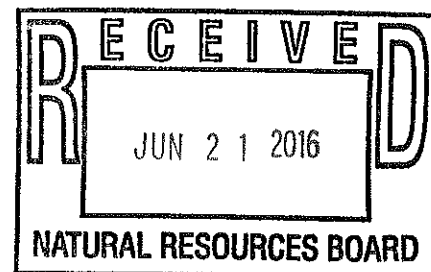


STATE OF VERMONT  
SUPERIOR COURT – ENVIRONMENTAL DIVISION



THE NATURAL RESOURCES )  
BOARD, )  
Petitioner, )  
 )  
v. )  
 )  
Kenneth & Sherilyn Pyden, )  
Respondents. )  
 )

Docket No.

**ASSURANCE OF  
DISCONTINUANCE**

**VIOLATIONS**

- Failure to comply with Conditions 2 and 8 of Land Use Permit 7R0226-7.
- Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A).
- Section 1-303(a)(5) of the Vermont Wastewater System and Potable Water Supply Rules.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Kenneth & Sherilyn Pyden (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondents own approximately 6.1 acres in Westmore, Vermont (the "Subject Property") that are subject to Land Use Permit series 7R0226.

**Material Change Violation and Violation of Condition 2:**

2. Condition 2 of Land Use Permit Amendment 7R0226-7 (the "Permit") states,  
  
"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."  
  
3. During the summer of 2014 Respondents operated a commercial cabin rental service, utilizing four historic girls' camp cabins on the Subject Property. No permit or permit amendment authorizes such a use.  
  
4. Respondents failed to comply with Condition 2 of Land Use Permit 7R0226-7.  
  
5. Act 250 Rule 34(A) states, in relevant part, that:  
"An amendment shall be required for any material change to a permitted development or subdivision, or any administrative change in the terms and conditions

of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.”

6. Act 250 Rule 2(C)(6) defines “material change” as:  
“any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10).”
7. The activities noted above constitute a material change to the permitted project in violation of the Permit and Act 250 Rule 34(A).

Buffer Violation and Violation of Condition 8:

8. Condition 8 of Land Use Permit Amendment 7R0226-7 (the “Permit”) states,  
“The existing wooded buffer along Lake Willoughby shall remain undisturbed except that brush may be cleared to create foot paths to the shoreline. There shall be no earth disturbance within 100 feet of the shoreline.”
9. In the summer of 2014, Respondents cleared all woody growth from the uppermost 25 to 50 feet of the existing wooded buffer on the Subject Property as defined in 7R0226-7 (the “Existing Wooded Buffer”), disturbing a land area of approximately 4,075 square feet.
10. An inspection by the Board’s Permit Compliance Officer on May 11, 2015, revealed that the Respondents had commenced construction of a low retaining wall within the cleared portion of the existing wooded buffer. The wall in progress appeared to be constructed primarily of treated and composite decking driven lengthwise into the ground. Landscape fabric had been placed on the uphill side of the wall. The Respondents stated that they had planned to place soil behind the wall to utilize the area for garden and landscape plantings.
11. The activities noted above constitute a material change to the permitted project in violation of the Permit and Act 250 Rule 34(A).
12. By May 21, 2016, Respondents had removed the retaining wall and all associated fill or construction materials from the Existing Wooded Buffer.
13. On May 21 and 22, 2016, Respondents planted 45 trees on the Subject Property in an effort to mitigate damage to the Existing Wooded Buffer. The planting objective was to enable the formation of a future overstory of mixed conifer - northern hardwood forest on the Subject Property. The trees planted were locally-sourced native balsam fir (*Abies balsamea*), northern white cedar (*Thuja occidentalis*), red spruce (*Picea rubens*) and white pine (*Pinus strobus*), ranging from 18 inches to 9 feet in height. The new plantings were spaced approximately 12 feet apart.

Wastewater Violations:

14. Section 1-303(a)(5) of the Vermont Wastewater System and Potable Water Supply Rules reads in relevant part:

“§1-303 Permit Required

(a) Except as provided in this section and in section 1-304 of this Subchapter, no person shall take or cause to be taken any of the following actions without first obtaining a permit or permit amendment from the Secretary:”

“(5) the modification of an existing building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system”

15. Section 1-201(a)(63) of the Vermont Wastewater System and Potable Water Supply Rules defines “wastewater system:”

**Wastewater system** - means any piping, pumping, treatment or disposal system used for the conveyance and treatment of sanitary waste or used water, including, but not limited to, carriage water, shower and wash water, and process wastewater. This definition does not include any internal piping or plumbing, except for mechanical systems, such as pump stations and storage tanks or toilets, that are located inside a building or structure and that are integral to the operation of a wastewater system. This definition also does not include wastewater systems that are used exclusively for the treatment and disposal of animal manure. For the purposes of these Rules, “wastewater system” refers to a soil-based disposal system of less than 6,500 gallons per day, or a sewerage connection of any size.

16. In or around 2011, Respondents added a shower to one of the four girls’ camp cabins. The shower was constructed with an on-demand hot water system, and drained to a gray water wastewater system under the lawn outside the cabin.

17. To date, Respondent has not applied to the Vermont Drinking Water and Groundwater Protection Division for a permit to authorize the aforementioned wastewater system.

18. On November 23, 2015, Respondents provided photographic evidence to the Board that the shower and plumbing in the northernmost cabin on the property has been completely disconnected and removed from the structure. The Board has provided this evidence to the Vermont Drinking Water and Groundwater Protection Division, St. Johnsbury Regional Office.

**AGREEMENT**

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

19. Respondent shall immediately cease any and all commercial operations associated with the

historic girls' camp cabins.

20. Respondents shall maintain the area identified in green on Exhibit A as a natural, undisturbed forested buffer. The term "undisturbed" means that there shall be no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing or mowing. Respondents may continue to maintain the existing pedestrian access path for pedestrian travel from the house to the lake. Said pedestrian access path shall not exceed four feet in width, and shall not remove trees beyond a six-foot width. In addition, Respondents may continue to manage woody vegetation within the existing access right-of-way that runs across the Subject Property parallel to the lake at no greater than 15 feet in width, as depicted on the plan entitled, *Proposed Subdivision, Camp Songadeewin, Willoughby Lake, VT, 156.5 acres*, which is an exhibit to Land Use Permit 7R0226.
21. Respondents shall water the new tree plantings as needed during first year of establishment. Other than maintenance to ensure the health or survival of the plants (e.g., watering and staking), no maintenance, including mowing, cutting, brush hogging or pruning of any vegetation, shall be permitted within the Existing Wooded Buffer, except within the existing pedestrian access path and the existing access right-of-way as outlined in paragraph 20.
22. By no later than October 15, 2017, dead or dying plants shall be replaced in accordance with the specifications outlined in Paragraph 13.
23. On or before June 15, 2016, Respondent shall contact the Board to arrange a site visit. The site visit may be attended by the Respondents or their representative, and the Board's Enforcement Officer and possibly other Board invitees (e.g. the District Coordinator or Agency of Natural Resources staff, or both), and shall occur on or before August 15, 2016, to confirm that all of the terms of this Restoration Plan have been fully implemented. Respondent shall promptly address deficiencies identified during the site visit, if any. In such case, Respondent shall contact the Board's Enforcement Officer when the deficiencies have been remedied; and shall participate in an additional site visit, at a mutually decided time, to confirm completion of the remedy work (or shall permit access to the property by the Board's Enforcement Officer (and/or his designee(s)) for this purpose.
24. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
  - i. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$5,500**, for the violations noted herein, by good check made payable to the "State of Vermont."

- ii. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,934.94**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont."
  - iii. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Westmore land records, by good check made payable to the "Town of Westmore, Vermont."
25. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board  
Dewey Building  
1 National Life Drive  
Montpelier, Vermont 05620-3201
26. Respondents are jointly and severally liable for all obligations under this Assurance.
27. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
28. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
29. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
30. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, 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.
31. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.
32. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either

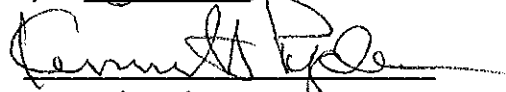
Respondent's control.

33. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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 Superior Court, Environmental Division.
34. 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.
35. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
36. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

**SIGNATURES**

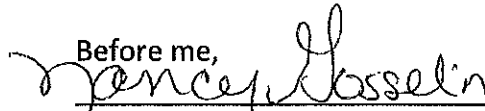
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Derby, Vermont, this 20 day of June, 2016.

  
Kenneth Pyden

STATE OF VERMONT  
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 20 day of June, 2016, personally appeared Kenneth Pyden, signer of the foregoing 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  
My Commission Expires: 2-10-2019

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

Dated at Derby, Vermont, this 20<sup>th</sup> day of June, 2016.

  
Sherilyn Pyden

STATE OF VERMONT  
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 20 day of June, 2016, personally appeared Sherilyn Pyden, signer of the foregoing instrument who is known to me or who satisfactorily established her identity to me and acknowledged the same to be her free act and deed.

Before me,

  
Nancy Gosselin  
Notary Public  
My Commission Expires: 2-10-2019

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

Dated in Montpelier, Vermont, this 26 day of July, 2016.

Natural Resources Board

By:

  
Diane B. Snelling, Chair