
LAND USE PANEL of the
NATURAL RESOURCES BOARD,
 Petitioner
 v.
DAVID HAYDEN
 Respondent

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Commencement of development without an Act 250 Land Use Permit. 10 V.S.A. §6081(a).

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. Respondent leases an approximately 1.5± acre lot, which is part of a 10 ± acre tract of land located on Wall Street in Northfield, Vermont. (the Project tract) This tract is described in Book 175, Pages 1014-1018 of the Town of Northfield land records and is currently the subject of a deed to MJM Properties, LLC.
- 2. The town of Northfield has not adopted both permanent zoning and subdivision bylaws.
- 3. In 2001, Respondent constructed a commercial building housing self storage units on the Project tract, then owned by CV Properties, Inc.
- 4. Respondent failed to apply for or obtain an Act 250 Land Use Permit for the construction of the self storage units at the time of construction. Respondent has yet to apply for an “as-built” Act 250 Land Use Permit for the project.
- 5. On December 17, 2008, Assistant District Coordinator for the District 5

Environmental Commission, Susan Baird, issued Jurisdictional Opinion #5-08-05 which found that Respondent's commercial structure required an Act 250 Land Use Permit.

6. Respondent violated 10 V.S.A. §6081 by commencing development without first obtaining an Act 250 Land Use Permit.

AGREEMENT

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

- A. Respondent shall submit and diligently pursue a complete Act 250 Land Use Permit application for the aforementioned development no later than 60 days from the date this Assurance is entered as an order by the court. If Respondent fails to file said permit application by that date, Respondent shall remove any unpermitted structures no later than 90 days from the date this Assurance is entered as an order by the court. If Respondent timely files a complete application and that application is denied and that denial becomes final, Respondent shall remove any unpermitted structures within 90 days of said final denial.
- B. Within thirty days (30) of the date on which this Assurance is signed by the Environmental Court, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Two Thousand Dollars (U.S.) (\$2,000.00) for the violation noted herein. Respondent shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- C. Any payment by the Respondent pursuant to this Assurance is made to resolve the violation set forth herein 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 Panel shall file a notice of this Assurance in the land records of the municipality where this project is located after this Assurance is signed by the Environmental Court. **The Respondent shall be responsible for the payment of the recording fee for such notice and shall send to the Panel a check in the amount of Ten Dollars (\$10.00), made payable to said municipality.**

- E. 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 violation set forth herein above.
- F. 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.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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.
- H. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- I. 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 Environmental Court. 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.
- J. 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. chapters 201 and/or 211.
- K. 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 Northfield, Vermont, this 21st day of JUNE, 2010.

David P. Hayden
DAVID HAYDEN

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 23^d day of June, 2010,
personally appeared DAVID HAYDEN, 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,

Joan Melanson
Notary Public
My Commission Expires: 2-10-2011

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

Dated in Montpelier, Vermont, this 24th day of June, 2010.

LAND USE PANEL

By: John H. Mason
General Council