

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Plaintiff

ASSURANCE OF DISCONTINUANCE

v.

Southerly Side of US Route 7, LLC,
Respondent

VIOLATION

Violation of Land Use Permit #4C1205 and Act 250 Rule 34

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Southerly Side of US Route 7, LLC hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On February 18, 2009, the District 4 Environmental Commission issued Land Use Permit #4C1205 to Southerly Side of US Route 7, LLC (Respondent). The Permit authorizes Respondent to construct Phase I of a Planned Unit Development, consisting of retail and warehouse buildings, a restaurant, office space, a motel and car wash on an 18.56-acre parcel of land, located on Route 7 in the Town of Milton, Vermont. Phase I consists of 4.8 acres of the 18.56-acre parcel.

2. Condition 34 of Land Use Permit #4C1205 reads:

No further subdivision, alteration and/or development of any parcel of land approved herein shall be permitted without the written approval of the District Commission.

3. Some time prior to May 2009, a portion of the project site, designated for development as Phases II and III of the project, was physically disturbed. Schedule B of the Respondent's application for Phase II includes the following statement:

Scott Dillon, State Archeologist, visited the site in May 2009; at the time of his visit Phase I was under construction and a portion of the Phase II area has been inadvertently stumped. Consequently Mr. Dillon mentioned that a Phase I Site Identification Survey was not needed as the area had already been disturbed. It should be noted that a Phase I Site

Identification Survey was done during Phase I and no Native American or Euro American artifacts were found.

4. Because of family priorities, the manager of the project, William Sawyer, was not at the site at the time that the stumping and disturbance occurred. Rather, the on-site crew, thinking that Mr. Sawyer would be pleased at the progress of work done at the site, made the decision, without his knowledge, to commence the stumping and other disturbance.

5. There is no information that indicates that the Respondent has had any prior violations of Vermont's environmental laws.

6. By stumping and otherwise disturbing a portion of the project site, the Respondent violated Condition 34 of Land Use Permit #4C1205.

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 #4C1205.
- B. Within thirty (30) days of the date that the Environmental Court enters this Assurance as a judicial order, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Eight Thousand (\$8,000.00 US) Dollars for the violations noted herein. Payment shall be by check made payable to the "Treasurer, State of Vermont," which 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

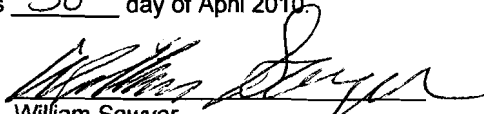
Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. 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.

- C. The Land Use Panel shall file a notice of this Assurance in the land records of the Town of Milton after this Assurance is signed by the Environmental Court. On or before the date that this Assurance is signed by the Respondent, the Respondent shall forward payment to the Land Use Panel at the address listed above in the amount of Ten (\$10.00) Dollars, by check made payable to the "Town of Milton," for the purpose of paying the recording fee.
- 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 Respondent's 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. I have the authority to sign this Assurance of Discontinuance on behalf of Southerly Side of US Route 7, LLC.

Dated at April, _____, this 30th day of April 2010.


William Sawyer
for Southerly Side of US Route 7, LLC

STATE OF Vermont
COUNTY OF Chittenden, ss.

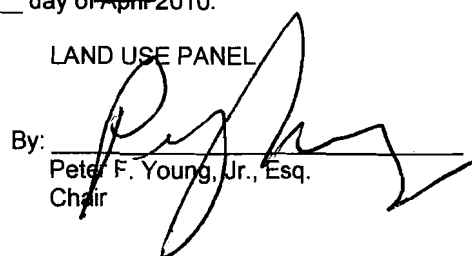
BE IT REMEMBERED that on the 30th day of April 2010, personally appeared William Sawyer, signer of the foregoing instrument, who is/are known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed, and that he/she has the authority to execute this Assurance of Discontinuance on behalf of Southerly Side of US Route 7, LLC.

Before me,

Notary Public
My Commission Expires: 2-10-11

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

Dated in Montpelier, Vermont, this 6th MAY day of ~~April~~ 2010.

LAND USE PANEL
By: 
Peter F. Young, Jr., Esq.
Chair