

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

**LAND USE PANEL of the
NATURAL RESOURCES BOARD,**

Petitioner

ASSURANCE OF DISCONTINUANCE

v.

SKATIUM, INC.,

Respondent

VIOLATION

- I. Commencing development without written approval from the District 5 Environmental Commission in violation of Condition No. 1 of Land Use Permit #5W0036-20.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns and operates an ice arena on land located off VT Route 100 in Waitsfield, Vermont, in the Mad River Green Shopping Center (the project tract). The project tract is subject to Land Use Permit #5W0036-20 (the Permit).
2. The Permit, issued on January 1, 1993, specifically authorizes construction of an 85' X 200' open natural ice skating rink with a zamboni building, pole lights, parking area and access road.
3. Condition No. 1 of the Permit states: "No changes shall be made in the project without the written approval of the District Environmental Commission."
4. At some time after January 1, 1993, but before March 14, 2008, Respondent constructed a 12' X 12' three-sided wood frame portolet on the project tract.
5. At some time after January 1, 1993, but before March 14, 2008, Respondent constructed a 16' X 44' wood frame structure on the project tract containing three dressing rooms, a storage room, ticket window, and a covered walkway.

6. At some time after January 1, 1993, but before March 14, 2008, Respondent constructed a 20' X 20' three sided wood tractor shed on the project tract.
7. At some time after January 1, 1993, but before March 14, 2008, Respondent constructed an 8' X 24' steel pallet on the project tract. The pallet contains refrigeration equipment.
8. During the fall of 1995, Respondent constructed a refrigeration system on the project tract
9. Respondent failed to obtain a Land Use Permit Amendment or other written approval from the Commission for aforesaid development.
10. Respondent violated Condition No. 1 of Land Use Permit #5W0036-20 by commencing development on the project tract without the written approval of the District 5 Environmental Commission.

AGREEMENT

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

- A. Respondent shall file and diligently pursue a complete application for an Act 250 Land Use Permit Amendment addressing the above described development no later than December 10, 2008.
- B. If Respondent fails to file a complete application by December 10, 2008, or timely files said application and said application is denied by the Commission and said permit denial becomes final, then Respondent shall remove all unpermitted improvements from the project tract. Said removal shall be completed within sixty (60) days from the date the permit denial becomes final, or by February 10, 2009 if Respondent fails to file an application.
- C. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of one thousand dollars (\$1,000.00) for the violation noted herein pursuant to the payment schedule set forth below:

One payment of \$500.00 due on January 26, 2009.

One payment of \$500.00 due on February 28, 2009.

Respondents shall make said payments by check made payable to the "Treasurer, State of Vermont" and forwarded 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

Late payments shall bear interest at the rate of twelve percent (12%) per annum. In the event that Respondent fails 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 Respondent pursuant to this Assurance is made to resolve the violation 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. 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.
- E. 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.
- F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- G. 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.
- H. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any 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.
- I. 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.

- J. 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.
- K. 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. Further, I, Donald R. Swain, the undersigned, hereby state under oath that I am PRESIDENT of Skatium, Inc., that I have the authority to contract on behalf of Skatium, Inc. and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at WATERBURY, Vermont, this 21 day of NOVEMBER, 2008.

Skatium, Inc.

By: [Signature]

Donald R. Swain
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 21 day of November, 2008, personally appeared Donald R. Swain, duly authorized agent of Skatium, Inc., signer of the foregoing written instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of Skatium, Inc..

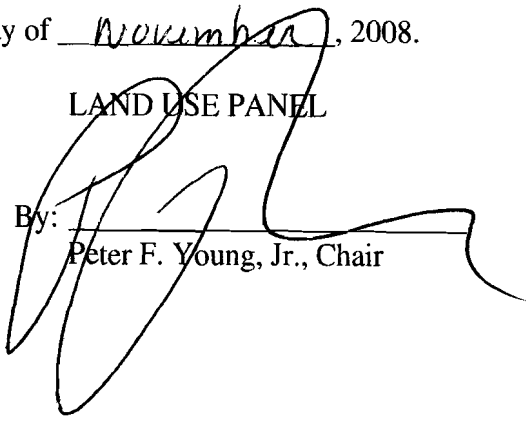
Before me,

[Signature]
Notary Public
My Commission Expires: 2/10/14

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

Dated in Montpelier, Vermont, this 24th day of November, 2008.

LAND USE PANEL

By: 
Peter F. Young, Jr., Chair