

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

Thetford Academy
Respondent

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Thetford Academy, a Vermont educational corporation with its principal place of business in Thetford , Vermont (Respondent) hereby enter into this Assurance of Discontinuance (Assurance) and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. The Respondent owns land in the Town of Thetford, Vermont, identified in Book 31, Page 240; Book 35, Page 492; Book 36, Page 460; and Book 38, Pages 72 and 249 of the Land Records of the Town of Thetford, Vermont.
2. On March 27, 2009 the District 3 Environmental Commission issued Land Use Permit # 3R0238-5 (Permit) to the Respondent. The Permit authorizes the Respondent to "construct an 18,500-square foot, Phase I addition to the existing Anderson Hall building, a 1,700-square foot addition to the renovation of the existing Ag/Science building, expand the existing in-ground sewage disposal system and construct new water supplies, storage and pumping facilities. The project is located at the intersection of VT Route 113 and Academy Road in Thetford." (Project)
3. Condition 1 of the Permit states:

The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #3R0238-5, (b) the plans and exhibits on file with the District Environmental Commission , and (c) conditions of this permit.
4. Condition 2 of 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 District

Environmental Commission, whichever is appropriate under the Act 250 Rules.

5. Condition 15 of the permit states, in pertinent part:

The permittee shall maintain a 50-foot undisturbed, naturally vegetated unmowed buffer strip from the top on the bank of all watercourses/wetlands on the project and any disturbed areas.

6. The expansion of the existing in-ground wastewater system includes a leachfield system which is proposed for construction approximately 1400 feet easterly and down slope of the present system. Due to the soil classifications on the property, the only suitable soils for the expansion are located down a steep embankment in a heavily wooded area. The only road that presently goes to this site is the existing woods road.
7. The plans for the construction of the leachfield system do not show the construction or use of any road other than the existing woods road.
8. In the process of prepping the site for the construction of the leachfield system, the excavating contractor hired to complete the construction of the leachfield determined that it was easier to move equipment into the site area via an improved Godfrey Road on the backside of the property.
9. In the process of the constructing improvements to Godfrey Road, the excavating contractor removed an existing bridge over Zebedee Brook and installed a culvert. This construction does not appear on any of the site plans approved by the District Commission.
10. By constructing improvements to Godfrey Road and installing a culvert in Zebedee Brook, the Respondent violated Conditions 1, 2 and 15 of the Permit.

II

11. Condition 11 of the Permit states:

Prior to the commencement of any site work, the permittee shall conduct a pre-construction conference on the site with representatives of the District Environmental Commission, the Agency of Natural Resources, and the contractor to review the details of the erosion control plan. Prior to the construction of the approved work, the permittee shall complete the following; a) construction limits shall be clearly delineated with flogging or snowfencing; b) diversion ditches shall be placed on the uphill limits of the construction area, and; c) temporary siltation controls shall be placed on the

downhill limits of the construction. Immediately following the above, the permanent drainage system and/or roads shall be installed after which normal construction can begin.

12. The Respondent did not conduct a pre-construction conference on the site with representatives of the District Environmental Commission prior to the commencement of any site work. Had the pre-construction conference occurred before the commencement of sitework, the violation might have been avoided.
13. By constructing improvements to Godfrey Road and installing a culvert in Zebedee Brook without first having a pre-construction conference on the site with representatives of the District Environmental Commission, the Respondent violated Condition 11 of the Permit.
14. Respondent stopped work upon the discovery of the above-noted violations, self-reported such violations to the Land Use Panel, and has since conducted a pre-construction conference with representatives of the District Environmental Commission on or about June 16, 2009.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series #3R0238.
- B. Within **thirty** (30) days of the date on which this Assurance is signed, the Respondent shall remove the culvert in Zebedee Brook and restore the stream and streambank to its natural condition. Subsequent authorization to install a stream crossing at this location may be obtained by way of an administrative Act 250 permit amendment provided that Respondent obtains prior approval from the Agency of Natural Resources River Management Program and otherwise complies with applicable federal and state laws. The removal shall occur as follows: (1) install sand bag check dams shall be upstream and downstream to isolate the work area; (2) use a pump to bypass the stream flow around the work area during the excavation; (3) remove the culvert and fill without disturbing the original banks and streambed; seed and mulch the banks; (4) pump any water out of the excavation area and discharge it upland so that it infiltrates or is filtered before reentering stream flow; (5) remove the sandbag check dams.
- C. Before removing the culvert, the Respondent shall comply with all federal and state requirements and obtain any necessary permits for the stream alteration.

- D. Within 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 **Nine Thousand Seventy-five Dollars** (\$9,075.00 (U.S)), for the violation noted herein. Respondents 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

- E. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- F. 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.
- G. 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.
- H. 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.
- I. 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 Respondents fully comply with the agreements set forth above.
- J. 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.

- K. 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.
- L. 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 ~~Thetford~~^{Hartford}, Vermont, this 10TH day of AUGUST, 2009.

Thetford Academy
By: [Signature] ^{Business Manager}
Duly Authorized Representative

STATE OF VERMONT
COUNTY OF ~~ORANGE~~^{WINDSOR} ss.

BE IT REMEMBERED that on the 10TH day of AUGUST, 2009, personally appeared Keith R. Mumick, 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 and the free act and deed of Thetford Academy and that he has the authority to sign this Assurance on behalf of Thetford Academy.

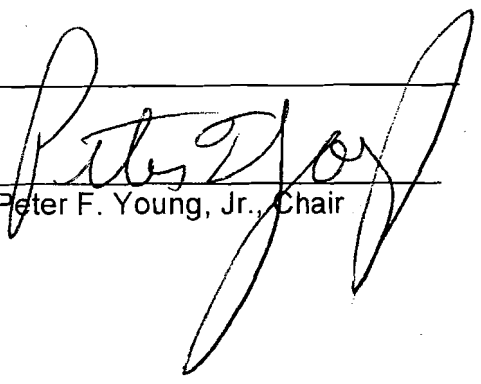
Before me,
[Signature]
Notary Public
My Commission
expires 2/10/2011

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

Dated in Montpelier, Vermont, this 1TH day of AUGUST, 2009.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair

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