

_____)
)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
)
 v.)
)
LYNDON INSTITUTE, INC.,)
 Respondent)
 _____)

ASSURANCE OF DISCONTINUANCE

VIOLATIONS

- I. Failure to obtain a Land Use Permit Amendment prior to the construction of improvements in violation of Condition No. 1 of Land Use Permit #7C0667 and Act 250 Rule 34 (A).
- II. Discharging regulated stormwater runoff without the appropriate coverage under General Permit #3-9015 in violation of the Vermont Environmental Protection Rules Chapter 18.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Lyndon Institute, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- 1. Respondent owns an approximately 140-acre parcel of land on 64 Campus Lane off of College Hill Road in Lyndon, Vermont, described in Book 45, Page 465 of the Town of Lyndon land records (the Project tract).
 - I.
 - 2. The Project tract is subject to Land Use Permit #7C0667 (the Permit) as amended.
 - 3. Condition No. 1 of the Permit states in relevant part: “No changes shall be made in the project without the written approval of the District Environmental Commission.”
 - 4. On August 11, 2009, Respondent applied to the District 8 Environmental Commission for an amendment to the Permit to allow the removal of two existing classroom buildings, the construction of a new three-story residence hall, the

redevelopment of approximately 11,500 square feet of parking, and the construction of approximately 3,500 square feet of additional parking and associated improvements (the Dormitory Project).

5. On August 18, 2009, Assistant District Coordinator, Amy Rast, issued a Jurisdictional Opinion in the form of a Project Review Sheet (the JO). The JO found that the Dormitory Project "is a material change to the existing permit pursuant to Act 250 Rule 2(C)(6)" and required an Act 250 Permit.
6. On November 18, 2009, Environmental Enforcement Officer Reg Smith visited the project tract and became aware that Respondent had begun construction on the Dormitory Project approximately two weeks prior.
7. On December 8, 2009, the District 7 Environmental Commission (the Commission) issued the Land Use Permit Amendment #7C0667-7, authorizing the Dormitory Project.
8. Respondent violated Condition No. 1 of the Permit by removing the two existing buildings and beginning construction on the Dormitory Project prior to obtaining an amendment to the Permit.
9. Respondent, by commencing construction on the Dormitory Project, has created a material change to the development
10. Respondent has violated Act 250 Rule 34 (A) by failing to obtain the required permit amendment to the Permit for a material change prior to beginning the Dormitory Project.

II.

11. On July 28, 2009, Respondent applied to the VT Department of Environmental Conservation's (DEC) Water Quality Division for authorization to discharge regulated stormwater runoff from an impervious surface pursuant to General Permit #3-9015.
12. At least as early as November 18, 2009, Respondent constructed impervious surface with the intent to discharge regulated stormwater without having obtained the required coverage under General Permit #3-9015.
13. On December 1, 2009, DEC issued the Respondent Stormwater Permit No. 4327-9015.2 authorizing discharge from the impervious surface of the Dormitory Project under General Permit #3-9015.
14. Respondent violated Chapter 18 of the Environmental Protection Rules by discharging regulated stormwater runoff without the appropriate coverage under General Permit #3-9015.

AGREEMENT

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

- A. Respondent shall abide by Land Use Permit #7C0667 as amended and by Stormwater Permit No. 4327-9015.2.
- B. Within thirty days of the date on which this Assurance is signed by the Environmental Court, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Seven Thousand One Hundred Twenty-Five Dollars (7,125.00) (U.S.) for the violations noted herein. Respondent shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded 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

- C. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth herein and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- D. A notice of this Assurance shall be filed in the land records of the municipality where this project is located within thirty days of the date on which this Assurance is signed by the Environmental Court. Within fifteen 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 municipality in question,** to the Land Use Panel at the address listed above for the purpose of paying the recording fee.
- 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 violation set forth herein above.
- F. 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 applicable to the Respondent.
- 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), 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 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.

Dated at Lyndonville, Vermont, this 30 day of June, 2010.

LYNDON INSTITUTE, INC.

By:



STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 30th day of June, 2010, personally appeared Kristen Lepine as the duly authorized agent of LYNDON INSTITUTE, INC., signer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be the free act and deed of LYNDON INSTITUTE, INC. and that he/she has the authority to contract on behalf of LYNDON INSTITUTE, INC. and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Michelle Maccaulos

Notary Public

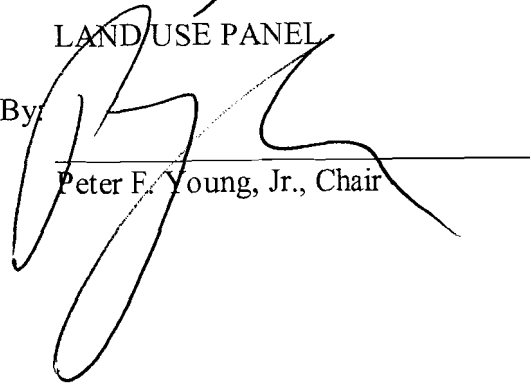
My Commission Expires: 2/10/2011

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

Dated in Montpelier, Vermont, this 6TH day of July, 2010.

LAND USE PANEL

By:



Peter F. Young, Jr., Chair