

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Okemo Realty, Inc. &
Ledgewood Home Owners Association,
Respondents

VIOLATIONS

- I. Failure to comply with Conditions 1 and 20 of Land Use Permit 2S0691-4.
- II. Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board), Okemo Realty, Inc. and Ledgewood Home Owners Association (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent, Okemo Realty, Inc. is the Act 250 permit holder for the Ledgewood Condominium project located off Winterplace Road on Okemo Mountain in Ludlow, Vermont; the parcel is identified in Book 65, Pages 125-127, and Book 52, Pages 58-59, of the Town of Ludlow, Vermont land records (the Project Tract).
2. Individuals of the Ledgewood Home Owners Association own property within the Ledgewood Condominium project, the Project Tract.
3. On May 16, 1990, the District 2 Environmental Commission issued Land Use Permit #2S0691-4 (the Permit) to Okemo Realty, Inc. authorizing the construction of 28 condominium units and related utilities, a ski trail, and skating pond on the Project Tract.
4. Condition 1 of the Permit states:

The project shall be completed as set forth in the Findings of Fact

and Conclusions of Law #2S0691-4 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.

5. The Findings of Fact and Conclusions of Law under Criterion 9(J) Impact on Public Utilities states:

In order to prevent an excessive demand on the Ludlow Electric Company, we will require the Applicant and all future unit owners comply with the restrictions outlined in Exhibit 24.

6. Condition 20 of the Permit states:

The permittee and all unit owners shall comply with the requirements of the Ludlow Electric Company as outlined in Exhibit 24.

7. Restriction number 6 of Exhibit 24 states:

Hot Tubs – no electric heated hot tubs.

8. On November 28, 2012, the Coordinators for the District 2 Environmental Commission issued Jurisdictional Opinion #2-283 to the Respondents.

9. The Respondents failed to appeal Jurisdictional Opinion #2-283 and is therefore the JO is final.

10. The Jurisdictional Opinion found that “extending an outside deck and adding a hot tub to the outside deck is a material change” to Land Use Permit #2S0691-4 and that an amendment is required to make these changes.

11. The following individual condominium units from the Ledgewood Home Owners Association installed hot tubs several years ago on the Project Tract as follows:

Unit D-3 (hot tub on the ground);
Unit G-1 (hot tub on its deck);
Unit G-2 (enlarged deck with a hot tub);
Unit G-3 (hot tub on the ground);
Unit G-5 (hot tub on its deck); and
Unit F-1 (hot tub on its deck).

12. This is not the Respondent, Okemo Realty's, first violation. On March 18, 2010, the

Land Use Panel of the Natural Resources Board entered into an Assurance of Discontinuance agreement with Okemo Realty, Inc. for changing the water source location for the Ledgewood Condominium project without a Land Use Permit amendment, in violation of Land Use Permit #2S0692-4 Condition 1.

13. Respondents have not received a permit amendment for the activities described herein.
14. By constructing the deck extensions and adding electric hot tubs on the Project Tract, the Respondents violated conditions 1 and 20 of the Permit and violated Act 250 Rule 34(A) by failing to obtain a Land Use Permit amendment.

AGREEMENT

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

- A. Respondents shall comply with all conditions of Land Use Permit #2S0691-4.
- B. The Respondents shall immediately cease the installation of any additional electric hot tubs on the Project Tract.
- C. No later than 60 days following the entry of this Assurance as a court order, the Respondents shall diligently pursue an amendment (Amendment) to Land Use Permit #2S0691-4 for the unpermitted improvements described herein.
- D. If the Respondents (1) fail to diligently pursue the Amendment within 60 days or (2) timely file said application for the Amendment and Respondents' permit application is denied by the Commission and said permit denial becomes final; then the Respondents shall:
 1. Cease the operation of all electric hot tubs immediately and shall immediately notify individual owners of such obligation by U.S. mail;
 2. Remove all unpermitted improvements, including but not limited to the seven hot tubs and any deck extensions made to accommodate those hot tubs, and shall restore the Project Tract to its condition prior to the commencement of construction as soon as reasonably practical but in no event later than six months from the date the permit denial becomes final or the Respondents' failure to file for a permit amendment.
- E. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a)

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respond to any and all requests for information from the Act 250 District 2 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission. Respondents shall not be responsible for delays outside their control, including those caused by the Commission.

- F. No later than 30 days following the entry of this Assurance 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 **Seven Thousand Four Hundred and Twenty Five Dollars and Zero Cents (U.S.) (\$7,425.00)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont",
 2. The amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Ludlow land records, by good check made payable to the "Town of Ludlow, Vermont".
- G. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Panel an executed Acceptance of Service, on a form approved by the Panel, showing that Respondents have actual notice of the Judicial Order and Assurance of Discontinuance.
- H. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- I. Respondents are jointly and severally liable for all obligations under this Assurance.
- J. Respondents 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.
- K. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

- L. 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.
- M. 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.
- N. Pursuant to 10 V.S.A. § 8007(d), the 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.
- O. 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.
- 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 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.
- Q. 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 Ludlow, Vermont, this 19 day of SEPT, 2013

Okemo Realty, Inc.

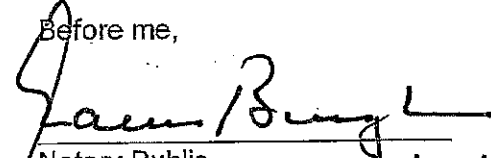
By 
(Signature)

DOUGLAS BURNS, Duly Authorized Agent
(Printed Name)

STATE OF VERMONT
COUNTY OF WINDSOR, ss.

BE IT REMEMBERED that on the 19 day of SEPT, 2013,
personally appeared DOUGLAS BURNS, as the duly authorized agent of
Okemo Realty, 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 **Okemo Realty, Inc.** and that he
has the authority to contract on behalf of **Okemo Realty, Inc.** and that he has been
duly authorized to enter into the foregoing Assurance on behalf of that entity.

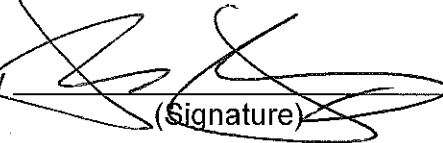
Before me,


Notary Public
My Commission Expires: 2/10/15

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

Dated at Burlington, Vermont, this 5th day of September 2013

Ledgewood Home Owners Association

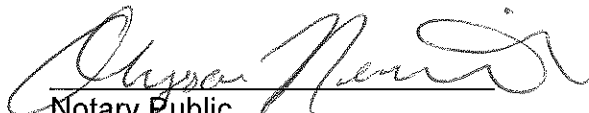
By  (Signature)

Hans Huessy, Duly Authorized Agent
(Printed Name)

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 5th day of September, 2013, personally appeared Hans Huessy, as the duly authorized agent of **Ledgewood Home Owners Association** 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 **Ledgewood Home Owners Association** and that he has the authority to contract on behalf of **Ledgewood Home Owners Association** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,


Notary Public
My Commission Expires: 2/10/15

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

Dated in Montpelier, Vermont, this 29th day of October, 2013

LAND USE PANEL

By:



Ronald A. Shems, Chair