

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

No. _____ Vtec

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

ASSURANCE OF DISCONTINUANCE

MARK BEAN d/b/a NORTHEAST
KINGDOM MOBILE HOME PARK,
Respondent

VIOLATION

- I. Adding fill to a floodplain area on a permitted property without authorization or a permit amendment, in violation of Land Use Permit #7C1177-Revised and Act 250 Rule 34(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 Mark Bean d/b/a Northeast Kingdom Mobile Home Park (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- A. On January 3, 2006, the District 7 Environmental Commission issued Land Use Permit #7C1177-Revised (the Permit) to Respondent Mark Bean authorizing a phased reconstruction of an existing mobile home park known as the Northeast Kingdom Mobile Home Park, including some filling of a flood-prone area (the Project). The Project is located in Lyndon, Vermont between Route 114 and the East Branch of the Passumpsic River.
- B. At some time since the Permit was issued, Respondent added fill in an area in the northeast portion of the Project tract. The Permit does not authorize the placement of fill in this location.
- C. At the time Respondent began placing fill in this area, it was in the floodplain of the East Branch of the Passumpsic River.

- D. The addition of fill in an unapproved location violates Condition 4 which reads as follows:
4. No changes shall be made in the design, phasing, or use of this project without the written approval of the District Coordinator or the District Commission, whichever is appropriate under the Natural Resources Board Rules.
- E. Respondent did not obtain an Act 250 permit amendment prior to adding the fill.
- F. To date, Respondent has neither applied for, nor obtained an Act 250 permit amendment for this addition of fill.
- G. Adding fill in this location has the potential for significant impacts under at least one Act 250 Criterion, including Criterion 1(F) (floodways) and Criterion 4 (erosion).
- H. Respondent violated the Permit and Act 250 Rule 34(A) by adding fill without prior authorization.

AGREEMENT

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

1. Respondent shall comply with Land Use Permit #7C1177-Revised, and all permit conditions and amendments, and shall make no further change to the Project without the written approval of the District Coordinator or District Commission.
2. Respondent shall pay the following:
 - a. A civil penalty in the amount of \$4,000.00 (U.S. Dollars) pursuant to 10 V.S.A. Chapter 201 for the violation noted herein, in four installments as set forth below. Respondent shall pay said penalty by check made payable to the "Treasurer, State of Vermont," in accordance with the following:
 - i. Respondent shall pay \$1,000.00 no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - ii. Respondent shall pay \$1,000.00 no later than 90 days following the entry of this Assurance as an Order by the Superior Court,

Environmental Division.

- iii. Respondent shall pay \$1,000.00 no later than 120 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - iv. Respondent shall pay \$1,000.00 no later than 150 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - v. Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty to become immediately due and owing.
 - vi. In addition, late payment may be subject to an annual interest rate of 12%.
- b. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall pay \$10.00, by check made payable to the Town of Lyndon and sent to the Panel at the address below, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the land records of the Town of Lyndon.
3. Respondent shall send payments required by this Assurance 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
4. Any payment made by the Respondent pursuant to this Assurance is made to resolve the violation set forth in this Order. Respondent shall neither deduct nor attempt to deduct any payment, penalty, contribution or other expenditure required by this Order from Respondent state or federal taxes.
 5. Within ninety (90) days of the date on which this Assurance is signed by the Superior Court, Environmental Division, Respondent shall file a complete Act 250 amendment application with the District Commission for the placement of fill in this location and any other changes Respondent wishes to make to the Project.
 6. If the District Commission denies Respondent's permit amendment application, and said denial becomes final, then Respondent shall remove all unpermitted

improvements, including but not limited to the fill in the northeast portion of the Project tract, and shall restore the tract to its permitted state within sixty (60) days of the date on which said denial becomes final.

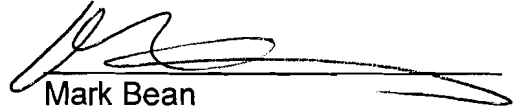
7. The Land Use Panel reserves the right to grant reasonable extensions of deadlines in this Assurance for good cause.
8. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violation set forth herein above.
9. 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.
10. 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.
11. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for any 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 herein.
12. 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 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.
13. 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.
14. 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 Lyndonville, Vermont, this 15th day of October, 2010.


Mark Bean

STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 15 day of October, 2010,
personally appeared MARK BEAN, signer 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.


Before me,


Notary Public
My Commission Expires 2/10/2011

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

DATED in Montpelier, Vermont, this 18th day of October, 2010.

LAND USE PANEL

By: 
Peter F. Young, Jr., Chair