

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 51-4-12 Vtec

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

ASSURANCE OF DISCONTINUANCE

Oscar's Farm of Vermont, Inc.,
Respondent

VIOLATION

- I. Commencement of development without an Act 250 Land Use Permit. 10 V.S.A. §6081..
- II. Construction of improvements without a permit Wastewater System and Potable Water Supply Rule (WSPWSR) §1-303(a)(4):
- III. Change of use of a structure without a permit WSPWSR §1-303(a)(7):

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. '8007, the Land Use Panel of the Natural Resources Board (Panel) and Oscar's Farm of Vermont, Inc, (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Oscar's Farm of Vermont, Inc, is, and was at all times relevant hereto, the owner of an approximately 40± acre parcel of land located off of Crosscut Road in West Burke Vermont (the project tract)
2. Respondent Oscar's Farm of Vermont, Inc. is a non-profit corporation registered in Vermont. Gary Schy is a corporate officer and the registered agent for

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Oscar's Farm of Vermont, Inc., and he is at this time responsible for Oscar's Farm of Vermont, Inc.

3. Respondent constructed improvements on the project tract requiring an Act 250 permit.

4. An Act 250 Land Use Permit was required before the commencement of the construction of said improvements. 10 V.S.A. §6081(a).

5. Respondent did not obtain an Act 250 permit before constructing said improvements.

6. The improvements constructed at the project tract included a living unit similar to a rooming house, the use of which requires the construction of wastewater and potable water supply systems. Respondent changed the use of the subject property in a manner that requires the construction of wastewater and potable water supply systems. WSPWSR §1-303(a)(4) and (7).

7. Respondent has not obtained wastewater and potable water supply permits for the new construction or change of use at the project tract.

AGREEMENT

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

A. Act 250 jurisdiction attaches to the construction of improvements at the project tract.

B. Respondent shall immediately cease all use and occupancy of the structure at the project tract until an Act 250 Land Use Permit is issued by the District 7 Environmental Commission and all necessary wastewater and potable water supply permits are issued by the Agency of Natural Resources.

C. Within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division, but no later than January 1, 2013, Respondent shall file complete applications for an Act 250 Land Use Permit and for wastewater and potable water supply permits for the aforementioned construction of improvements on the project tract, if such applications have not already been filed.

Respondent shall diligently pursue such applications. For purposes of this Assurance, "diligently pursue" shall mean that Respondent shall (a) respond to any and all requests for information from the Act 250 District 7 Environmental Commission,

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or the Coordinator for the Commission, or the Agency of Natural Resources (ANR), as applicable, by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR.

Respondent shall not be responsible for delays outside its control, including those caused by the Commission, or ANR, or by other parties to its applications.

D. Respondent shall pay Eight Thousand (\$8,000.00) Dollars (U.S.) to the State of Vermont to resolve this matter.

Payment shall be made by three checks. The first check, in the amount of One Thousand (\$1,000.00) Dollars (U.S.), shall be paid within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division and shall be made payable to the "Treasurer, State of Vermont."

The second check, in the amount of Five Thousand One Hundred Fifteen (\$5,115.00) Dollars (U.S.), shall be paid within six months of the date that this Assurance is entered as an order by the Superior Court, Environmental Division and shall be made payable to the "Treasurer, State of Vermont."

The third check, to allow the Natural Resources Board to recover its enforcement costs, in the amount of One Thousand Eight Hundred Eighty-Five (\$1,885.00) Dollars (U.S.), shall be paid within six months of the date that this Assurance is entered as an order by the Superior Court, Environmental Division and shall be made payable to the "Vermont Natural Resources Board."

All checks shall be sent to:

Denise Wheeler, Business Manager
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

E. To secure the payments set forth in Paragraph D above, within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division, Respondent shall execute a first mortgage deed on the project tract in favor of the Vermont Natural Resources Board, which mortgage shall not be junior to any other lien. If the Respondent fails to timely make any payment required under Paragraph D, all of the payments required under this Assurance shall become immediately due, and the Natural Resources Board may commence a foreclosure action against the project tract for any remaining portion of the payments due, and, pursuant to 10 V.S.A. §8014(c), all foreclosure costs shall be assessed

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against and added to the penalty assessed against the Respondent in this Assurance. Upon the receipt of the final payment required under Paragraph D, the Natural Resources Board shall immediately discharge the said mortgage.

F. Within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division, Respondent shall sign an acceptance of service, on a form approved by the Land Use Panel, showing that Respondent has actual notice of the Order and Assurance.

G. Respondent 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.

H. 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.

I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's 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 by 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), Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.

L. 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.

M. When this Assurance is entered as a judicial order by the Superior Court, Environmental Division, 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.

N. The violations resolved by this Assurance shall count as violations

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committed by Oscar's Farm of Vermont, Inc. and Gary Schy for purposes of determining a record of compliance. 10 V.S.A. §8010(b)(4).

O. This Assurance is subject to the provisions of 10 V.S.A. §§8007 and 8020.

P. The March 23, 2012 Administrative Order in this matter is dismissed.

Signatures

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

Dated at Montpelier, Vermont, this 29 day of November, 2012.

Oscar's Farm of Vermont, Inc.

By:


Gary Schy, its duly appointed agent

STATE OF VERMONT
COUNTY OF WASHINGTON, ss.

BE IT REMEMBERED that on the 29th day of November, 2012, personally appeared Gary Schy as the duly authorized agent of Oscar's Farm of Vermont, Inc. signer of the forgoing instrument, who is known to me or who satisfactorily established his identity to me, and acknowledged the same to be his signature on this document and the free act and deed of Oscar's Farm of Vermont, Inc. and that he has the authority to contract on behalf of Oscar's Farm of Vermont, Inc. and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

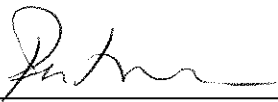
Before me,


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 Montpelier, Vermont, this 23rd day of January, 2013.

Land Use Panel
Natural Resources Board

By: 
Ronald A. Shems, Chair

PROMISSORY NOTE

For value received, Oscar's Farm of Vermont, Inc., by and through its duly-appointed agent Gary Schy, the undersigned, promise to pay THE STATE OF VERMONT, the principal sum of seven thousand dollars and no cents (\$7,000.00), without interest. A mortgage securing this note will be signed and recorded in the Burke land records at the time this note is signed.

Principal and interest shall be paid as follows:

The maker of this note shall pay the holder the sum of seven thousand dollars and no cents (\$7,000.00), on or before _____ [a date six months following the signing of an Assurance of Discontinuance], as settlement of a case before the Environmental Court entitled, *Land Use Panel v. Oscar's Farm of Vermont, Inc. and Gary Schy*, Docket No. 51-4-12 Vtec.

The property is all and the same land and premises conveyed to Oscar's Farm of Vermont, Inc. by Gary Schy, by warranty deed dated Aug. 12, 2012, of record at Book 42, Page 440 of the Burke town land records.
 1982 441

Dated at Montpelier, this ___ day of October, 2012.

OSCAR'S FARM OF VERMONT, INC.

In the Presence of:

Jean M. Calmesano

Gary Schy, L.S.
Gary Schy, Its duly-appointed
Agent

STATE OF VERMONT
WASHINGTON COUNTY, SS.

At Montpelier, this 29th day of ~~October~~ November, 2012, Gary Schy, duly-appointed agent of Oscar's Farm of Vermont, Inc. personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Oscar's Farm of Vermont, Inc.

Before Me: Jean M. Calmesano
Notary Public

MORTGAGE

This Mortgage is given on ~~August~~ ^{November 29, 2012}, 2011. The Mortgagor is Oscar's Farm of Vermont, Inc.. The Mortgagee is the State of Vermont.

The Mortgagor owes the Mortgagee the principal sum of seven thousand dollars and no cents (\$7,000.00). This debt is evidenced by Mortgagor's note dated the same date as this Mortgage, which provides for a payment by Mortgagor. This Mortgage secures to Mortgagee the repayment of the debt evidenced by the Note, without interest to guarantee the performance of Mortgagors' covenants and agreements under this Mortgage and the Note. For this purpose and in consideration of the debt, Mortgagor hereby mortgages, grants and conveys to Mortgagee and its successors and assigns, with power of sale, the following described property located in the Town of Burke, Caledonia County, Vermont:

All and the same land and premises conveyed to The property is all and the same land and premises conveyed to Oscar's Farm of Vermont, Inc. by Gary Schy, by warranty deed dated Nov. 29, 2012 of record at Book 42, Page 440 of the Burke town land records.

Together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property."

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and have the right to mortgage, grant and convey the Property and that the Property is unencumbered. Mortgagor warrants and will defend generally this title to the Property against all claims and demands, subject to any encumbrances of record.

Mortgagor and Mortgagee covenant and agree as follows:

1. Payment of the Principal; Prepayment. Mortgagor shall promptly pay when due the principal of and interest on the debt evidenced by the Note. The debt may be paid at any time before the due date.

2. Charges; Liens. Mortgagor shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Mortgage, other than those discussed in the Note.

Mortgagor shall promptly discharge any lien which has priority over this Mortgage unless Mortgagee: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Mortgagee; (b) contests in good faith the lien by, or defend against enforcement of the lien in, legal proceedings which in the

Mortgagee's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Mortgagee subordinating the lien to this Mortgage. If Mortgagee determines that any part of the property is subject to a lien which may attain priority over this Mortgage, Mortgagee may give Mortgagor a notice identifying the lien. Mortgagor shall satisfy the lien or take one or more of the actions set forth above within ten days of the giving of notice.

3. Hazard or Property Insurance. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards induced within the term "extended coverage" and any other hazards, including floods or flooding, for which Mortgagor requires insurance. This insurance shall be maintained in the amounts and for the periods that Mortgagee require. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Mortgagee's approval which shall not be unreasonably withheld.

4. Occupancy, Preservation, Maintenance and Protection of the Property; Leaseholds. Mortgagors shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property.

5. Protection of Mortgagee's Rights in the Property. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Mortgagee's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations, or a tax sale), then Mortgagee may do and pay for whatever is necessary to protect the value of the Property and Mortgagee's rights in the property. Mortgagee's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Mortgagee may take action under this paragraph 6, Mortgagee does not have to do so.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Mortgagor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Mortgage immediately before the taking, unless Mortgagee and Mortgagor otherwise agree in writing, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Mortgagor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured

immediately before the taking, unless Mortgagee and Mortgagors otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by the Mortgage whether or not such sums are then due.

If the Property is abandoned by Mortgagor, or if, after notice by Mortgagee to Mortgagor that the condemnor offers to make an award or settle a claim for damages, Mortgagors fail to respond to Mortgagees within thirty days after the date the notice is given, Mortgagee is authorized to collect and apply the proceeds, at their option, either to restoration or repair of the Property or to the sums secured by this Mortgage, whether or not then due.

Unless Mortgagor and Mortgagee otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of such payments.

7. Mortgagor Not Released; Forbearance by Mortgagee Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release the liability of the original Mortgagors or Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against any successor in interest or extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor or Mortgagor's successors in interest. Any forbearance by Mortgagee in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

8. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Mortgagee, subject to the provisions of paragraph 12. Mortgagor's covenants and agreements shall be joint and several.

9. Notices. Any notice to Mortgagor provided for in this Mortgage shall be given by delivering it or by mailing it by first class mail. The notice shall be directed to the Property Address or any other address Mortgagors designate by notice to Mortgagee. Any notice to Mortgagee shall be given by first class mail to Mortgagee's address stated herein or any other address Mortgagee designates by notice to the Mortgagors. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given as provided in this paragraph.

10. Governing Law; Severability. This Mortgage shall be governed by the law of Vermont. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the note are declared to be severable.

11. Mortgagors' copy. Mortgagor shall be given one conformed copy of the Note and of this Mortgage.

12. Transfer of the Property or a Beneficial Interest in Mortgage. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgage is sold or transferred) without Mortgagee's written consent, Mortgagee may, at their option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Mortgagee if exercise is prohibited by law.

If Mortgagee exercises this option, Mortgagee shall give Mortgagors notice of acceleration. The notice shall provide a prior notice of not less than thirty days from the date the notice is delivered or mailed within which Mortgagor may pay all sums secured by this Mortgage. If Mortgagors fail to pay these sums prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Mortgage without further notice or demand on Mortgagor.

13. Mortgagors' Right to Reinstate. If Mortgagor meet certain conditions, Mortgagor shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of: (a) five days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Mortgage; or (b) entry of a judgment enforcing this Mortgage. Those conditions are that Mortgagor: (a) pays Mortgagee all sums which then would be due under this Mortgage and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorney's fees; and (d) takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee's rights in the Property and Mortgagor's obligation to pay the sums secured by this Mortgage shall continue unchanged. Upon reinstatement by Mortgagors, this Mortgage and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 14.

14. Hazardous Substances. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any environmental law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Mortgagor shall promptly give Mortgagee written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagors have knowledge. If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Mortgagor shall promptly take all necessary actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and the laws of Vermont that relate to health, safety or environmental protection.

15. Remedies. Mortgagee shall give notice to Mortgagor prior to foreclosure following Mortgagor's breach of any covenant or agreement in this Mortgage. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty days from the date the notice is given to Mortgagor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Mortgagor to sale. If the default is not cured on or before the date specified in the notice, Mortgagee, at its option, may require immediate payment in full of all sums secured by this Mortgage without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Mortgagee shall be entitled to collect all expenses incurred in pursuing the remedies provided in this mortgage, including, but not limited to, reasonable attorney's fees and costs of title evidence.

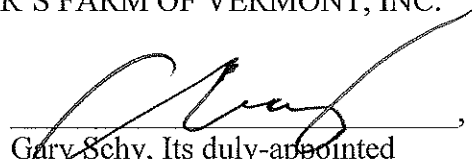
If Mortgagor or Mortgagee invokes the power of sale, and the Property is judicially ordered to be sold pursuant to such power, Mortgagee shall mail a copy of the notice of sale by registered mail to Mortgagor at the Property Address or at any other address Mortgagor delivers to Mortgagee in writing for that purpose. Mortgagee shall publish the notice of sale for the time and in the manner required by applicable law and, without further demand on Mortgagor, the Property shall be sold at the time and under the terms designated by the court and in the notice of sale. Mortgagee or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by this Mortgage; and (c) any excess to the person or persons legally entitled to it.

By signing below, Mortgagor accepts and agrees to the terms and covenants contained in this Mortgage.

Dated at Montpelier, this 29 day of ^{November}~~October~~, 2012.

OSCAR'S FARM OF VERMONT, INC.

In the Presence of:


Gary Schy, Its duly-appointed
Agent

, L.S.

STATE OF VERMONT
WASHINGTON COUNTY, SS.

At Montpelier, this ^{4th November} ~~29~~ day of ~~October~~, 2012, Gary Schy, duly-appointed agent of Oscar's Farm of Vermont, Inc. personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Oscar's Farm of Vermont, Inc.

Before Me: *James H. Belmcom*
Notary Public