

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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

v.

Docket No.

**RICHARD J. DOWNING,
Respondent**

VIOLATION

Construction of a 24-foot by 9-foot, illuminated, free-standing cross on property subject to Land Use Permit # 7C0600-10 without a land use permit amendment, in violation of Land Use Permit # 7C0600-10 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 Richard J. Downing (Respondent) hereby enter into this Assurance of Discontinuance (AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND VIOLATION

1. Respondent owns land in Lyndon, Vermont that is subject to Land Use Permit # 7C0600-10 (the Permit) and referenced in deeds recorded in Book 141, Page 196 of the Lyndon, Vermont land records.
2. The Permit, issued on June 8, 2005, authorizes construction of a 2,344-square-foot chapel, with an access drive, parking area and associated utilities (the Project).
3. At some time before January 5, 2008, Respondent constructed a 24-foot by 9-foot, illuminated, free-standing cross on the Project tract.
4. On March 6, 2008, the District 7 Environmental Coordinator issued a Jurisdictional Opinion (JO) in which she concluded that the construction of the cross constitutes a material change to the permitted project.
5. No appeal has been taken from said JO.
6. To date, Respondent has not obtained a permit amendment for said construction. Said failure to obtain a permit amendment violates the Permit and Act 250 Rule 34(A).

AGREEMENT

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

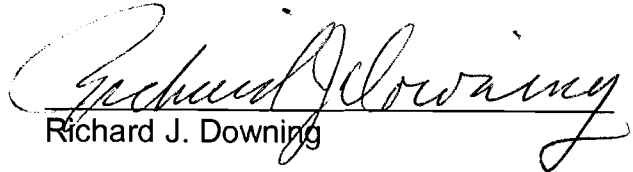
- A. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$1425.00 U.S. Dollars, for the violation noted herein. Respondent shall make 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, National Life Drive
Montpelier, Vermont 05620-3201

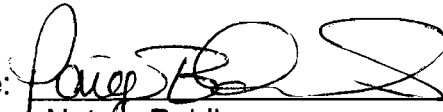
- B. Any payment by the Respondent pursuant to this Assurance is made to resolve the violation set forth herein and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- C. No later than ten (10) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall cease illuminating the cross, pending further order of the Court or District Commission.
- D. No later than ninety (90) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall either: 1) file with the District 7 Environmental Commission a complete permit amendment application to address the construction of the cross and any other project changes Respondent wishes to make or retain; or 2) remove all unpermitted improvements from the project tract, including but not limited to the illuminated cross, and shall restore the project tract to its permitted state.
- E. If Respondent's permit amendment application is denied by the Commission, and said permit denial becomes final, then Respondent shall remove all unpermitted improvements from the project tract, including but not limited to the illuminated cross, and shall restore the project tract to its permitted state. Said removal shall be completed within sixty (60) days from the date the permit denial becomes final.
- F. Respondent shall comply with all terms and conditions of Land Use Permit # 7C0600-10, as amended.

SIGNATURES

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


Richard J. Downing

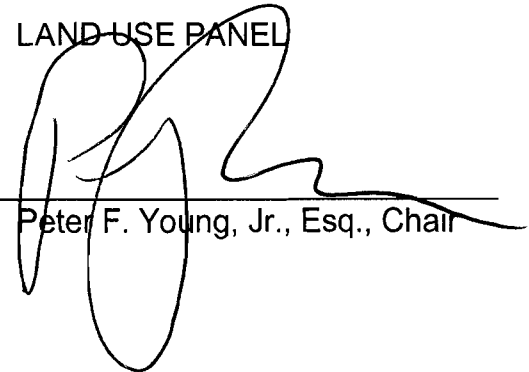
BE IT REMEMBERED that on the 28th day of July, 2008, personally appeared Richard J. Downing, signer of the foregoing written instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed.

Before me: 
Notary Public: _____ Commission Expires: 2/10/11

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

DATED in Montpelier, Vermont, this 30th day of July, 2008.

LAND-USE PANEL

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