

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Old Gray Barn Associates LLC,

Respondents

VIOLATION

Commencement of development without a Land Use Permit. 10 V.S.A. § 6081(a)

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Old Gray Barn Associates LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns approximately 7.74 acres accessed off of Vermont Route 30 in the town of Rupert, Vermont (the "Project Tract").
2. The Project Tract is contiguous to 100+ acres owned by TTM Associates. Alan Calfee is managing partner for both Old Gray Barn Associates LLC, and TTM Associates, thereby making both the same "person" under 10 V.S.A. § 6001(14).
3. Rupert is a "10-acre Town" for the purposes of determining jurisdiction under Act 250.
4. The District Coordinator issued a Project Review Sheet to Respondent on February 19, 2014 stating that an Act 250 permit was not required for conversion of an existing barn to an event facility.
5. In the Winter of 2016, the District Coordinator informed Respondent that an Act 250 permit is required. Respondent promptly submitted an Act 250 application on February 12, 2016 which was deemed complete. The District Commission issued a Notice of Minor Application #8B0625 on February 22, 2016 and did not receive any request for hearing.

6. Inspections by the Board's Enforcement Officer on April 15, 2016, revealed that the Respondent had improved an old road leading into the Project Tract, and refurbished an historic barn. Initially, the improvements were done for agricultural and forestry purposes. Later, Respondent began using the barn for events.
7. The Board issued a Notice of Alleged Violation to Respondent on July 19, 2016.
8. The Respondent held 10 events on the property in 2014, 13 events on the Property in 2015, and 18 events on the property in 2016.
9. Respondent's operations are seasonal (mid-May through mid-October) with a maximum of one event per week.
10. Prior to the issuance of the NOAV, Respondent scheduled weddings and events for the 2017 Spring, Summer and Fall seasons.
11. Respondent 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. The Respondent shall **immediately** cease any and all commercial operations at the Project Tract except for the following authorized events, which were scheduled prior to the issuance of the NOAV:

August 12, 2017
September 9, 2017
September 16, 2017
September 30, 2017
October 7, 2017
October 14, 2017

- B. **Prior to resuming operation, the Respondent shall satisfy the following requirements and diligently pursue said permits:**
 1. Obtain an approved Act 250 Land Use Permit.
 2. Obtain a Construction Permit from the Agency of Natural Resources. All construction must be completed in accordance with the Construction Permit prior to resuming operation (events listed above in Section A are authorized).
 3. Submit installation certifications for the wastewater and water supply systems

to the Agency.

4. Submit to the Agency for review and approval an administratively complete Notice of Intent to Operate Subject to the General Permit for Class 1A/1B Public TNC Water Systems.
 5. Retain a Vermont-certified operator of the appropriate class to operate the drinking water system and submit an administratively complete Water System Officials Contact Form to designate the Administrative Contact, Designated Operator, and Owner.
 6. Submit an administratively complete Coliform Sampling Plan to the Agency, including a distribution map identifying sampling locations that are representative of water throughout the distribution system and, pending Agency approval, follow the plan for all future bacteriological samples.
 7. Complete routine water quality monitoring for total coliform bacteria and nitrate according to a monitoring schedule determined by the Agency.
 8. Submit to the Agency for review and approval an administratively complete Seasonal Start-Up Procedures and Certification Form no later than 10 days following the month of start-up. Submit such form annually prior to resuming operation each operating season.
- C. Respondents shall comply with the Vermont Water Supply Rules (VWSR) in the operation of its water supply system.
- D. Respondent shall diligently pursue said permits. For purposes of this AOD, "diligently pursue" shall mean that Respondent shall (a) respond to any and all requests for information from the Act 250 District 8 Environmental Commission, the Coordinator for the Commission, or the Agency (as applicable) by the date set by the Commission or Coordinator or Agency; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or the Agency. Respondent shall not be responsible for delays outside their control, including those caused by the Commission or the Agency or by other parties to its applications.
- E. **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 **Two Thousand Nine Hundred Fifty (\$2,950.00) Dollars (U.S.)**, for the violations noted herein, by check made payable to the "State of Vermont."

2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Thousand Seventy-Seven Dollars and Eighty-Two Cents (\$1,077.82) (U.S.)**, 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 ten **(\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Rupert land records, by check made payable to the "Town of Rupert, Vermont."
- F. 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.
- G. 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
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.

- N. 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.
- O. 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.
- P. 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.
- Q. 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 Rupert, Vermont, this 8th day of August, 2017.

OLD GRAY BARN ASSOCIATES, LLC

By



Alan Calfee, Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Bennington, ss.

BE IT REMEMBERED that on the 8th day of August, 2017,

personally appeared Alan Calfee, as the duly authorized agent of Old Gray Barn Associates LLC, 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 Old Gray Barn Associates LLC and that he has the authority to contract on behalf of Old Gray Barn Associates LLC, 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: 2/10/19

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