

STATE OF VERMONT
ENVIRONMENTAL COURT

FILED
APR 14 2008
VERMONT
ENVIRONMENTAL COURT

Vermont Natural Resources Board)
Land Use Panel,)
Petitioner,)
v.)
Capitol City Auto Mart, Inc.,)
Respondent.)

Docket # 65-4-08 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on April 7, 2008, and filed with the Environmental Court on April 11, 2008, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 14th day of April 2008.

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin,
Environmental Judge

**STATE OF VERMONT
ENVIRONMENTAL COURT**

**LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner**

v.

Docket No.

**CAPITOL CITY AUTO MART, INC.
Respondent**

VIOLATION

Display parking of vehicles beyond the permitted display area, and failure to install a fence in accordance with the approved plans, in violation of Land Use Permit #5W0836, as amended, and without a permit amendment in violation of 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 Capitol City Auto Mart, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND VIOLATION

1. Respondent owns and operates an automobile dealership on U.S. Route 2 in Berlin, Vermont (the Project). The Project as permitted involves a tract of land approximately 2.7 acres in size, previously owned by Twin City Subaru, Inc. and described in Book 52, Page 85 of the land records of the Town of Berlin.
2. The Project is subject to Land Use Permit #5W0836, issued to Twin City Subaru, Inc. on October 3, 1985, as amended (the Permit).
3. Condition 1 of Land Use Permit #5W0836 provides that:

The project shall be completed as set forth in Findings of Fact and Conclusions of Law 5W0836, in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit.
4. Land Use Permit Amendment #5W0836-1 was issued to Twin City Subaru, Inc. on May 18, 2001, authorizing, in relevant part, the construction of an additional 26-car display parking lot on the west side of the dealership

building. Condition 1 of Land Use Permit Amendment #5W0836-1 provides that:

All conditions of Land Use Permit #5W0836 are in full force and effect except as amended herein.

5. Condition 4 of Land Use Permit Amendment #5W0836-1 provides that:

No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.

6. The permitted display parking areas are shown on Exhibit 1 of Land Use Permit #5W0836-1, and consist of paved areas in the front and to both sides of the dealership building. On December 13, 2006 RHTL Partners, LLC purchased the Property upon which the Project is located from Twin City Subaru, Inc. and leased it to Respondent who, on or before June 13, 2007, parked display vehicles on the grass between the pavement and U.S. Route 2.
7. The Permit, including the landscape plan approved in Land Use Permit #5W0836, requires the installation of a low fence in certain locations, including in the area between the approved display parking lot and U.S. Route 2.
8. The fence was not in place when the Property was purchased by RHTL Partners, LLC and leased to Respondent; and is not in place as of this date.
9. In November or December 2007, Respondent moved the vehicles from the unauthorized area and onto a neighboring parcel of land.
10. Respondent has informed the District Coordinator that it intends to apply for a permit amendment to authorize the new display parking area and revised landscaping plan.
11. The Panel has alleged that Respondent violated the Permit and Rule 34(A) by parking vehicles for display outside of the approved area, and by failing to install the required fence, without a permit amendment.

AGREEMENT

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

- A. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$675.00 U.S.**

Dollars, for the violation noted herein. Respondent shall make said payment by check or money order payable to the "Treasurer, State of Vermont" and shall send it to:

Denise Wheeler, Business Manager
Natural Resources Board, Land Use Panel
National Life Records Center
Montpelier, Vermont 05620-3201

- B. Any payment by the Respondent pursuant to this Assurance is made to resolve the violation set forth herein and shall not be considered to be a charitable contribution or business expense under federal or state tax laws.
- C. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall file with the District 5 Environmental Commission a complete permit amendment application to address the display parking, landscaping, and any other project changes Respondent wishes to make or retain.
- D. If the Respondent fails to file such application in compliance with the preceding paragraph, or files a complete and timely application and the Commission denies said application, the Respondent shall restore the project site to its permitted condition. Said restoration shall be completed within one hundred eighty (180) days of the deadline in the preceding paragraph for filing an application if Respondent fails to file a complete application by that date, or within one hundred eighty (180) days of the permit denial if Respondent files an application in accordance with the preceding paragraph.
- E. Respondent shall comply with all terms and conditions of Land Use Permit #5W0836, as amended.
- F. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violation set forth herein above.
- G. 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.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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.

- I. Pursuant to 10 V.S.A. § 8007(d), Respondent shall not be liable for 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 above.
- J. In the event of a future violation by Respondent, the facts agreed to herein shall constitute a violation for purposes of 10 V.S.A. § 8010.
- K. 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 Environmental Court. 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.
- L. 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.
- M. 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.


Capitol City Auto Mart, Inc.

By: _____


Abel Toll

BE IT REMEMBERED that on the 7th day of April, 2008, personally appeared Abel Toll, signer of the foregoing written 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 Capitol City Auto Mart, Inc.

Before me: _____


Edward R. Zuccaro
Notary Public

Notary Public:

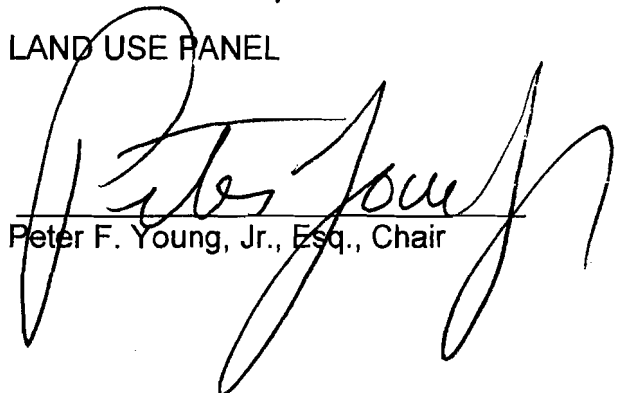
Commission Expires:

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

DATED in Montpelier, Vermont, this 8th day of APRIL, 2008.

LAND USE PANEL

By:


Peter F. Young, Jr., Esq., Chair