

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

NATURAL RESOURCES BOARD,	)	
Petitioner	)	
	)	
v.	)	Docket No.
	)	
GSD DEVELOPMENT, LLC and	)	
JOHN PHILIP GERBODE,	)	
Respondents	)	

**VIOLATIONS**

- I. Failure to comply with Conditions 1, 12, 20, 22 and 24 of Land Use Permit 6F0569, as amended.
- II. Construction with expired Construction General Permit coverage.
- III. Failure to comply with Operational Stormwater Permit.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and GSD Development, LLC and John Philip Gerbode (Respondents) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. On March 23, 2005, the District 6 Environmental Commission issued Land Use Permit #6F0569 (the Permit) to GSD Enterprises, Inc. and landowner Rocheleau Dairy, Inc., authorizing the construction of 92 elderly housing units with municipal water and sewer, a recreational pavilion, and access to the project off the Franklin Park West commercial park, in St. Albans, Vermont (the Project). The Project is referred to as The Village at Franklin Park West.
2. Respondent John Philip Gerbode was also listed on the Act 250 permit application as the landowner.
3. Respondent GSD Development, LLC acquired the Project tract in 2005, and has constructed approximately 26 of the 92 permitted housing units.
4. Respondent Gerbode is a principal and the registered agent of Respondent GSD Development, LLC.

5. Condition 1 of the Permit states:

1. The Project shall be completed, operated and maintained as set forth in accordance with the plans and exhibits on file with the District Environmental Commission, and in accordance with the conditions of this permit. No material or substantial or material changes shall be made in the Project without the written approval of the District Environmental Commission.

6. Sheet LT-1 of the lighting plans on file with the District Commission show a KIM Archtype 175 watt metal halide luminaire as the street light model to be used for the Project tract. Respondents installed a different model of street light.

7. In the construction plan on file with the District Commission, the inlet to the forebay was proposed to be constructed using a metal end section. Respondents built the inlet using PVC piping instead of a metal end section.

8. The construction plans on file with the District Commission for the catch basin call for the use of neoprene boots of a certain size at each penetration. Several of the catch basin penetrations on the Project tract are the wrong size and were sealed with bricks and mortar around the penetrations instead of neoprene boots.

9. In the construction plan on file with the District Commission, the stormwater recharge swale running along the western portion of the property is supposed to be grass-lined. Respondents have lined approximately 500 linear feet of the swale on the Project tract with stone and fitted with a drainage pipe instead of as indicated in the construction plan.

10. By not completing the Project in accordance with the plans on file with the District Commission, Respondents have violated Condition 1 of the Permit.

11. Condition 12 of the Permit states:

12. The Permittees shall develop a construction and demolition waste management plan, prior to construction to be approved by the Agency of Natural Resources, and the Solid Waste Management Program. Through contract language, the contractor shall be obligated to implement the plan and shall submit a copy to the District Environmental Commission.

12. Respondents did not submit a copy of the construction and demolition waste management plan, approved by the Agency of Natural Resources, prior to construction.

13. Condition 20 of the Permit states:

20. The Permittee shall construct the recreational pavilion no later than November 1, 2006.
14. To date, the recreational pavilion has not been equipped with plumbing and fixtures and made ready for hookups to electric service and water and sewer as contemplated by the Permit and Findings. This violates Condition 20 of the Permit.
15. Condition 22 of the Permit states:
  22. Upon completion of the construction, the Permittees and successors in interest or assigns shall ensure that a certification label available from the Department of Public Service or one substantially like it is issued. The certification label shall be signed by the builder of the home, a licensed architect or engineer or a Vermont-accredited home energy rating system, certifying that the residential building or addition has been constructed in compliance with the requirements of the Residential Building Energy Standards (RBES). This label shall be permanently affixed to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these areas. The Permittees and its successors and assigns shall ensure that the person certifying compliance provides a copy of each certificate to the Department of Public Service and that each certificate is recorded and indexed in the town records.
16. To date, Respondents have not ensured that a copy of an RBES certificate has been provided to the Public Service Department and recorded in the land records for, and have not affixed all certification labels, for each unit constructed to date, as required by Condition 22.
17. Condition 24 of the Permit states:
  24. The Permittees shall comply with all exhibits for erosion control. The Permittees shall prevent transport of sediment beyond that area necessary for construction approved herein. All soils shall be stabilized within fourteen days of initial disturbance. From September 15 to April 15 of any calendar year, all disturbed areas of the construction site shall be mulched until final grading and vegetative cover is established. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. The Commission reserves the right to schedule hearings and site inspections to review erosion control and to evaluate and impose additional conditions with respect to erosion control, as they deem necessary.
18. Due to inadequate erosion control measures during and after construction, many

of the stormwater controls on the Project tract are inundated with sediment, including the forebay of the detention pond.

19. The inlet to the forebay has cracked and is in a state of disrepair.
20. Based on two expired Construction General Permits, 3604-9020 and 3604-9020.R, Respondents have been moving and using a soil stockpile without implementing erosion control practices and have failed to reach final stabilization in some areas of the development.
21. GSD Development, LLC has coverage under an Operational Stormwater Permit (3604-9015) but is not in compliance with said permit based on the catch basin issues (settling sinkholes around many of them), some of the grass swales being converted to stone and/or lines with drainage pipe, and general maintenance issues (sediment in catch basins, ponds, forebays, and improperly maintained grass swales (bottom widths)).
22. Respondents violated Conditions 1, 12, 20, 22, and 24 of the Permit, failed to comply with their Operational Stormwater Permit (3604-9015), and commenced construction with expired Construction General Permit coverage (3604-9020 and 3604-9020.R).
23. Respondents have recently applied for Stormwater Construction General Permit Coverage.
24. The Project is being foreclosed upon by the Peoples' Trust Co. and both Respondents are in the process of declaring bankruptcy.

### **AGREEMENT**

- A. Respondents shall comply with all conditions of Land Use Permit #2S0691-4 and Operational Stormwater Permit (3604-9015).
- B. Respondents shall diligently pursue the application for Stormwater Construction Permit coverage filed with the Agency of Natural Resources Department of Environmental Conservation.
- C. No later than 30 days after the date this Assurance is entered as a Judicial Order, Respondents shall either:
  1. File a complete application with the Agency of Natural Resources Department of Environmental Conservation to amend the existing Operational Stormwater Permit; or

Assurance.

- I. Neither 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.
- J. 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.
- K. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected each Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- L. 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.
- M. 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 Respondents fully comply with this Assurance.
- N. 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.
- O. 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. 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.
- P. 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 court 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.
- Q. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

2. File an engineer's certification with the Board and the Agency of Natural Resources Department of Environmental Conservation that the Project is in compliance with the existing Operational Stormwater Permit and that all items that were not in compliance with have been repaired.
  3. File an engineer's certification with the Board and the Commission that the project is in compliance with Land Use Permit #2S0691-4; in particular, that that the project is in compliance with Conditions 1, 12, 20, 22 and 24.
- D. For purposes of this Assurance, "diligently pursue" means that Respondents shall: (a) respond to any and all requests for information from the Department of Environmental Conservation promptly and by any date set by the Department for such response.
- E. No later than 30 days after the date this Assurance is entered as a Judicial Order by the Superior Court, Environmental Division, Respondents shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$1,500.00** (U.S. Dollars), for the violations noted herein, by check made payable to: **Treasurer, State of Vermont.**
  2. Pursuant to 10 V.S.A. § 8010(e)(2), the amount of **\$831.76** (U.S. Dollars) to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to: **Vermont Natural Resources Board.**
  3. The amount of **\$10.00** (U.S. Dollars), for the purpose of paying the fee for recording a notice of this Assurance in the Town of St. Albans land records, by check made payable to: **Town of St. Albans, Vermont.**
- F. No later than 30 days following the entry of this Assurance as a Judicial Order, Respondents shall deliver to 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.
- G. All payments required by this Assurance shall be sent to:
- Natural Resources Board  
Dewey Building  
National Life Drive  
Montpelier, Vermont 05620-3201
- H. Respondents are jointly and severally liable for all obligations under this

**SIGNATURES**

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

DATED at St. Albans, Vermont, this 24 day of Oct., 2013.

GSD DEVELOPMENT, LLC

By Mary L. Samson  
(Signature)

MARY L. SAMSON, Duly Authorized Agent  
(Printed Name)

BE IT REMEMBERED that on the 24<sup>th</sup> day of October, 2013, personally appeared Mary Samson, as the duly authorized agent of GSD Development, LLC 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 GSD Development, LLC and that he has the authority to contract on behalf of GSD Development, LLC and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

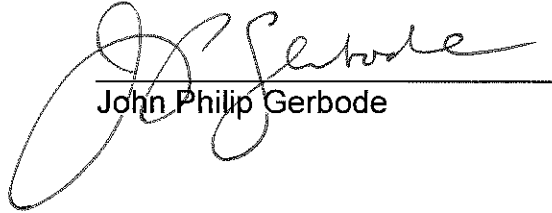
Before me,

Julie Rollo  
Notary Public  
My Commission Expires: 2014

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

DATED at St. Albans, Vermont, this 24<sup>th</sup> day of October, 2013.

JOHN PHILIP GERBODE

  
\_\_\_\_\_  
John Philip Gerbode

BE IT REMEMBERED that on the 24<sup>th</sup> day of October, 2013,  
personally appeared John P. Gerbode, signer of the foregoing  
instrument who is known to me or who satisfactorily established John Philip Gerbode's  
identity to me and acknowledged the same to be John Philip Gerbode's free act and  
deed.

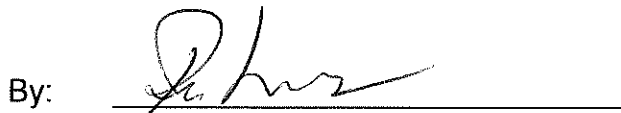
Before me,

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 2014

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

DATED in Montpelier, Vermont, this 13<sup>th</sup> day of January, 2014.

NATURAL RESOURCES BOARD

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