

STATE OF VERMONT

ENVIRONMENTAL COURT  
Docket No.

Land Use Panel of the  
Natural Resources Board,  
Petitioner

v.

**ASSURANCE OF  
DISCONTINUANCE**

Richard Werner and Regina Werner,  
D/B/A: W and B Maintenance  
Respondents

**VIOLATIONS:** Commencement of development without a Land Use Permit  
in violation of 10 V.S.A. §6081(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 Richard Werner, Regina Werner, and W and B Maintenance (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

#### **STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondents, Richard and Regina Werner own an approximately forty-five (45) acre parcel at 32 Carroll Trail in East Dover, Vermont (the Property).
2. Respondent, Richard Werner, operates W and B Maintenance on the Property.
3. Regina Werner is the registered agent of W & B Maintenance.
4. W and B Maintenance is a commercial enterprise operated as a property management and maintenance business since 1996.
5. In 2001 Respondents built a personal residence on the Property.
6. In 2002 Respondents constructed an approximately 1,500 square foot garage on the Property.
7. The Respondents periodically store business equipment and service business equipment and vehicles in the garage.

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8. Some on-site work is performed in the garage.
9. Respondents have constructed a parking area adjacent to the garage where employees park their personal cars and some business equipment is stored.
10. Respondents store log splitting equipment, several snow plow truck attachments, a solar powered speed notification sign owned by the State of Vermont, an empty 1,000 gallon fuel tank, a few small tractors, lawn mowers, personal excavators, a large dump truck, and a truck labeled "W & B Maintenance" in and around the garage.
11. On July 21, 2011, there were at least 9 business and personal vehicles parked in the parking area near the garage.
12. Respondents employ three (3) to seven (7) employees at any one time.
13. Between 2005 and 2008 the Respondents placed a two bay shed behind the main garage. The two bay shed is used to store lumber for W & B Maintenance.
14. Respondents have periodically stored up to eighteen cubic yards of earth material on the Property for commercial use.
15. All commercial construction and commercial activities described in this AOD are located within a discrete area immediately adjacent to the 1,500 square foot garage.
16. On August 19, 2011, the Town of Dover Development Review Board issued a Home Business Occupation Permit to Respondents for activities on the property as described by the Board's approval of permit application #11-CT016-02.
17. Respondents have constructed improvements for a commercial purpose. 10 V.S.A. §6001(3)(A)(ii).
18. Respondents have not applied for an Act 250 Land Use Permit for such construction.
19. Respondents have commenced development without a Land Use Permit in violation of 10 V.S.A. §6081(a).

## AGREEMENT

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

A. Within **90 days** following the entry of this Assurance as an Order by the Superior Court Environmental Division, the Respondent shall file a complete application for an Act 250 Land Use Permit for the construction and activities noted herein. Respondents shall diligently pursue said application. Provided, however, that in the event the District Commission is unwilling to limit "involved land" for purposes of Act 250 jurisdiction to the portion of Respondents' property which actually contains the improvements recited in Paragraphs 6, 9, 13, and 14, or in the event that the Commission issues an Act 250 permit with conditions which make Respondents' commercial operation unfeasible, Respondents may either withdraw their Act 250 application or abandon their permit, as applicable, and shall thereupon take those actions prescribed under Subparagraph C. below in the event of final permit denial.

B. For purposes of this Assurance, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 2 Environmental Commission, or the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR.

Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.

C. If Respondents fail to timely file said permit application, or timely file said application and it is denied by the Commission and said denial becomes final, then:

- i. Respondents shall cease all commercial use of the Property within 60 days of the failure to timely file said application or within 60 days of the final permit application denial.
- ii. Any commercial use of the Property shall be prohibited, unless an Act 250 permit is obtained prior to the commencement of that activity.

D. Provided that the Respondents follow all provisions outlined in this Assurance, including C above, the Respondents may continue their present

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commercial operations on the Property. However no further improvements shall be made on or to the Property unless an Act 250 Land Use Permit is first obtained. If, however, the Respondents fail to follow all provisions outlined in this assurance, the NRB reserves the right to pursue an Administrative Order under 10 V.S.A. §8008 as necessary.

- E. Following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
1. A civil penalty, pursuant to 10 V.S.A. Ch. 201, in the amount of **Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00) (U.S.)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont" in accordance with the following:
    - A. Respondent shall pay \$1,833.00 no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
    - B. Respondent shall pay \$1,833.00 no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
    - C. Respondent shall pay \$1,834.00 no later than 90 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
    - D. Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty to become immediately due and owing.
    - E. Any late payment shall be subject to an annual interest rate of 12%.
  2. Within 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall pay the amount of **Two Hundred Forty-One Dollars and Eighty-Three Cents (\$241.83) (U.S.)**, pursuant to 10 V.S.A. §8010(e)(2), to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
  3. Within 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall pay

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the amount of Ten Dollars and Zero Cents (\$10.00) (U.S.) for the purpose of paying the recording fee for the filing of a notice of this Assurance of Discontinuance in the land records of the municipality where the Project is located, by check made payable to the Town of East Dover, Vermont.

(5)

(No Such Town as East Dover)

All payments pursuant to this paragraph 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

- G. Any payment by the Respondent pursuant to this Assurance is a penalty made to resolve the violations set forth in this Assurance. 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 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.
- I. 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.
- 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 described herein, provided that the Respondent fully complies with the agreements set forth above.
- L. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written

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- agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the *Superior Court, Environmental Division*. 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.
- M. 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.
- N. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

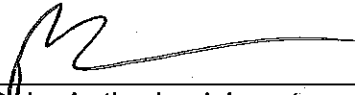
**SIGNATURES**

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

Dated at Dover, Vermont, this 21<sup>st</sup> day of June, 2012

  
Richard Werner, Individually

**W and B Maintenance**

By   
Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF Windham, ss.

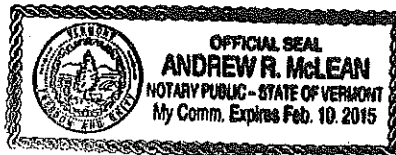
BE IT REMEMBERED that on the 21 day of June, 2012, personally appeared **Richard Werner**, individually and as the duly authorized agent of **W and B Maintenance** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of **W and B Maintenance** and that he has the authority to contract on behalf of **W and B Maintenance** 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: 2/10/2015



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

Dated at Dover, Vermont, this 21 day of June, 2012

Regina Werner  
Regina Werner

STATE OF VERMONT  
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 21 day of June, 2012, personally appeared Regina Werner, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established *her* identity to me and acknowledged the same to be *her* free act and deed.

Before me,

Andrew R. McLean

Notary Public

My Commission Expires: 2/10/2015



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

Dated in Montpelier, Vermont, this 26<sup>th</sup> day of June, 2012

LAND USE PANEL

By:

Ronald A. Shems  
Ronald A. Shems, Chair