

STATE OF VERMONT
SUPERIOR COURT—ENVIRONMENTAL DIVISION

LAND USE PANEL of the NATURAL RESOURCES BOARD,	}	Docket No. 139-8-10 Vtec.
Petitioner,	}	
	}	CONSENT ORDER
v.	}	
SUNRISE PLAZA, INC.,	}	
Respondent.	}	

WHEREAS, Petitioner, the Land Use Panel of the State of Vermont Natural Resources Board (the Panel) has filed an Administrative Order dated July 19, 2010 (the Administrative Order) against Respondent Sunrise Plaza, Inc. (Respondent) for failing to continually maintain a six-foot (6') tall wooden privacy fence between a commercial plaza and a residential subdivision as required by Condition No. 3 of Land Use Permit #1R0788-2 and 10 V.S.A. § 6081(a);

WHEREAS, the Parties hereto recognize, and the Court by entering this Consent Order finds, that this Consent Order has been negotiated in good faith and at arm's length and that this Consent Order is fair, reasonable, consistent with the goals of Act 250 and 10 V.S.A. Chapter 201 and in the public interest;

WHEREAS, the Panel was constrained to initiate judicial proceedings by filing the Administrative Order with this Court before Respondent agreed to cooperate in the complete resolution of this matter, and;

WHEREAS, the Parties, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the filing further pleadings, the service of discovery demands or the taking of any testimony, upon the aforesaid Administrative Order, upon consent and agreement of the Parties, it is hereby ORDERED and ADJUDGED as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. The Panel initiated this proceeding by the filing of the Administrative Order for the assessment of an administrative penalty pursuant to 10 V.S.A. §§ 8008 and 8010 for Respondent's violation of Condition No. 3 of Land Use Permit #1R0788-2 and 10 V.S.A. § 6081(a).
2. Respondent owns lands located on Route 4A in Castleton, Vermont, more specifically identified in Book 70, Page 141 in the land records of the Town of Castleton (the Project Tract).

3. On February 21, 1996, the District 1 Environmental Commission (Commission) issued LUP #1R0788 (the Permit) to Sunrise Plaza, Inc. for the creation of a five-lot subdivision on the Project Tract, which already contained an existing commercial plaza (Sunrise Plaza), along with four residential lots (the Sunrise Plaza Subdivision or Project).
4. Condition No. 1 of the Permit required that the Project be completed in accordance with the exhibits and plans on file with the Commission. Condition No. 6 of the Permit required the installation of a wooden privacy fence between Sunrise Plaza and the Sunrise Plaza Subdivision.
5. On October 20, 1998, the Commission issued Land Use Permit Amendment 1R0788-2, Condition No. 3 of which likewise required Respondent to install and continually maintain the wooden privacy fence, but extended the deadline for Respondent to do so until December 15, 1998.
6. On May 6, 2010, the Panel's Permit Compliance Officer (PCO) John Wakefield received a letter from a resident of the subdivision dated May 5, 2010 (the Citizen Complaint) which requested that the NRB enforce the Permit to require maintenance of the privacy fence between Sunrise Plaza and the Sunrise Plaza Subdivision.
7. On May 24, 2010, PCO Wakefield investigated the Project and determined that Respondent was in violation of Land Use Permit Amendment 1R0788-2. The privacy fence was in a state of significant disrepair, weather-beaten and rotted, and some sections were completely missing.
8. According to the writer of the Citizen Complaint, the privacy fence had been in this condition for years, and Respondent had refused to repair the fence when requested to do so by a resident of the subdivision.
9. Respondent failed to maintain the privacy fence as required by Condition No. 3 of Land Use Permit Amendment 1R0788-2.
10. On June 18, 2010 PCO Wakefield issued Respondent a Notice of Alleged Violation regarding said violation which included a compliance directive requiring Respondent to comply with Condition 3 Land Use Permit Amendment 1R0788-2.
11. On June 30, 2010, PCO Wakefield conducted a follow-up investigation and determined that Respondent had repaired the fence and that the fence, as repaired, provided the privacy required by Condition No. 3 of Land Use Permit Amendment 1R0788-2.

ORDER

- A. No later than 30 days following the entry of this Consent Order as an Order by the Environmental Division of the Superior Court, 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 Eight Hundred and Fifty Dollars (\$1,850.00)** (U.S.), for the violations noted herein. Payment shall be made by **two (2) checks**, one check in the amount of **One Thousand Six Hundred and Four Dollars (\$1,604.00)** and a second check in

the amount of **Two Hundred and Forty-Four Dollars (\$244.00)**, each made payable to the "Treasurer, State of Vermont" and 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

- B. Any payment by Respondent pursuant to this Consent Order is made to resolve the violations set forth in this Consent Order 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 Consent Order from Respondent's state or federal taxes.
- C. 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.
- D. Nothing in this Consent Order 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, including, without limitation, the obligation to continually maintain the wooden privacy fence as required by Respondent's Act 250 permit.
- E. Consistent with 10 V.S.A. § 8007(d), the Land Use Panel agrees that 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 this Court signs this Consent Order, provided that the Respondent fully complies with the agreements set forth herein.
- F. This Consent Order 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 amending order issued by this Court. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- G. Any violation of any agreement set forth herein will 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.
- H. Failure to pay the civil penalty shall subject Respondent to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 12 V.S.A. § 2903(c) and shall render Respondent liable for all charges, costs, fees and penalties established by law for the benefit of a creditor or the State of Vermont in securing payment.

- I. This Consent Order shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.
- J. Respondent hereby waives its right to a judicial hearing or appeal on any issue of law or fact set forth herein and consents to the terms of this Consent Order.
- K. This Consent Order or a notice thereof shall be filed within the land records of the town(s) in which the property is located. Respondent shall be responsible for the payment of the recording fee for such notice and shall send to the Panel a check in the amount of **Ten Dollars (\$10.00)**, made payable to the said municipality.
- L. The effective date of this Consent Order shall be the date upon which this Consent Order is entered by this Court.
- M. This Consent Order shall be filed with the Vermont Attorney General. The Attorney General may move this Court to vacate this Consent Order within ten (10) days of its entry on the grounds that this Consent Order is insufficient to carry out the purposes of 10 V.S.A. Chapter 201. Upon finding that the assurance is insufficient to carry out the purposes of Chapter 201, this Court shall vacate this Consent Order.
- N. Each undersigned representative of the Parties hereto certifies that he or she is fully authorized by their respective clients to enter into the terms and conditions of this Consent Order and legally bind to this document the Party he or she represents.
- O. This Consent Order may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.
- P. This Consent Order supersedes the Land Use Panel's Administrative Order dated July 19, 2010.


FOR PETITIONER THE LAND USE
 PANEL OF THE VERMONT NATURAL
 RESOURCES BOARD



 Mark L. Lucas, Esq.

Dated: 9/2/10

FOR RESPONDENT SUNRISE PLAZA,
 INC.



 Phyllis McCoy-Jacien, Esq.

Dated: 8/31/10

SO ORDERED, THIS ____ DAY OF _____, 2010 AT _____, VERMONT