

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Gerald Scott,
Respondent

VIOLATIONS

- (1) Land Use Permit 5L0450, Conditions 1 and 5,
- (2) Act 250 Rule 34(A) Failure to obtain a Land Use Permit Amendment

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and Gerald Scott (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent is the owner of approximately 2.1 acres, described as Lot 2, located at 5504 Mountain Road in Stowe, Vermont (the "Property"). The Property is subject to the terms and conditions of Act 250 Land Use Permit series 5L0450, which authorized a nine-lot subdivision (the "Permit").
2. The original residential building on the Property contained a septic system designed for a 4-bedroom single family residence.
3. Subsequently, Respondent constructed additional improvements ("Additional Improvements") including: bathrooms, bedrooms, and living areas, which were not used or operated as a single-family 4-bedroom residence. As used herein, "Property" as defined in paragraph #1 shall include within its defined meaning the Additional Improvements.

4. By converting the use and constructing the Additional Improvements to the Property without having obtained an Act 250 Land Use Permit Amendment, the Respondent has failed to comply with conditions 1 and 5 of the Permit, and violated Act 250 Rule 34(A) and 10 V.S.A. § 6001(3)(A)(iv).

Subsequent Events

5. A Jurisdictional Opinion, JO 5-36, (the "JO") was issued by the District Coordinator on September 13, 2016, which concluded that the construction of the Additional Improvements and the operation of a yoga retreat center was a material change to the Permit and an amendment was required under Act 250 Rule 34(A).
6. Respondent timely filed an appeal of the JO. The appeal was docketed as Scott JO #5-36, Docket No. 128-10-16 Vtec.
7. On October 24, 2016, Lintilhac, LLC filed a timely cross-appeal of the JO in Docket No. 128-10-16 Vtec.
8. Subsequent to the filing of the appeal and cross-appeal, the Respondent permanently terminated and abandoned the use of the Property (including the Additional Improvements) as a yoga retreat center.

AGREEMENT

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

- A. Respondent, his heirs, successors, assigns, leasees, and licensees shall comply with the Permit and must maintain the use of the Property (including the Additional Improvements) as a single-family 4-bedroom residence. However, nothing herein shall be construed to prohibit the customary residential lease or short-term license of the Property (including the Additional Improvements) as a single-family 4-bedroom residential use for no more than 10 people. During such lease term or short-term license no other use of the Property (including the Additional Improvements) shall be allowed other than as a single-family 4-bedroom residential use. Nothing herein shall relieve the Respondent, his heirs, successors, assigns, leasees, and short-term licensees of complying with all state or local permitting obligations.
- B. An Act 250 Land Use Permit Amendment shall be required for any use of the Property (including the Additional Improvements) other than as a single-family 4-bedroom residence. Without limiting the preceding, the addition of a fifth

bedroom, whether as new construction or the use of the Additional Improvements, may, but need not, be authorized as an administrative amendment to the Permit, subject to the condition, however, that personal notice of the administrative amendment shall be given to Lintilhac, LLC, its successors and assigns, by the District Commission concurrent with the issuance of the administrative amendment. Without limiting the preceding, the addition of a sixth bedroom, and thereafter a seventh or more bedroom, whether as new construction or the use of the Additional Improvements, shall constitute a material change to the Permit under Act 250 Rule 2(C)(6), and shall only be authorized, if at all, as a material change to the Permit in compliance with Act 250 Rule 34(A).

- C. Respondent shall not advertise for sale the Property as anything other than a single-family 4-bedroom residence.
- D. Nothing herein shall preclude subsequent owners from seeking a permit amendment for any "material change" as defined by Act 250 Rule 2(C)(6).
- E. This Assurance of Discontinuance and the entry of this Assurance as an Order by the Superior Court, Environmental Division shall be incorporated into Land Use Permit 5L0450 specific to the Property under Act 250 Rule 40. The Respondent shall provide a copy of this Assurance of Discontinuance as a condition of any sale, lease, or assign of the Property.
- F. Provided Respondent abides by the terms and directives of this Assurance of Discontinuance, the Natural Resources Board agrees that Respondent's continued residential use of the Property (including the Additional Improvements) as a 4-bedroom residence does not constitute a material change and no further Act 250 Permit Amendment is required, except as otherwise provided herein.
- G. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay, by separate checks, the following:
 - 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$6,000.00** 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 **\$513.24** 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 **\$60.00** for the purpose of paying the recording fee for the

filing of this Assurance in the Stowe land records, by check made payable to the "Town of Stowe, Vermont."

- H. 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 notarized, written acknowledgement of receipt of the Court's Order.
- I. No later than **15 days** following execution of this Assurance of Discontinuance by the Natural Resources Board and Respondent, Respondent and the Natural Resources Board agree to file a Stipulated Motion to Withdraw in docket 128-10-16 Vtec.
- J. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
 - Natural Resources Board
 - Dewey Building
 - 1 National Life Drive
 - Montpelier, Vermont 05620-3201
- K. 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.
- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause

beyond either Respondent's control.

- Q. 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.
- R. 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.
- S. 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.
- T. 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. Steward VT

Dated at Stowe VT, Vermont, this 18th day of July, 2017.

[Signature]
Gerald Scott

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 18th day of July, 2017
personally appeared Gerald Scott, signer(s) of the foregoing
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.

Before me,

Karen Velko
Notary Public
My Commission Expires: 2/10/19

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

Dated in Montpelier, Vermont, this _____ day of _____, 20__.

Natural Resources Board

By:

Diane B. Snelling, Chair