

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)
Petitioner,)

v.)

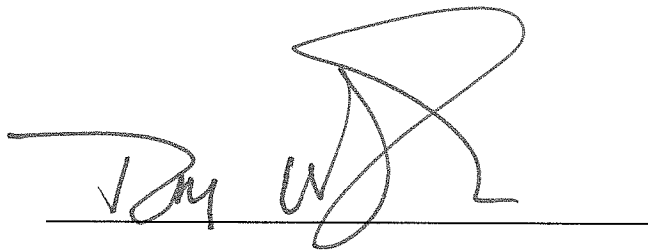
Docket # 40-4-17 Vtec

BLS Bennington LC,)
Respondent.)

ORDER (Corrected)

The Assurance of Discontinuance signed by the Respondent on February 23, 2017, and filed with the Superior Court, Environmental Division, on April 14, 2017, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 19th day of April 2017.

A handwritten signature in black ink, appearing to read 'Tom Walsh', is written over a horizontal line.

Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,)
Petitioner)
v.)
BLS Bennington LC,)
Respondent.)

ASSURANCE OF
DISCONTINUANCE

VIOLATIONS

Failure to comply with Permit Condition 16 of Land Use Permit 8B0079-8

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Natural Resources Board (Board) and BLS Bennington LC (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 tax records, Respondent BLS Bennington LC owns a parcel located at 210 Northside Drive, which consists of a Wal-Mart store and associated infrastructure in Bennington, Vermont (the "Project Tract").
2. The Project Tract is subject to Land Use Permit 8B0079-8 (the "Permit"), which authorized the Respondent to construct a 112,126 s.f. Wal-Mart with satellite 10,000 s.f. retail store, associated new parking, landscaping, and stormwater system; and to demolish the existing 50,966 s.f. Wal-Mart & 10,000 s.f. retail space on the Project Tract (the "Project").
3. Condition 16 of the Permit states: "Since the project is located in a designated growth center, the Permittee shall provide a mitigation fee in accordance with the offsite mitigation requirements of 10 V.S.A. § 6093. Said fee will be at the statutory ratio of 1:1, based on 16.91 acres lost, and at a price to be determined by and drafted into an agreement with the Secretary of Agriculture, Food, and Markets. Payment shall occur prior to commencement of construction."
4. On June 12, 2015, the Vermont Agency of Agriculture, Food and Markets issued "Confirmation of Criterion 9(B) Off-site Mitigation." This letter required the Respondent

to contribute \$34,378 to the Vermont Housing and Conservation Board (VHCB) prior to commencing construction of the Project.

5. Respondent commenced construction of the Project in October of 2015. Respondent failed to make the mitigation payment prior to commencing construction, in violation of Condition 16 of the Permit.
6. On August 9, 2016, the Board issued a Notice of Alleged Violation to the Respondent, directing the Respondent to submit the mitigation payment plus interest (for a total amount of \$35,341) to VHCB by no later than August 16, 2016.
7. Respondent submitted the mitigation payment plus interest to VHCB on August 15, 2016, approximately ten months after the payment was due.

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 8B0079.
- B. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$3,950.00**, for the violations noted herein, by good check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$305.50**, to reimburse the Natural Resources Board for the costs of this enforcement action by good 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 Bennington land records, by good check made payable to the "Town of Bennington, Vermont."
- C. 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

SIGNATURES

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

Dated at Youngstown, Ohio, this 23rd day of February, 2017.

BLS BENNINGTON LC

By Lee Burdman
(Signature)

Lee Burdman, Duly Authorized Agent
(Printed Name)

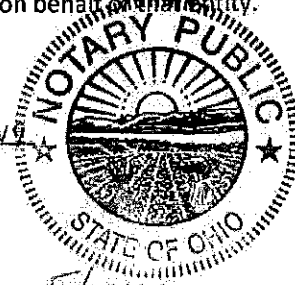
STATE OF Ohio
COUNTY OF Trumbull, ss.

BE IT REMEMBERED that on the 23rd day of February, 2017, personally appeared Lee Burdman, as the duly authorized agent of BLS Bennington LC, signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of BLS Bennington LC and that (s)he has the authority to contract on behalf of BLS Bennington LC and that (s)he has been duly authorized to enter into the foregoing Assurance on behalf of the entity.

Before me,

Susan Fitch
Notary Public

SUSAN FITCH
Notary Public - State of Ohio
My Commission Expires: 11-30-2019



My Commission Expires: 11-30-2019

Dated at Youngstown, Ohio, this 23rd day of February, 2017.

NATURAL RESOURCES BOARD

By:

Diane B. Snelling 4.13.17
Diane B. Snelling, Chair

Assurance of Discontinuance

Natural Resources Board v. BLS Bennington LC

Page 3 of 4

- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond either Respondent's control.
- J. 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.
- K. 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.
- L. 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.
- M. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.