

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

Latke Vermont Realty Trust and Adam Hetnarski
Respondents

VIOLATION

Clearing a closed road and other incursions into a protected deer wintering area

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Latke Vermont Realty Trust and Adam Hetnarski (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On October 31, 2005, the District 5 Environmental Commission issued Land Use Permit #5L1018-9 to Richard G. Warren and J. Ruby Warren.

2. Condition 2 of the said permit reads:

The approved house site is located on the edge of the buffer area for the identified deer wintering area up-slope of the home. Existing trees and brush between the house site and the access road are within the buffer and shall be left undisturbed.

3. Condition 3 of the said permit reads:

Re-planting of the original roadway has been completed as required in Condition #15 of Land Use Permit #5L1018-1.

4. Condition 15 of Land Use Permit #5L1018-1 reads:

The permittees shall reclaim the abandoned upper portion of the project road and replant it with balsam and red spruce to attain natural vegetation similar to the surrounding softwood forest. The District Coordinator or District Wildlife Biologist will then inspect the restoration.

5. At some time following the issuance of Land Use Permit #5L1018-9, the lands subject to said Permit were transferred to Respondents.

6. The existing trees and brush between the house site and the access road have been thinned in violation of Condition 2 of Land Use Permit #5L1018-9 and other construction and incursions have occurred in this area, including the storage of equipment .

7. A portion of the original roadway has been cleared in violation of Condition 15 of Land Use Permit #5L1018-1.

8. As owner of the lands subject to Land Use Permit #5L1018-9, Respondents are liable for violations of the said Permit.

AGREEMENT

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

- A. Respondents shall comply with Land Use Permit series #5L1018.
- B. On or before August 31, 2009, Respondents shall remove the storage shed, the backhoe and the zip line from the woods to the northwest of the house site.
- C. Respondents shall allowed the so-called "old road," the area of the woods to the northwest of the house site which has been thinned, and the clearing to provide access to the storage shed to regenerate as forested land.
- D. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of One Thousand (\$1000.00) Dollars (U.S.), for the violations noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and 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

Any payment by Respondents pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.

- E. 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.
- F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to Respondents.
- G. 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.
- H. Pursuant to 10 V.S.A. §8007(d), Respondents shall not be liable for 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 Respondents fully comply with the agreements set forth above.
- I. 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.
- J. 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.
- K. 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. I have the authority to sign this Assurance of Discontinuance on behalf of Latke Vermont Realty Trust.

Dated at 6/24, 2009, this _____ day of _____, 2009.

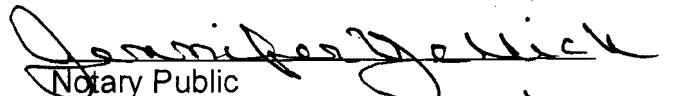
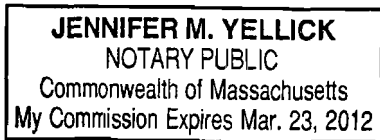


Adam Hetnarski,
Individually and for Latke Vermont
Realty Trust.

STATE OF Massachusetts
COUNTY OF Suffolk, ss.

BE IT REMEMBERED that on the 24 day of June, 2009,
personally appeared Adam Hetnarski, signer(s) of the foregoing instrument who is/are
known to me or who satisfactorily established his/her identity to me and acknowledged
the same to be his/her free act and deed.

Before me,

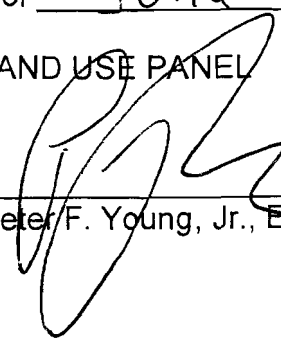


Notary Public
My Commission Expires: 3/23/2012

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

Dated in Montpelier, Vermont, this 24th day of June, 2009.

LAND USE PANEL

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