

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

Natural Resources Board, Petitioner,)

v.)

Special Services Transportation Agency,)
Inc., Respondent.)

**ASSURANCE OF
DISCONTINUANCE**

VIOLATIONS

1. Failure to comply with Permit Conditions 3, 4, and 21 of Land Use Permit 4C0988-2;
2. Failure to comply with Permit Condition 23 of Land Use Permit 4C0988-4, and;
3. Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A)

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. The permitted project is located at 2091 Main Street, and is described in Book 325, Page 274 in the Land Records of the Town of Colchester, Vermont (the Project Tract).
2. On June 14, 2011, the District 4 Environmental Commission issued Land Use Permit 4C0988-2, specifically authorizing the Respondent to construct 36 additional parking spaces, and install additional parking lot lighting and a 15,000-gallon underground gas tank and pump.
3. Sometime between April of 2015 and March of 2016, Respondent commenced construction of a 2,000-square foot addition to the existing office building (Building B) on the Project Tract.
4. On December 21, 2016, the District 4 Environmental Commission issued Land Use Permit

Assurance of Discontinuance

Natural Resources Board v. Special Services Transportation Agency, Inc.

Page 2 of 6

4C0988-4 for the after-the-fact approval of a 2,000 s.f. (footprint) expansion of Building B and increase in the number of employees from 16 to 24.

5. Permit condition 3 of Land Use Permit 4C0988-2 states, "The project shall be completed, operated and maintained in accordance the plans and exhibits on file with the District Environmental Commission and the conditions of this permit."
6. Permit condition 4 of Land Use Permit 4C0988-2 states,
"The approved plans are:
Sheet 1 - "Site Plan Amendment," dated March 19, 2008, last revision October 20, 2010;
Sheet 2 - "Parking & Stormwater Details," dated July 15, 2010;
Sheet 3 - "Lighting Plan," dated March 19, 2008, last revision August 12, 2010; and
Sheet 4 - "Stormwater Management Plan," dated March 19, 2008, last revision November 11, 2010."
7. The approved plans and exhibits on file for Land Use Permit 4C0988-2 do not depict or describe the 2,000-square foot addition to Building B.
8. Respondent failed to comply with permit conditions 3 and 4 of Land Use Permit 4C0988-2.
9. Permit condition 21 of Land Use Permit 4C0988-2 states, "The installation of exterior light fixtures is limited to those approved in Exhibits #6 and 15 (Schedule B; and Lighting Plan), and shall be mounted no higher than 20 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated."
10. Exhibit 6, Schedule B to Land Use Permit 4C0988-2 states, in relevant part, "the project proposes three (3) new 20' tall pole mounted parking lights. Please refer to Sheet 3 for lighting details."
11. Condition 23 of Land Use Permit 4C0988-4 states, in relevant part, "No new exterior signage, lighting or landscaping is proposed in conjunction with this Project." Despite this condition, Exhibit 8 to Land Use Permit 4C0988-4 depicts four (4) exterior pole mounted parking lights, rather than the 3 lights specified and depicted within Land Use Permit 4C0988-2.
12. During a site visit on January 27, 2017, the Board's Enforcement Officer viewed two exterior light fixtures that are not depicted on any of the approved plans or exhibits. The fixtures were mounted on the southern façade of the Existing Warehouse Building 'E,' and on the eastern façade of the new 2,000-square foot Building Addition to Office Building (B). Each of the two building-mounted fixtures was angled out toward the

parking lot in a manner that exposed light sources and reflector surfaces to view beyond the perimeter of the area to be illuminated. By installing inadequately shielded light fixtures not depicted on any of the approved plans and exhibits, the Respondent violated permit conditions 3, 4, and 21 of Land Use Permit 4C0988-2 and condition 23 of Land Use Permit 4C0988-4.

13. Act 250 Rule 34(A) states, in relevant part, "an amendment shall be required for any material change to a permitted development or subdivision, or any administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited."
14. Act 250 Rule 2(C)(6) defines "material change" as "any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10)."
15. The Respondent has violated Act 250 Rule 34(A) by failing to obtain a Land Use Permit Amendment prior to commencing construction on the Building B expansion, or installing additional exterior floodlights.

AGREEMENT

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

- A. Respondent shall comply with Permit series 4C0988.
- B. Respondent shall **immediately** remove, adjust, or shield all unshielded lights on the Project Tract in accordance with Permit condition 21 of Land Use Permit 4C0988-2.
- C. **By no later than March 31, 2017**, the Respondent shall submit a complete application for an Act 250 Land Use Permit Amendment to the District 4 Environmental Commission for review. Said application shall include all unpermitted lighting not included in the current Land Use Permit series, as well as revised site plans, if applicable.
- D. No later than **30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division**, the Respondents shall pay the following:
 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$3,000.00**, for the violations noted herein, by check made payable to the "State of Vermont."

Assurance of Discontinuance

Natural Resources Board v. Special Services Transportation Agency, Inc.

Page 4 of 6

2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$712.10**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."

3. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Colchester land records, by check made payable to the "Town of Colchester, Vermont."

E. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.

F. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201

G. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

H. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.

J. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, 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.

K. 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 set forth herein, provided that the Respondent fully complies with this Assurance.

Assurance of Discontinuance

Natural Resources Board v. Special Services Transportation Agency, Inc.

Page 6 of 6

Inc. and that he has the authority to contract on behalf of Special Services Transportation Agency, Inc. and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,



Notary Public

My Commission Expires: 2/19

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

Dated in Montpelier, Vermont, this _____ day of _____, 2017.

NATURAL RESOURCES BOARD

By:

Diane B. Snelling, Chair

Assurance of Discontinuance

Natural Resources Board v. Special Services Transportation Agency, Inc.

Page 5 of 6

- L. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- M. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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 Superior Court, Environmental Division.
- N. 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.
- O. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- P. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

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

Dated at Colchester Vermont, this 1 day of June, 2017.

SPECIAL SERVICES TRANSPORTATION AGENCY, INC.

By Murray A. Benner
Name: Murray A. Benner
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF CHITTENDEN, ss.

BE IT REMEMBERED that on the 1 day of June, 2017, personally appeared Murray Benner, individually and as the duly authorized agent of Special Services Transportation Agency, Inc. signer and sealer 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 and the free act and deed of Special Services Transportation Agency,