

-----	)	
<b>LAND USE PANEL of the</b>	)	
<b>NATURAL RESOURCES BOARD</b>	)	
Petitioner	)	
	)	<b>ASSURANCE OF DISCONTINUANCE</b>
<b>v.</b>	)	
	)	
<b>TROY AND TANI RAINEY</b>	)	
Respondents	)	
-----	)	

VIOLATIONS

- I. The construction of a building and operation of a dog grooming business without approval from the District 7 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #7C0645 and Act 250 Rule 34(A).
- II. The construction of a parking area used for commercial contracting equipment without approval from the District 7 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #7C0645 and Act 250 Rule 34(A).
- III. The construction of an access onto Route 5 without approval from the District 7 Environmental Commission, in violation of Condition No. 1 of Land Use Permit #7C0645 and Act 250 Rule 34(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 Troy and Tani Rainey (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND VIOLATION

- 1. Respondents own a home on Lot # 2 of the "Little Egypt Subdivision," located at 2561 Lynburke Road, in Lyndonville, Vermont (project tract).
- 2. The "Little Egypt Subdivision," including the project tract, is subject to Land Use Permit #7C0645, issued October 14, 1986.

3. Condition No. 1 of Land Use Permit #7C00645 prohibits changes to the project tract without the written approval of the District 7 Environmental Commission (Commission).
4. Sometime between 2005 and March 15, 2008, Respondents constructed a building and commenced operation of a dog kennel and grooming business within that building on the project tract.
5. Sometime between 2005 and March 15, 2008, Respondents constructed a parking area for construction equipment associated with Respondents' contracting business on the project tract.
6. Sometime between 2005 and March 15, 2008, Respondents constructed a highway access onto US Route 5 from the project tract.
7. Land Use Permit #7C00645 does not authorize the construction set forth in paragraphs 4 through 6 herein.
8. The changes to the project tract set forth in paragraphs 4 through 6 herein were made without first obtaining written approval from the Commission.
9. On April 15, 2008, the District Coordinator for the Commission issued a jurisdictional opinion in the form of a Project Review Sheet, which found that the construction set forth in paragraphs 4 through 6 required an Act 250 Land Use Permit Amendment. That jurisdictional opinion was not appealed and has gone final.
10. Respondents violated Condition No. 1 of Land Use Permit #7C00645 by constructing the changes set forth in paragraphs 4 through 6 herein on the project tract without written approval from the District 7 Environmental Commission.
11. On May 19, 2009 the Chair of the Land Use Panel issued an Administrative Order in this matter. Respondents requested a hearing on May 25, 2009.

#### AGREEMENT

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

- A. The May 19, 2009 Administrative Order issued by the Land Use Panel in this matter, and Respondents' appeal thereof, shall be dismissed.

- B. Respondents shall abide by Land Use Permit #7C0645 as amended.
- C. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Four Thousand Six Hundred and Eighty Dollars (\$4,680.00), for the violations noted herein, which shall be paid in twenty-four (24) monthly payments of One Hundred and Ninety-Five Dollars (\$195.00). Each payment shall be received by the Land Use Panel no later than the 14th of every month with the initial payment due by September 14, 2009.

Respondents shall make said payment by check or money order payable to the "Treasurer, State of Vermont" and shall send it to:

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

Late payments shall bear interest at the rate of twelve percent (12%) per annum. In the event that Respondents fail to make any payment by the date due, the Land Use Panel, at its option, may declare the whole amount then owing under this Assurance due and payable, any terms herein to the contrary notwithstanding.

- D. Any payment by the Respondents pursuant to this Assurance is made to resolve the violations 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. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' State or Federal taxes.
- E. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall file with the District 7 Environmental Commission a complete Act 250 permit amendment application to address: i) operation of a dog kennel business with a detached building and fenced outdoor area; ii) construction of a trailer/equipment parking area; iii) creation of a highway access onto US Route 5; and iv) any other project changes Respondents wish to make or retain.
- F. If Respondents' permit amendment application is denied, and said denial becomes final, then Respondents shall, within sixty (60) days of said denial, cease all unpermitted commercial use of the project tract. Furthermore, upon said denial, Respondents may maintain the unpermitted building, which currently

houses the dog kennel and grooming business, for personal use only, however Respondents shall immediately remove any signage associated with the dog kennel and grooming business. Upon said denial, Respondents shall also immediately block off and cease use of the unpermitted highway access onto US Route 5.

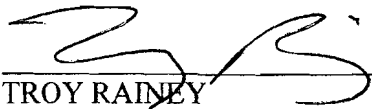
- G. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violation set forth herein above.
- H. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives.
- I. 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.
- J. Pursuant to 10 V.S.A. § 8007(d), 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, except that Respondents specifically waive any of the protections afforded them under 10 V.S.A. § 8007(d) with respect to any issues involving their on-site waste water and potable water systems.
- 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.

N. This Assurance or a notice thereof may be filed within the land records of the town(s) in which the property is located.

**SIGNATURES**

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

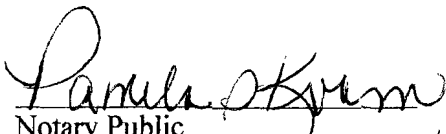
Dated at Caledonia Co., Vermont, this 26 day of Aug, 2009.  
Lyndonville

  
TROY RAINEY

STATE OF VERMONT  
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 26<sup>th</sup> day of August, 2009,  
personally appeared Troy Rainey / Tani Rainey, signer(s) of the foregoing  
instrument who is/are known to me or who satisfactorily established his/her/their identity  
to me and acknowledged the same to be his/her/their free act and deed.

Before me,

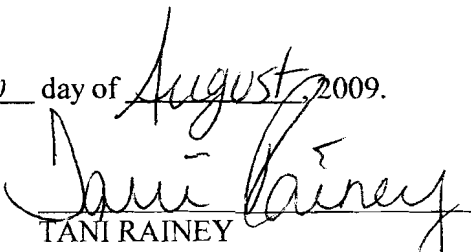
  
Notary Public

My Commission Expires: 2/10/2011

\*\*\*\*\*  
\*\*\*\*\*

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

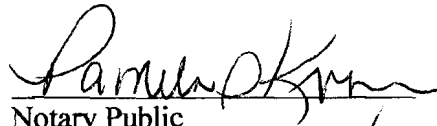
Dated at Caledonia Co., Vermont, this 26 day of August, 2009.

  
TANI RAINEY

STATE OF VERMONT  
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 26<sup>th</sup> day of August, 2009,  
personally appeared Tani Rainey, signer(s) of the foregoing  
instrument who is/are known to me or who satisfactorily established his/her/their identity  
to me and acknowledged the same to be his/her/their free act and deed.

Before me,



Notary Public

My Commission Expires: 2/10/2011

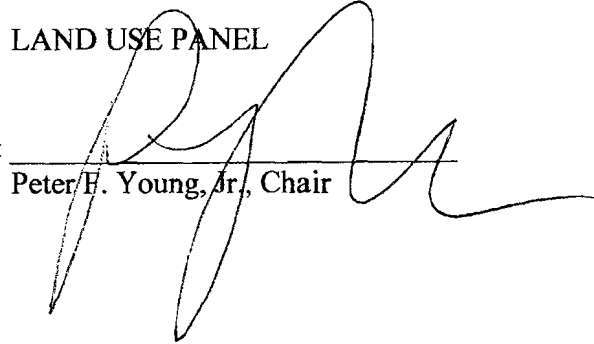
\*\*\*\*\*  
\*\*\*\*\*

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

Dated in Montpelier, Vermont, this 28<sup>th</sup> day of AUGUST, 2009.

LAND USE PANEL

By:

  
Peter H. Young, Jr., Chair