

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,)
 Petitioner)
)
 v.)
)
 Gerald E. Parker, Jr.,)
 Respondent)

ASSURANCE OF
DISCONTINUANCE

VIOLATIONS

1. Failure to comply with Permit Conditions 1, 4, 5, and 6 of Land Use Permit 1R0732
2. Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A)
3. Failure to comply with Permit Conditions 5 and 15 of Land Use Permit 1R0732-1

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Gerald E. Parker, Jr. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. According to 2015 tax records, Respondent owns two parcels totaling 80.87 acres in Middletown Springs, Vermont; a 61-acre parcel, and a 19.87-acre parcel referred to as "Parker Water Wells," which, according to the Town, includes mobile homes and a commercial barn.
2. Sometime prior to December 14, 1989, the Respondent constructed a commercial garage for the storage and maintenance of trucks involved with the Respondent's well drilling business (the "Operations Center"). Water Supply and Wastewater Disposal Permit WW-1-0175, dated 12/08/89, approved use of an onsite drilled well and subsurface wastewater disposal system for the business.
3. On December 27, 1989, Act 250 District 1 Coordinator Anthony T. Stout issued a Project Review Sheet indicating the need for an Act 250 Permit for the project, citing "commercial project on more than one acre (see 12/27/89 letter to R. Brownson Spencer)."
4. On April 10, 1992, the District 1 Environmental Commission issued Land Use Permit 1R0732

to Respondent, which authorized the after-the-fact construction of “a 60 foot by 75 foot steel building for a well drilling business on a 1.94 acre parcel of involved land to be subdivided from an 80 acre tract on non-involved land” (the “Project Tract”).

5. Condition 1 of Land Use Permit 1R0732 states, in relevant part,

“The project shall be completed in accordance with all the terms and conditions of the Water Supply and Wastewater Disposal Permit #WW-10175.”

6. The “Site Plan for Parker Water Wells” dated 12/08/89, that accompanies Water Supply and Wastewater Disposal Permit WW-1-0175 depicts the original shop building, without any associated office buildings or additions.

7. Sometime between 1994 and 2003, the Respondent added an office building to the shop complex, without first obtaining an amendment to the Water Supply and Wastewater Disposal Permit.

8. Respondent violated condition 1 of Land Use Permit 1R0732, by failing to operate the project in accordance with the terms and conditions of the Water Supply and Wastewater Disposal Permit WW-10175, and by failing to obtain a Land Use Permit Amendment to incorporate a material change to the Water Supply and Wastewater Disposal Permit into the Land Use Permit.

9. Condition 4 of Land Use Permit 1R0732 states:

“The permittee shall plant four trees, evergreen or deciduous, at least 6 feet in height, around the project site to eventually soften the visual appearance of the building and parking area neighboring residences and roads.”

10. During an inspection on March 28, 2016, the Board’s Enforcement Officer observed that the Respondent had failed to plant four trees pursuant to permit condition 4. As of February 8, 2017, the trees still had not been planted. By failing to plant the trees, the Respondent violated condition 4 of Land Use Permit 1R0732.

11. Condition 5 of Land Use Permit 1R0732 states:

“This project shall be completed in accordance with the Findings of Fact, Conclusions of Law, and Order #1R0732, and in accordance with the plans and exhibits stamped “Approved” and on file with the District Environmental Commission.”

12. The site plan, Exhibit 5 of Land Use Permit 1R0732, depicts only the 60- by 75-foot Operations Center for the well-drilling business.

13. On March 28, 2016, the Board’s Enforcement Officer observed that the Respondent has erected a 60- by 55-foot addition (the “Addition”) to the previously permitted 60- by 75-

foot Operations Center, as well as an approximately 25- by 40-foot office building (the "Office Building") and associated deck and ADA access ramp adjacent to the Operations Center. Neither the Addition nor the Office Building had been permitted.

14. The Findings of Fact for Land Use Permit 1R0732, Under Criterion 1B, Waste Disposal state the following:

"2. Floor drains in the building discharge to the ground surface outside the building and do not discharge underground."

15. In email and phone communications on May 31, 2016, the Respondent confirmed to ANR Regulatory Policy Analyst Karin McNeil that the original garage building has a single floor drain which discharges to an underground tank. The tank fluids then leach into the ground.

16. The Findings of Fact, Under Criterion 1B, Waste Disposal state the following:

"5. No vehicle fuels will be stored outside the project building or underground."

17. On March 28, 2016, the Board's Enforcement Officer observed that the Respondent had installed two fuel tanks under an open-air roofed structure located just to the southwest of the Operations Center. The Respondent confirmed that one of the tanks contained "off road diesel" for running the well drilling rigs, and the other tank contained gasoline, for use by the business' fleet of road vehicles, mainly pickup trucks.

18. By constructing the unpermitted Office Building and Addition, installing a floor drain with an underground discharge, and storing vehicle fuel outside the project building, the Respondent violated condition 5 of Land Use Permit 1R0732.

19. Condition 6 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 Commission."

20. Act 250 Rule 34(A) states, in relevant part,

"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."

21. 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)."*

22. By constructing the Office Building and the Addition to the Operations Center without first obtaining a land use permit amendment, Respondent violated condition 6 of Land Use Permit 1R0732 and Act 250 Rule 34(A).
23. On June 10, 2016, the District 1 Environmental Commission issued Land Use Permit Amendment 1R0732-1 to the Respondent, which specifically authorized "the construction of a 60' x 55' addition to an existing truck maintenance garage and post construction approval of an office building."
24. Permit Condition 15 of Land Use Permit Amendment 1R0732-1 states, in relevant part,

"the Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. . . . If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application."
25. On November 21, 2013, Respondent submitted Schedule A to its original application for Land Use Permit Amendment 1R0732-1, which calculated a total application fee in the amount of \$434.70, which was calculated based upon an estimated cost of \$21.21 per square foot, a landscaping cost of \$500.00, a utilities cost of \$9,000, and the application fee rate that went into effect on July 1, 2012.
26. On December 12, 2013, Respondent submitted an application fee to the District Commission in the amount of \$434.70.
27. On December 4, 2014, the application was formally withdrawn.
28. On May 4, 2016, Respondent signed and dated a revised Schedule A, calculating a new total fee in the amount of \$595.65, which was calculated based upon a cost of \$21.21 per square foot, a site preparation cost of \$1,000.00, a utilities cost of \$9,000, and the application fee rate that went into effect on July 1, 2015.
29. On May 24, 2016, Respondent submitted a supplemental fee to the District 1 Office in the amount of \$124.07, representing the difference between the original estimated fee (\$434.70), which was calculated based upon an estimated cost of \$21.21 per square foot, and a newly calculated fee (\$558.77), which was based upon an actual cost of \$22.73 per square foot and the application fee rate that went into effect on July 1, 2015. However, the Schedule A form upon which this revised fee (\$558.77) was calculated does not include the site preparation fee (\$1,000) or the utilities cost (\$9,000) that was included in the signed May 4, 2016 calculation. Furthermore, this later Schedule A form is not signed.
30. To date, the Board has not received a Certificate of Actual Construction Costs or a fee associated with the construction of the Office Building. ✓

31. By failing to pay the full amount due for construction of the Addition, and by failing to pay an application fee for the construction of the Office Building, Respondent has violated Condition 15 of Land Use Permit 1R0732-1.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series 1R0732.
- B. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall submit the following to the Board:
 - 1. A Certificate of Actual Construction Costs associated with the construction of the Addition that includes the actual costs of site preparation and utilities;
 - 2. A supplemental fee that covers the difference between the revised amount calculated in item B.1. above, and the amount paid to the State of Vermont to date (\$558.77).
 - 3. A Certificate of Actual Construction Costs associated with the construction of the Office Building; and,
 - 4. A fee for the Office Building construction, calculated in item B.3, above.
- C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall:
 - 1. Submit a signed and dated statement to the Board, certifying the following:
 - i. The floor drain has been rerouted to daylight, and no longer discharges underground; and,
 - ii. A secondary containment area(s) has been constructed for the storage of all hazardous materials in the building that has the floor drain.
 - 2. Plant four trees, evergreen or deciduous, at least 6 feet in height, as depicted on Exhibit 11, Sheet C-1, Site Plan.
 - 3. Submit photographs to the Board, documenting that the trees have been planted.
- 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 **\$7,500.00**, for the violations noted herein, by check made payable to the "State of Vermont."

2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,265.16**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 3. The amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Middletown Springs land records, by check made payable to the "Town of Middletown Springs, Vermont."
- E. 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.
- F. 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
- 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 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 Respondent, for good cause beyond 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 ON FOLLOWING PAGES]

SIGNATURES

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


Dated at Poultney, Vermont, this 29 day of August, 2017.


Gerald E. Parker, Jr.

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 29 day of August, 2017, personally appeared Gerald E. Parker, Jr., 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: 02/10/2019

Dated in Montpelier, Vermont, this _____ day of _____, 2017.

Natural Resources Board

By:

Diane B. Snelling, Chair