

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Land Use Panel of the
Natural Resources Board,
Petitioner

Docket No.

v.

ASSURANCE OF DISCONTINUANCE

Champlain Valley Meats, Inc.,
Respondent

VIOLATION

Construction of improvements for commercial purposes without the required Land Use Permit in violation of Act 250 Rule 34(A) and Land Use Permit 6G0328.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Land Use Panel of the Natural Resources Board (Panel) and Champlain Valley Meats, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Ronnie S. and Colleen Bushway own in fee simple an approximately 3.05 acre parcel off VT Route 2 in Grand Isle, Vermont (project tract). The project tract is described in a deed recorded on Book 37, Page 343 in the land records of the Town of Grand Isle.
2. Champlain Valley Meats, Inc. (CVM) operates facilities on the project tract pursuant to a lease.
3. On September 30, 1985, the District 6 Commission issued Land Use Permit 6G0328 to Ronnie S. Bushway, "to install a waste water disposal system for a previously constructed slaughter and packing house."
4. Condition 1 of Land Use Permit 6G0328 states:
 1. The project shall be completed as set forth in Findings of Fact and Conclusions of Law #6G0328, in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.

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5. Sometime in 2008, CVM constructed three improvements to the existing slaughter house facility: (a) a 59' x 12' addition to the north end of the building, (b) a 30' x 45' addition to the south end of the building, and (c) a 15' x 35' free standing pole barn south of the facility. These improvements total approximately 2,583 square feet.
6. On August 24, 2010, CVM filed an Act 250 Land Use Amendment Application (6G0328-1) with the District 6 Commission seeking approval for the construction of the aforementioned improvements. The Commission denied the permit for failure to comply with Criteria 8 (aesthetics) and 10 (Town Plan).
7. On October 27, 2010, the District 6 Coordinator issued to CVM a Jurisdictional Opinion in the form of a Project Review Sheet which determined that the aforementioned improvements are a material change to Land Use Permit 6G0328 and therefore required an amended permit under Act 250 Rule 34(A). This Jurisdictional Opinion was not appealed and is therefore final.
8. Following the issuance of the Jurisdictional Opinion, CVM ceased operations in the three improvements noted in paragraph 5 above.
9. CVM appealed the Commission's decision to the Environmental Court. While the case was on appeal, the Town Plan was amended in a manner favorable to CVM, and CVM agreed to certain restrictions on its operations to address the concerns voiced by the Commission in its denial under Criterion 8. The matter was therefore settled by a stipulation between CVN and the Land Use Panel and remanded to the Commission, which issued Land Use Permit 6G0328-1 on July 23,, 2012.
10. CVM constructed and, for a time, operated in the improvements set out in paragraph 5 above, without an amendment to Land Use Permit 6G0328, or other written approval from the District Environmental Commission or Coordinator, in violation of Act 250 Rule 34(A) and Land Use Permit 6G0328.

AGREEMENT

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

- A. Within 30 days of the date upon which the Environmental Division of the Superior Court enters this Assurance as an Order, the Respondent shall pay:
 1. A civil penalty pursuant to 10 V.S.A. Ch. 201 for the violation set forth herein, in the amount of **Four Thousand (\$4,000.00)** Dollars (U.S.) by check made payable to: "Treasurer, State of Vermont."
 2. The amount of **Ten (\$10.00)** Dollars (U.S.), to pay the recording fee for the filing of a notice of this Assurance of Discontinuance in the land

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records of the municipality where the project is located, by check made payable to: "Town of Grand Isle, Vermont."

- B. The Respondent shall send all payments required by this Assurance to:
- Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- C. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- D. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- E. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- F. 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.
- G. 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 described herein, provided that the Respondent fully complies with the agreements set forth above.
- H. 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.
- I. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties,

including penalties set forth in 10 V.S.A. Ch. 201 and/or 211.

J. 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.

Dated at Grand Isle, Vermont, this 17th day of September 2012.

Champlain Valley Meats, Inc

By Ronnie S. Bushway
Ronnie S. Bushway

STATE OF VERMONT
COUNTY OF Grand Isle, ss.

BE IT REMEMBERED that on the 17 day of September 2012, personally appeared Ronnie S. Bushway as the duly authorized agent of Champlain Valley Meats, Inc., signer and sealer 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 and the free act and deed of Champlain Valley Meats, Inc. and that he has the authority to contract on behalf of Champlain Valley Meats, Inc. and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Cheryl L. Vinton
Notary Public
My Commission Expires: 02/15

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

Dated in Montpelier, Vermont, this 23rd day of October 2012.

LAND USE PANEL

By: Ronald A. Shems
Ronald A. Shems, Chair