

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

Patrick Palermo,
Respondents

VIOLATION

Activity in violation of Condition 18 of Land Use Permit # 2S0735.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On September 1, 1987 the District 2 Environmental Commission issued Land Use Permit #2S0735 to Joseph and Elfreda Cerniglia. The Permit authorizes the permittees to, among other things, "create an eleven-lot subdivision." The subdivision is located off Taylor Drive in Springfield, Vermont.
2. Condition 18 of Land Use Permit #2S0735 states:

The permittees and all assigns and successors in interest for Lots, 7, 8, 10 and 11 shall maintain a 25 foot undisturbed vegetated buffer strip from the top of the bank of the intermittent stream.
3. Respondent Patrick Palermo owns lots 6 and 7 of the subdivision subject to Land Use Permit #2S0735.
4. The parties have been unable to determine the line or location of the "top of the bank of the intermittent stream."
5. Respondent has cut trees within twenty-five feet of the edge of the intermittent stream.

6. Respondent has constructed a house on lot 6 that is not in the location depicted on the site plan.

7. Permit EC-2-1490, issued by the Department of Environmental Conservation reads, in part:

4. This project has been reviewed and is approved for the construction of one single family residence with maximum three (3) bedrooms with six person occupancy on lots 2 -11. ...

8. Condition 4 of Land Use Permit #2S0735 incorporates the conditions of Permit EC-2-1490.

9. The Panel has obtained information from the Town of Springfield that indicates that Respondent's house has four bedrooms. Respondent disputes this information.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series #2S0735.
- B. Respondent shall maintain twenty-five -foot undisturbed vegetated buffers from the edges (where the water meets the earth) of the intermittent stream. No cutting, clearing or any other disturbance of the vegetation shall occur within these buffers without written approval of the District 2 Environmental Commission or a written Jurisdictional Opinion from the District 2 Coordinator that Commission approval is not necessary.
- C. Within thirty days of the date that this Assurance is entered as an order of the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Two Hundred (\$200.00) Dollars (U.S.), for the violations noted herein. Payment shall be by check payable to the "Treasurer, State of Vermont" sent to:

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

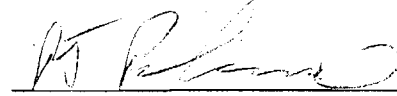
Any payment by the Respondent pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under federal or state tax codes. Respondent shall not deduct, nor attempt 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 Respondents' 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 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.
- 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 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.
- 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 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.
- 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. chapters 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 LUDLOW, VT, this 25 day of JUNE, 2009.



Patrick Palermo

STATE OF VT
COUNTY OF WINDSOR, ss.

BE IT REMEMBERED that on the 25 day of JUNE, 2009, personally appeared Patrick Palermo, 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,



Notary Public

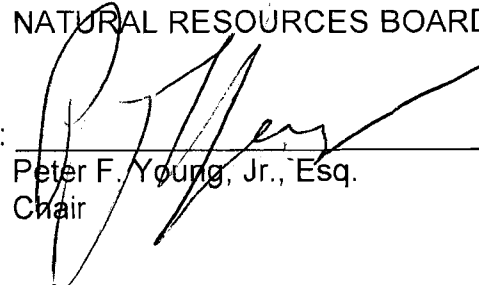
My Commission Expires: 2/10/2011

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

Dated in Montpelier, Vermont, this 29th day of JUNE, 2009.

LAND USE PANEL of the
NATURAL RESOURCES BOARD

By:



Peter F. Young, Jr., Esq.
Chair