

**STATE OF VERMONT
ENVIRONMENTAL COURT**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

Docket No. 183-9-09 Vtec

ROBERT LIMOGGIO,
Respondent

ASSURANCE OF DISCONTINUANCE AND STIPULATED DISMISSAL ORDER

Pursuant to the provisions of 10 V.S.A. ' 8007, the Land Use Panel of the Natural Resources Board (Panel) and Robert Limoggio (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 an auto repair garage at 874 Route 100, in Wilmington, Vermont (the Project).
2. The Project is subject to Land Use Permit #2W0607 (the Permit). Condition 1 of the Permit provides that:

The project shall be completed as set forth in the Findings of Fact and Conclusions of Law #2W0607, 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. No changes shall be made in the project without the written approval of the District Environmental Commission.
3. Respondent purchased the Project tract subject to the Permit.
4. Respondent has stored vehicles near the garage on the Project tract for periods of time longer than three months. The Panel believes that said vehicle storage constitutes a material change to the projected authorized by the Permit. Respondent believes that this vehicle storage is authorized by the Permit.
5. Part of the garage on the Project site does not appear on the plans approved with the Permit. The Panel believes that this is an addition that constitutes a material change to the permitted project. Respondent believes that this part of the garage was in existence in 1984 when the Permit was issued, and that it is

authorized by the Permit.

6. To date, Respondent has not applied for a permit amendment.
7. On or about September 15, 2009, the Panel served an Administrative Order upon Respondent for the unauthorized construction of an addition onto the auto repair garage authorized by Land Use Permit #2W0607, and the unauthorized storage of vehicles on the project site, without a land use permit amendment in violation of Land Use Permit #2W0607 and Act 250 Rule 34(A).
8. Respondent filed a hearing request on the Administrative Order with the Environmental Court on or about September 17, 2009. The matter was assigned Docket No. 183-9-09 Vtec.
9. On or about December 16, 2009, the Panel filed a Motion to Amend the Caption in that matter.

AGREEMENT

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

- A. The environmental enforcement action on the Panel's Administrative Order, Docket No. 183-9-09 Vtec, shall be dismissed.
- B. 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 **\$1,250.00** 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
- C. After this Assurance is signed by the Environmental Court, the Panel shall file a notice of this Assurance for recording in the land records of the Town of Wilmington.
- D. No later than fifteen (15) days of the date on which this Assurance is signed by the Court, the Respondent shall forward payment in the amount of Ten Dollars (\$10.00), by check made payable to the Town of Wilmington, to the Land Use

Panel at the address listed above for the purpose of paying the recording fee.

- E. 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.
- F. No later than sixty (60) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall have filed with the District 2 Environmental Commission a complete permit amendment application to address the existing addition, placement of vehicles, and any other project changes Respondent wishes to make or retain, unless the Panel grants an extension of this time. The Panel may grant reasonable extensions as appropriate, provided that Respondent is proceeding in good faith and with due diligence, including extensions for delays that are beyond the Respondent's control.
- G. If the Respondent fails to file a timely and complete application in compliance with the preceding paragraph, or the application is denied and said denial becomes final, the Respondent shall restore the project site to its permitted condition, by removing the addition and removing the vehicles from the project site. 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 any final permit denial.
- H. Respondent shall comply with all terms and conditions of Land Use Permit #2W0607, as amended.
- I. 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.
- J. 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.
- K. 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.
- L. 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.

- M. 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.
- N. 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.
- O. 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 NEW HYDE PARK, New York, this 12 day of January, 2010.


Robert Limoggio

BE IT REMEMBERED that on the 12th day of January, 2010, personally appeared Robert Limoggio, 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.

Dhankumar Singh
Notary Public, State of New York
NO. 01S16050654
Qualified in Nassau County
Commission Expires March 7, 2011

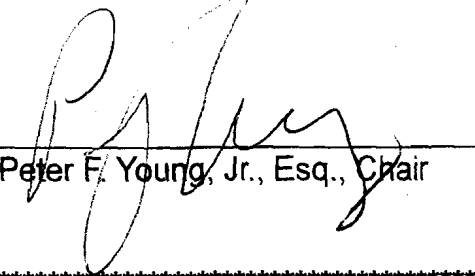
Before me: 
Notary Public

Commission Expires:

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

DATED in Montpelier, Vermont, this 14th day of January, 2010.

LAND USE PANEL

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

ORDER

It is SO ORDERED.

This matter is hereby DISMISSED.

DATED at Berlin, Vermont, this _____ day of _____, 2010.

VERMONT ENVIRONMENTAL COURT

The Hon. Thomas S. Durkin,
Presiding Judge