owns a residential condominium development in Bennington, Vermont (Project).
2. On May 18, 1988, the District 8 Environmental Commission issued Land Use Permit #8B0401 (the Permit) to Jack Heaton, authorizing the Permittee to construct and use 40 residential condominium units and related improvements on a 2.2 acre tract on South Street in Bennington, Vermont.

Failure to use wood clapboard and wood trim:

3. Condition 17 of the Permit states:

This project shall be completed in accordance with the Findings of Fact, Conclusions of Law, and Order #8B0401, and in accordance with plans and exhibits stamped "Approved" and on file with the District Environmental Commission. In the event of any conflict, the terms and conditions of this permit and the facts relied upon in the Findings of Fact and Conclusions of Law shall supersede the approved plans and exhibits.

4. Section 8 (g) of the Findings of Fact states:

8(g)The architectural style of the building will blend with the historic house with

narrow wood clapboards, pitched roofs, and traditional trim details.

5. On page 5 of Exhibit 3, Schedule B to the Land Use Permit application, under Criterion 8, the applicant stated, in relevant part:

Landscaping, site layout, and the building's design harmonize with the character of the neighborhood. The building exteriors will be of horizontal wood clapboard with an opaque stain of warm gray hues, contrasting trim and gray roof.

6. On April 26, 2016, an investigation by the Board's Enforcement Officer revealed that the Respondent had replaced the original wood clapboards with vinyl siding in approximately 2006.
7. Respondent failed to maintain wood clapboard and trim on the exterior of the buildings, in violation of Condition 17 of the Permit.

AGREEMENT

8. Respondent shall comply with Land Use Permit 8B0401, as amended, except as provided herein.
9. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
- a. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$1,750**, for the violations noted herein, by good check made payable to the "**State of Vermont.**"
 - b. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$173.79** to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "**State of Vermont.**"
 - c. the amount of **\$10.00** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Bennington land records, by good check made payable to the "**Town of Bennington, Vermont.**"

10. All payments required by this Assurance shall be sent to:

Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201

11. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt

to obtain any other tax benefit from such payment.

12. In lieu of complying with the Permit requirements for wood siding, Respondent shall pay to the **Division for Historic Preservation** (Recipient), the sum of **\$27,500** for a Supplemental Environmental Project (SEP) (10 V.S.A. § 8007(b)(2)), which the Recipient shall use for the following purpose and subject to the following guidelines:

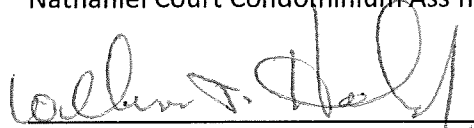
- a. To create the "Bennington Neighborhood Survey and Historic District Nomination." Within the following boundaries of this district, there are approximately 550 properties which need to be properly surveyed for their architectural and historic significance:
 - i. Eastern Boundary: Dewey Street (east side) and South Street (east side)
 - ii. Southern Boundary: Crescent Boulevard, including Pine Circle, Pine Circle East, and Margaret Lane;
 - iii. Weeks Street, including Putnam Street (both sides) to Observatory Street (both sides) to Jefferson Heights (west side)
 - iv. Western Boundary: South Street (west side south of Weeks Street) and Morgan Street (west side)
 - v. Northern Boundary: Elm Street and Union Street (both sides, excluding what is in Downtown Historic District)
- b. Properties in this area are predominantly single-family houses, some duplexes and commercial buildings. There are also High-style mansions and more modest mid-century structures. The properties in this area date in age from the 1850s to 1960s. There are approximately 550 buildings that will be surveyed and for which the nomination process for historic preservation will begin using funds from this SEP.
- c. Respondent agrees to the following payment schedule with respect to the sum indicated in Paragraph 12, above:
 - i. First Installment: \$13,750 to be paid no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division;
 - ii. Second Installment: \$6,875, to be paid no later than August 3, 2017;
 - iii. Third Installment: \$6,875, to be paid no later than January 30, 2018.
- d. Recipient agrees to the following:
 - i. To maintain a current accounting of all monies received and expended in furtherance of the Project, to be made available to the Board upon request;
 - ii. To provide to the Board, within thirty (30) days of the completion of the Project, a final accounting of all receipts and expenditures in furtherance of the Project; and

- iii. To provide to the Board, within thirty (30) days of the completion of the Project, a brief report of the Project, indicating that the funds have been expended in furtherance of the Project.
 - iv. SEP funds may be used only for the project outlined herein. If any funds remain unused after completion of the project, such funds may be used to fund other Division projects within the same Historic District. File a sworn certification with the Board and the Commission that the directives outlined above (subsection a.) have been completed.
13. 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 above.
14. Nothing in this Assurance 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.
15. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
16. 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 violations described herein, provided that the Respondent fully complies with all directives herein.
17. This Assurance 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 Superior Court, Environmental Division.
18. Violation of any provision of this Assurance, as this Assurance is entered as a judicial order pursuant to 10 V.S.A. § 8007(c), shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief or penalties or both, including penalties set forth in 10 V.S.A. chapters 201 or 211 or both.
19. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

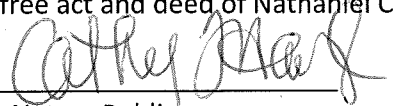
SIGNATURES

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

Nathaniel Court Condominium Ass'n

By: 
Bill Holmes, Authorized Agent

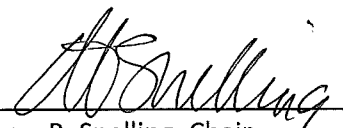
BE IT REMEMBERED that on the 8th day of June, 2017, personally appeared Bill Holmes, signer of the foregoing written instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of Nathaniel Court Condominium Ass'n.

Before me: 
Notary Public
Commission Expires: 02/10/2017

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

DATED in Montpelier, Vermont, this 24 day of July, 2017.

NATURAL RESOURCES BOARD

By: 
Diane B. Snelling, Chair

DATED in Montpelier, Vermont, this ___ day of _____, 2017.

Division for Historic Preservation
(As to Paragraph 12(d) only)

By: _____
Laura V. Trieschmann, State Historic Preservation
Officer