

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

VERMONT NATURAL)	
RESOURCES BOARD,)	
Petitioner)	
)	Docket No.
v.)	
)	
MARTIN J. BEATTIE ENTERPRISES,)	
INC., MARTIN J. BEATTIE and)	
CATHERINE BEATTIE, d/b/a)	
MARTY'S 1 ST STOP, and MARTIN)	
J. BEATTIE IRREVOCABLE TRUST,)	
Respondents)	
)	

ASSURANCE OF DISCONTINUANCE

Pursuant to 10 V.S.A. § 8007, the Natural Resources Board (Board) and Martin J. Beattie Enterprises, Inc., Martin J. Beattie and Catherine Beattie d/b/a Marty's 1st Stop, and the Martin J. Beattie Irrevocable Trust (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

VIOLATIONS

- I. Failure to comply with Land Use Permit 7C0980.
- II. Failure to comply with Condition 11 of Land Use Permit 7C0980-1.
- III. Failure to comply with Land Use Permit 7C0980-2.
- IV. Failure to comply with Land Use Permit 7C0980-2B.
- V. Failure to comply with Condition 16 of Land Use Permit 7C0980-3.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents Martin J. Beattie Enterprises, Inc., Martin J. Beattie and Catherine Beattie operate a business known as Marty's 1st Stop on land owned by Respondent Martin and Catherine Beattie Irrevocable Trust, on the north side of Route 2 in the town of Danville, Vermont (the Project).
2. The Project is subject to Act 250 Land Use Permit 7C0980, as amended (the Permit). The Permit was originally issued in 1995 for the construction of a temporary bank branch office.
3. In 1997, Land Use Permit Amendment 7C0980-1 was issued, authorizing the construction of a 2,200 square foot addition to an existing retail store and deli.
4. In 2005, Land Use Permit Amendment 7C0980-2 was issued, authorizing the

installation of an Exxon Mobil non-illuminated blue band around the perimeter of the existing canopy and upgrade to the existing sign.

5. In 2008, Land Use Permit Amendment 7C0980-2A was issued, incorporating an underground storage tank permit and to clarify that the Permit authorizes a 576 square foot canopy and a 936 square-foot canopy over the two gas pump islands, and an 840 square foot addition to the existing store and deli.
6. In 2008, Land Use Permit Amendment 7C0980-3 was issued; authorizing the construction of a 2,400 square foot addition to the existing convenience store/deli for a bank branch office and warehouse space, and a 432 square foot covered loading dock at the rear of the building furthest from U.S. Route 2, with associated retaining wall and gravel parking area.
7. In 2013, Land Use Permit Amendment 7C0980-2B was issued, authorizing the reconstruction and reconfiguration of the existing fuel pumps and gas canopy, including related underground fuel tank improvements, revised signage, paving improvements, reconfigured parking, and modified access from U.S. Route 2 in coordination with the Vermont Agency of Transportation.
8. The Project tract consists of 83.27 acres near a low spot on Route 2. Of that total, a bank branch, grocery store, gas station, and deli make up approximately 2.5 acres. The balance of the Project tract is primarily undeveloped land.
9. In the original application for the Permit, Respondents stated that: "No lighting will be directed toward the roadway."
10. Condition 1 of Land Use Permit Amendment 7C0980-1 provides:
 1. Except as specifically amended herein, all terms and conditions of Land Use Permit #7C0908 and subsequent amendments remain in full force and effect.
11. Condition 11 of Land Use Permit Amendment 7C0980-1 provides:
 11. Any outdoor lighting shall be installed or shielded in such a manner as to conceal light sources and reflect surfaces from view substantially beyond the perimeter of the area to be illuminated.
12. Condition 16 of Land Use Permit Amendment 7C0980-3 provides:
 16. The installation of exterior light fixtures is limited to those approved, and shall be mounted no higher than (20) feet above grade level. Any exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.

13. In 2008, the District Coordinator observed that exterior lights were inadequately shielded, and discussed the problem with Respondent Martin J. Beattie, who immediately responded and replaced some, but not all, of the noncompliant exterior light fixtures with shielded fixtures.
14. The three fixtures that were not replaced were those that Mr. Beattie believed essential to the safety of his employees and customers.
15. The noncompliant fixtures were those fixtures mounted above the parking spaces near the southeastern corner of the building, and near the northwestern and northeastern corners of the building in the general vicinity of the bank and the loading dock.
16. Upon notification of the violation, Respondents took immediate steps to comply and have since replaced all three fixtures with shielded light fixtures.
17. Respondents violated Permit 7C0980, Condition #11 of Land Use Permit Amendment 7C0980-1, and Condition #16 of Land Use Permit Amendment 7C0980-3, by having inadequately shielded exterior light fixtures.
18. In 2008, the District Coordinator observed an internally illuminated blue band on the canopy over the gas pumps in violation of Land Use Permit Amendment 7C0980-2, and notified Respondent Martin Beattie, who then ceased the unauthorized illumination.
19. Respondents' application for Land Use Permit Amendment 7C0980-2B stated in part that: "As part of the canopy reconstruction, a new canopy design is being proposed . . . This canopy façade will also not be illuminated." The approved canopy design does include internal illumination for the gas pumps, but does not include lighting of the canopy façade.
20. Thus, in 2013, when Respondents installed an illuminated band on the gas pump canopy, it was in violation of Land Use Permit Amendment 7C0980, as amended.
21. In 2014, upon being informed of this violation, Respondents turned off the illumination to the gas pump canopy and disconnected power to it so that it could not be inadvertently illuminated.
22. Respondents were very cooperative and took immediate action to resolve these minor violations.

AGREEMENT

- A. Respondents shall comply with Land Use Permit 7C0980, as amended (the Permit).
- B. Respondents shall not illuminate the exterior band of the gas pump canopy without first

obtaining a permit amendment.

- C. Within 30 days of the date this Assurance is issued as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$400.00** (U.S. Dollars), for the violations noted herein, by good check made payable to: "Treasurer, State of Vermont."
 2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$415.00** (U.S. Dollars), to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to: "Vermont Natural Resources Board."
 3. The amount of **\$10.00** (U.S. Dollars) for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Danville land records, by good check made payable to: "Town of Danville, Vermont."
- D. Within 30 days of the date this Assurance is issued as an Order by the Superior Court, Environmental Division, each Respondent shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that each Respondent has actual notice of the Judicial Order and Assurance of Discontinuance.
- E. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board
Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201
- F. Respondents are jointly and severally liable for all obligations under this Assurance.
- G. No Respondent shall deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- H. 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 Respondents' 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), Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.
- L. The Board may grant reasonable extensions from any deadline in this Assurance upon request, for good cause beyond the Respondents' control.
- M. Except as otherwise provided herein, 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. 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.
- N. 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 the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- O. 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 DAKESVILLE, Vermont, this 19 day of JUNE,
2014.

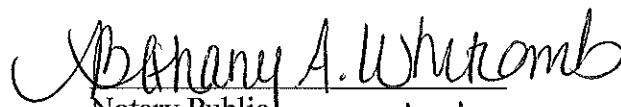
MARTIN J. BEATTIE ENTERPRISES, INC.

By: Martin J. Beattie
(signature)
MARTIN J. BEATTIE
(Print name) Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on this 19th day of June, 2014, Martin Beattie individually and as the duly authorized agent of MARTIN J. BEATTIE ENTERPRISES, INC., 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 MARTIN J. BEATTIE ENTERPRISES, INC., and that he/she has the authority to contract on behalf of MARTIN J. BEATTIE ENTERPRISES, INC. and that he/she has been duly authorized to enter into this Assurance on behalf of that entity.

Before me,


Notary Public
Commission Expires: 2/10/15

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

DATED at DARVILLE, Vermont, this 19 day of JUNE, 2014.


Martin J. Beattie

STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 19th day of June, 2014, personally appeared Martin J. Beattie, signer 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,

Bethany A. Whitcomb
Notary Public
Commission Expires: 2/10/15

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

DATED at Danville, Vermont, this 19 day of June, 2014.

Catherine J Beattie
Catherine Beattie

STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 19th day of June, 2014, personally appeared Catherine Beattie, signer of the foregoing instrument, who is known to me or who satisfactorily established her identity to me and acknowledged the same to be her free act and deed.

Before me,

Bethany A Whitcomb
Notary Public
Commission Expires: 2/10/15

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

DATED at DAUVILLE, Vermont, this 19 day of JUNE, 2014.

MARTIN & CATHERINE BEATTIE
IRREVOCABLE TRUST

By: Martin J. Beattie
(signature)
MARTIN J. BEATTIE
(Print name) Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on this 19th day of June, 2014, Martin Beattie individually and as the duly authorized agent of MARTIN & CATHERINE BEATTIE IRREVOCABLE TRUST, 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 MARTIN & CATHERINE BEATTIE IRREVOCABLE TRUST, and that he/she has the authority to contract on behalf of MARTIN & CATHERINE BEATTIE IRREVOCABLE TRUST and that he/she has been duly authorized to enter into this Assurance on behalf of that entity.

Before me,

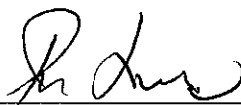
Abernathy Whitcomb
Notary Public
Commission Expires: 2/10/15

.....

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

DATED at Montpelier, Vermont, this 28th day of July, 2014.

NATURAL RESOURCES BOARD

By: 
Ronald A. Shems, Chair

Y:\NRB\NRB - SHARED\ENFORCEMENT\CASES\OPEN CASES\MARTY'S FIRST STOP, DANVILLE\FINAL AOD.DOCX