

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

Gene Parker and Danielle Simoneau
Respondents

VIOLATION

Construction of seawall in violation of Land Use Permit #6G0371.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On April 29, 1988, the District 6 Environmental Commission issued Land Use Permit (Permit) #6G0371 to Robert Philips. The Permit authorized the subdivision of lots and the construction of a roadway and other infrastructure to serve these lots.

2. Condition 18 of Land Use Permit #6G037 reads:

Waterfront access from each lot shall be established by the Declarant. However, there shall be no more than one such access point for each two lots. Each access point shall be constructed by the Declarant, and designed and built in such a way as to cause minimal disturbance to the bank and to prevent further erosion to the bank. No lot owner shall construct his own access point to the lake ("access point" to include walkway, path, ramp, stairway, ladder or other means of access to the lake). All such stairways shall be constructed of wood or stone, and concrete, where necessary. No construction shall occur below an elevation of 102 feet above seal level according to USGS standards.

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3. Some time following the issuance of the Permit, the Respondents purchased a lot within the subdivision subject to the Permit.

4. Respondents have constructed a seawall along the shore of their lot.

5. The construction of the seawall is in violation of Condition 18 of the Permit.

6. Respondents are willing to undertake remedial work on the seawall and grant an easement to the neighboring property in furtherance of the goals of the existing Permit.

7. The cost of the remedial work is estimated to be approximately \$7000.00. Further, the grant of the easement may diminish the value of the Respondents' lot.

AGREEMENT

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

- A. Respondents shall comply with Land Use Permit #6G0371.
- B. On or before July 31, 2009, in accordance with the plan attached to this Assurance as Exhibit A, Respondents shall complete the following work to remediate the violation:
 - 1. the upper tier of the sea wall will be removed;
 - 2. the stairs will be removed;
 - 3. the lower tier will remain and will be stained a dark color to blend into the natural shoreline;
 - 4. the ground behind the wall will be graded to a 1:1 slope
 - 5. landscaping will be planted on the graded area
- C. On or before October 15, 2009, Respondents shall complete the planting and landscaping on the graded area behind the wall in accordance with Note 3 on Exhibit A.
- D. On or before February 28, 2009, Respondents shall grant an easement for access to the lake over Respondents' property at 64 Point of the Tongue, Alburgh, Vermont land to the benefit of adjoining land located at 58 Point of the Tongue in Alburgh (also known as Lot 14 of the Robert W. Phillips Subdivision).

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A copy of the easement shall be filed with the District Commission. The easement shall not be relinquished or conveyed back to the Respondents or their successors or assigns without the written approval of the District Commission.

- E. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Three Hundred (\$300.00) Dollars (U.S.), for the violations noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and shall be sent 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

Any payment by the Respondents 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 the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. The Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from the Respondents' state or federal taxes.

- F. In the event that this Assurance allows the Respondents to fund a Supplemental Environmental Project (SEP) in lieu of the payment of a civil penalty, if the Respondents publishes by any means, directly or indirectly, the identity or result of an SEP that the Respondents has funded, the Respondents shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Natural Resources Board.
- G. 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.
- H. 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 Respondents.
- I. This Assurance shall become effective only after it is signed by all parties and

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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.

- J. 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 described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.
- K. 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.
- L. 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.
- M. 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 Chittenden Albany branch, this 22 day of December, 2008


Gene Parker

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STATE OF VT
COUNTY OF Grand Isle, ss.

BE IT REMEMBERED that on the 22 day of December, 2008,
personally appeared Gene Parker 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. used Javid ID.

Before me,

Kelly J Morrison
Notary Public
My Commission Expires: 2/10/2011

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

Dated at Chittenden Bank, Albury, this 22 day of December, 2008.

Danielle Simoneau
Danielle Simoneau

STATE OF Vermont
COUNTY OF Grand Isle, ss.

BE IT REMEMBERED that on the 22 day of December, 2008,
personally appeared Danielle Simoneau signer of the foregoing instrument who is
known to me or who satisfactorily established her identity to me and acknowledged the
same to be her free act and deed.

Before me,

Kelly J Morrison
Notary Public
My Commission Expires: 2/10/2011

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

Dated in Montpelier, Vermont, this 24th day of December, 2008

LAND USE PANEL

By: 

Peter F. Young, Jr., Esq., Chair