

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)	
Petitioner,)	
)	
v.)	Docket # 38-3-18 Vtec
)	
Fox Hill Realty Trust and Janis Comb,)	
Respondents.)	

ORDER

The Assurance of Discontinuance signed by the Respondent on February 15, 2018, and filed with the Superior Court, Environmental Division, on March 28, 2018, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 28th day of March 2018.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Fox Hill Realty Trust and
Janis Comb,
Respondents

VIOLATIONS

Commencement of development without a Land Use Permit. 10 V.S.A. § 6081(a).

Wastewater System and Potable Water Supply Rule (WSPWSR) §1-303(a) and Wastewater System and Potable Water Supply Permit - WW-5-5206, Condition 1.4 and 1.5: Construction of new structures without a permit

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and Fox Hill Realty Trust (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 approximately 315 acres of land and improvements located at 823 Fox Lot Road in Johnson, Vermont (the "Project Tract").
2. The Project Tract currently includes three residential homes (Building 1, Building 2, and Building 3), an accessory apartment (attached to Building 1), a guest house (near Building 3), an art studio with a bedroom, a workshop, three cabins, three composting toilets, two yurts, three sheds, one sauna, and a "meditation hut."
3. Of the 315 acres at the Project Tract only a portion of the land was used in connection with any commercial development discussed in this Agreement. That area includes only one residential home (Building 1) which contains event space, one accessory apartment (attached to Building 1), two yurts, one cabin, one composting toilet, and a meditation hut.

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4. In 2005, the Respondent purchased the Project Tract and registered the name, "Dreaming Mountain Retreat Center" with the Vermont Secretary of State's Office, with a Principal Office Business Address located at the Project Tract.
5. On April 1, 2010, Respondent registered the name, "Dreaming Mountain LLC," with the Vermont Secretary of State's Office, with a Principal Office Business Address located at the Project Tract. The Business Description provided was "RENTALS." According to the Secretary's website, this business was dissolved on January 28, 2016.
6. From approximately 2009 through early 2014, Respondent operated a private commercial eco-retreat center on the Project Tract. The Respondent offered weekend retreats, meals, day-long events, seminars, trainings, classes, concerts, parties, and weddings within the commercial area on the Project Tract.
7. On July 19, 2009, ANR Permit Specialist John Miller issued a Project Review Sheet (PRS) to Respondent that advised that a Wastewater and Potable Water Supply Permit would be required to permit the construction of a 3-bedroom single family residence as the third residence on a 233-acre lot with an existing 3-bedroom single family residence and an existing 2-bedroom residence with a 1-bedroom apartment. The PRS included an Act 250 Jurisdictional Opinion that an Act 250 Land Use Permit would not be required for the proposed construction on the Project Tract, as the project was represented as purely residential, and therefore, did not constitute development under 10 V.S.A § 6001(3)(A)(ii).
8. Sometime between 2009 and 2011, Respondent constructed a home at 865 Fox Lot Road ("Building 3"). The Vermont Department of Environmental Conservation (DEC) permitted this home as a 2-bedroom single family residence under Wastewater Permit number WW-5-5206. The Wastewater Permit noted that the project was permitted on a property with an existing 2-bedroom residence having an attached 1-bedroom apartment ("Building 1") and an existing 3-bedroom single-family residence ("Building 2").
9. From 2011 through 2013, Respondent advertised rental opportunities on the parcel including: the entire property, Building 1, an apartment, rooms, two yurts, and other structures, on a nightly or weekly basis. Respondent also advertised that "rates for monthly or seasonal stays are negotiable."
10. On December 16, 2013, John Miller issued a second PRS to Respondent that advised that a Wastewater and Potable Water Supply Permit would be required to permit the change in use of a 4-bedroom single family residence to allow for

the lodging of guests, for weddings, vacation rentals, family reunions, etc. The PRS included an Act 250 Jurisdictional Opinion that an Act 250 Land Use Permit was required for the commercial development and activities then in place on the Project Tract, as the development and as-built activities constitute the construction of improvements for a commercial purpose pursuant to 10 V.S.A § 6001(3)(A)(ii). The Respondent did not appeal the Jurisdictional Opinion, and the decision became final.

11. On December 19, 2013, District 5 Coordinator Clancy DeSmet followed-up with a letter to Respondent, reiterating that a Land Use Permit is required, and requesting a complete permit application by no later than the week of January 20, 2014. The letter also reminded Respondent that the 2013 PRS requested that Respondent contact ANR and other state and local agencies about additional permitting.
12. By the end of February 2014, following repeated inquiries from Coordinator DeSmet, Respondent changed its website to indicate that the Dreaming Mountain retreat center had closed.
13. In the spring of 2015, a nonprofit organization, the Center for Mindful Learning (CML), took up residence at the Project Tract. CML offered a residential monastic program, provided mindfulness training, promoted an online mindfulness program in schools, offered guided meditations and courses, and organized day-long mindfulness retreats.
14. On January 12, 2016, a CML representative met with Coordinator DeSmet with regard to CML's activities on the Project Tract. Coordinator DeSmet informed that individual that an Act 250 Permit was required for CML's activities.
15. On April 25, 2016, the Board's Enforcement Officer inspected the Project Tract with the Respondent. During that inspection, the Enforcement Officer observed various improvements on the Project Tract including, but not limited to, one cabin, one composting toilet, two yurts, and a "meditation hut." These commercial structures and related activities were limited to the "Jurisdictional Area" identified on Exhibit A.
16. On August 18, 2016, a DEC Environmental Enforcement Officer visited the Project Tract and noted multiple structures had been constructed consistent with the Board's observations, and that the use of these structures for habitation required a wastewater permit.
17. Respondents have agreed to cease all commercial operations on the Project Tract and have agreed to vacate the Center for Mindful Learning from the property. Respondents have no proposed commercial use for the previous

commercial area of the Project Tract.

18. Based on the foregoing, the Respondents have commenced development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).
19. Based on the foregoing, the Respondents have constructed new structures without a permit in violation of WSPSR §1-303(a) and Wastewater System and Potable Water Supply Permit - WW-5-5206, Conditions 1.4 and 1.5.

AGREEMENT

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

- A. Respondents shall immediately cease any and all commercial operations and construction on the Project Tract unless and until a Land Use Permit is issued by the District Environmental Commission.
- B. Respondents shall comply with all Wastewater System and Potable Water Supply Rules and Wastewater System and Potable Water Supply Permits - WW-5-5206, WW-5-5206-1, and WW-5-5206-2. Based on Respondents' representations regarding the current use and operation of existing structures on the Project Tract, Respondents are not required to remove existing structures, however, Respondents' use, activity, or modification to existing buildings or structures shall comply with said Rules and Permits.
- C. No later than **30 days** from the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall have a survey conducted of the Tract of Land as described in **Exhibit A** as the "Act 250 Jurisdictional Area" and file that survey with the Land Records for the Town of Johnson, Vermont. As this area represents the extent of impacts from the previous commercial construction and operation, the Jurisdictional Area shall be subject to Act 250 jurisdiction and shall require a Land Use Permit prior to the continuation of any commercial operations regardless of whether additional construction has occurred. In addition, any material change, as defined by Act 250 Rule 2(C)(6), proposed within the Jurisdictional Area shall require a permit prior to construction or operation. The remaining portion of the Project Tract, as residential, non-commercial property, will not be subject to continuing Act 250 jurisdiction unless and until jurisdiction is independently triggered.
- D. 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:

1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$12,000.00 Dollars (U.S.)**, for the Act 250 violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$6,750.00 Dollars (U.S.)**, for the Agency of Natural Resources violations noted herein, by check made payable to the "State of Vermont."
 3. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,839.68 Dollars (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 4. the amount of **\$10.00 Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Johnson land records, by check made payable to the "Town of Johnson, Vermont."
- D. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
- E. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05620-3201
- F. Respondents are jointly and severally liable for all obligations under this Assurance.
- G. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- H. 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.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply

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with applicable state or local statutes, regulations or directives.

- J. 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.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
- L. 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.
- M. 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.
- N. 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.
- O. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- P. 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.

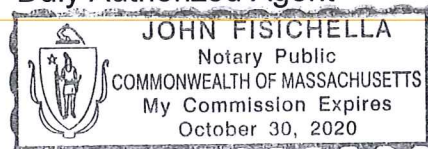
Dated at Manchester, ^{Mass.}~~Vermont~~, this 15th day of Feb., 2018.

Janis Comb
Janis Comb, Individually

Fox Hill Realty Trust

By Janis Comb
Duly Authorized Agent

^{Mass.}
STATE OF ~~VERMONT~~
COUNTY OF Essex, ss.



BE IT REMEMBERED that on the 15th day of Feb., 2018, personally appeared Janis Comb, individually and as the duly authorized agent of Fox Hill Realty Trust signer and sealer 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 Fox Hill Realty Trust and that he has the authority to contract on behalf of Fox Hill Realty Trust and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]
Notary Public

My Commission Expires:

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

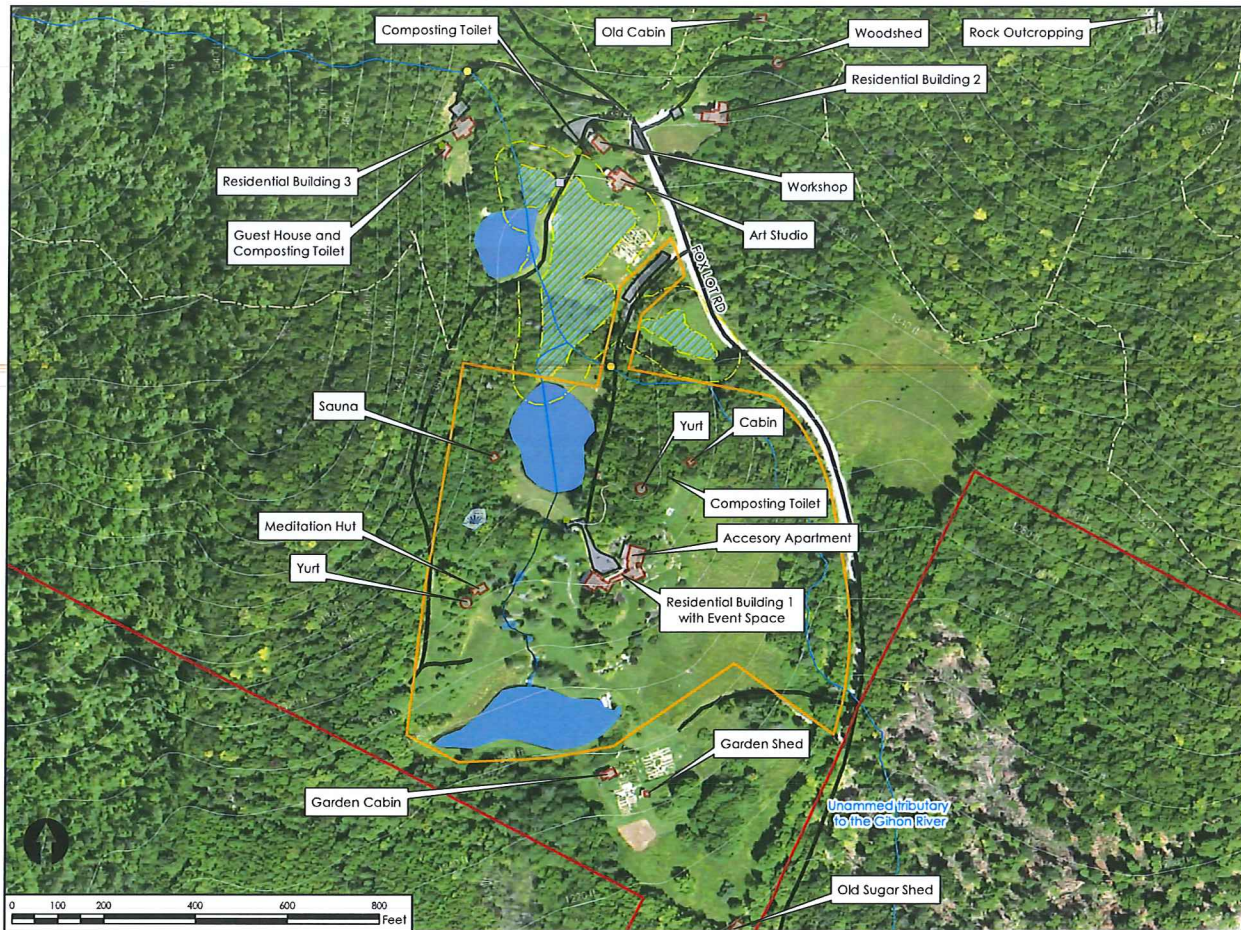
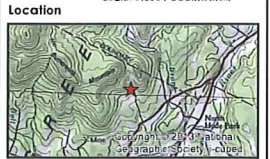
Dated in Montpelier, Vermont, this 28 day of March, 2018

Natural Resources Board

By:



Diane B. Snelting, Chair



- Legend**
- Act 250 Jurisdictional Area (15.6 ac)
 - Project Parcel (315+/- ac)
 - Solar Panel
 - Compost Pile
 - Culvert
 - Existing Trails
 - Man-Made Stream
 - VHD Stream
 - Existing Ponds
 - Existing Road
 - Existing Parking Area
 - Existing Building
 - TCE Wetland Assessment Buffer (50')
 - TCE Wetland Assessment
 - Class II
 - Contour (20')
 - State Significant Wetland*
 - State Class 3 Wetland*
 - State Wetland Advisory*
 - State RIE Species*
 - State Uncommon Species*
 - State Deer Wintering Area*
- *Label does not occur in map view.
- Sources: NAD Imagery (2014); Streams by VHD (2013); Tax Parcel Boundary compiled by VCGI; Contours by VCGI & CCRPC (various dates); VT Significant Wetland by AHE (2013); RIE Species and Natural Community by VT Fish & Wildlife (2015); Uncommon Species by VT Fish & Wildlife (2015); Deer Wintering Area by AHR (2011); All other layers by TCE (2016).
- Disclaimer: The accuracy of information presented is determined by its sources. TCE is not responsible for any errors or omissions that may exist. Questions of on-the-ground location can be resolved by site inspections and/or surveys by a registered surveyor. This map is not a replacement for surveyed information or engineering studies.

Comb Property
 823, 864, 865 Fox Lot Road
 Johnson, VT

Act 250 Jurisdictional Area Map

Project: 16-148
 Prepared By: ALD
 02/09/2018
 1 inch = 200 feet