

Vermont Environmental Court
2418 Airport Road, Suite 1
Barre, VT 05641-8701
(802) 828-1660
December 8, 2008

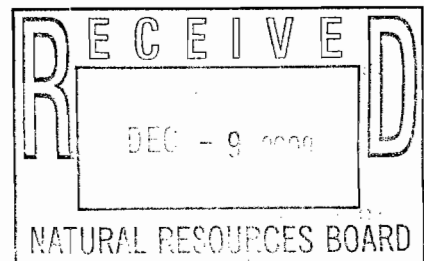
Melanie Kehne, Esq.
Vermont Natural Resources Board
Drawer 20
Montpelier VT 05620

NRB-LUP v Kinhaven Music School Inc.

Docket No. 189-8-08 Vtec

Enclosed is the entry order/stipulation of settlement dated December 8,
2008.

cc: Melanie Kehne, Attorney for Petitioner, Natural Resources Board/LU Panel
Respondent, Kinhaven Music School, Inc.



FILED

**STATE OF VERMONT
ENVIRONMENTAL COURT**

DEC 8 2008

**LAND USE PANEL of the
NATURAL RESOURCES BOARD,**
Petitioner

**VERMONT
ENVIRONMENTAL COURT**

Docket No. 189-8-08 Vtec

v.

KINHAVEN MUSIC SCHOOL, INC.
Respondent

STIPULATION OF SETTLEMENT

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Kinhaven Music School, Inc. (Respondent) hereby enter into this Stipulation of Settlement (Stipulation), and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns land at 354 Lawrence Hill Road in Weston, Vermont, that is subject to Land Use Permit # 2S1108 (the Permit), Land Use Permit Amendment # 2S1108 -1 (Amendment 1), and Land Use Permit Amendment # 2S1108 -2 (Amendment 2).
2. Respondent is a non-profit corporation that runs a summer music school, and is governed by an all-volunteer board of trustees composed of alumni, parents and friends. A faculty of professional musicians lives at the school when it is in session.
3. The Permit, issued on February 29, 2000, authorizes construction of a six-bedroom faculty housing facility (the Project). Condition 2 of the Permit provides that:

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 Environmental Board Rules.

4. Amendment 1, issued on June 2, 2000, authorizes the installation of two three-bedroom mobile homes in lieu of the previously permitted faculty housing facility.
5. Amendment 2, issued on February 4, 2004, authorizes the demolition of two existing buildings and the construction of three seasonal, unheated cabins and

- two related bath houses.
6. On or about September 1, 2004, Respondent filed amendment application #2S1108-3 for a permit to authorize construction of three cabins, and to reconfigure an existing grass parking area. This permit application was held open pending Respondent's submittal to the District Environmental Commission of a wastewater permit issued by the Agency of Natural Resources.
 7. On or before April 3, 2008, Respondent constructed all three buildings that are the subject of amendment application #2S1108-3.
 8. The Agency of Natural Resources is no longer requiring a wastewater permit for the project proposed in application #2S1108-3 because of changes in its rules.
 9. Sometime prior to April 3, 2008, Respondent constructed an addition on the west side of one of the buildings authorized by the Permit, known as the Scherzo building.
 10. Construction of this addition to the Scherzo building constitutes a material change to the permitted project. Respondent made this change without a permit amendment for said addition.
 11. On or about March 5, 2008, Respondent filed an incomplete permit amendment application #2S1108-4, for the removal and replacement of the seasonal housing and bathhouse units with newer cabins and bathhouses, including new utility connections to existing utilities.
 12. On or about March 6, 2008, and March 27, 2008, the District Environmental Coordinator wrote Respondent to request additional information to complete permit amendment application #2S1108-4.
 13. On or about August 22, 2008, Respondent provided the information and completed permit amendment application #2S1108-4.
 14. Act 250 amendment application #2S1108-4 was heard on September 12, 2008 and remains pending before the District Environmental Commission. As part of the amendment application process, the District Coordinator has asked the Agency of Natural Resources to provide a courtesy review of the proposed project's wastewater disposal system.
 15. The construction of the three unpermitted cabins and the addition to Scherzo building without a permit amendment violates the Permit, as amended, and violates Act 250 Rule 34(A).

16. Condition 24 of Amendment 2 provides that:

All construction shall be completed in accordance with the approved plans by September 15, 2006, unless an extension of this date is approved in writing by the District Environmental Commission.

17. Construction of one of the cabins authorized by Amendment 2 was ongoing on or about April 3, 2008. Respondent did not request an extension of the September 15, 2006 construction completion date. This constitutes a violation of Condition 24 of Amendment 2.

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violations, the parties hereby agree that the Administrative Order currently pending before the Environmental Court in Docket No. 189-8-08 Vtec, may be dismissed on the following terms:

A. Within thirty (30) days of the date on which this Stipulation is entered as an Order 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 **Three Thousand Dollars U.S. (\$3,000.00)** for the violations noted herein. Respondent shall make said payment by check made payable to the "**Treasurer, State of Vermont**" and shall send it 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

B. Any payment by the Respondent pursuant to this Stipulation is made to resolve the violations set forth in this Stipulation and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.

C. If the District Environmental Commission denies Respondent's permit amendment application, and said denial becomes final, then Respondent shall remove all unpermitted improvements from the project tract, including but not limited to the three cabins proposed in Application #2S1108-3 and the addition to the Scherzo building, and shall restore the project tract to its permitted condition. Said removal shall be completed within sixty (60) days from the date the permit denial becomes final.

D. 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.

- E. Nothing in this Stipulation shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations, permits or directives.
- F. This Stipulation shall become effective only after it is signed by all parties and entered as an order of the Environmental Court.
- G. 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 enters this Stipulation as an Order, provided that the Respondent fully complies with the agreements set forth herein.
- H. This Stipulation 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 Stipulation, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- I. 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.

SIGNATURES

The provisions set forth in this Stipulation of Settlement are hereby agreed to and accepted.

DATED at New York, ^{N.Y.} Vermont, this 26th day of November, 2008.

KINHAVEN MUSIC SCHOOL, INC.

By: Darrell Prescott

Darrell Prescott
Print name and title

*Board Member on
behalf of Kinhaven
Music School, Inc.*

BE IT REMEMBERED that on the 26th day of November, 2008,
personally appeared Darrell Prescott, signer 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 Kinhaven Music School, Inc.

Before me,

Virginia A. Fedus

Commission expires:

Notary Public

VIRGINIA A. FEDUS
Notary Public, State of New York
No. 01FE6021880
Qualified in Queens County
Commission Expires March 22, 2011

The provisions set forth in this Stipulation of Settlement are hereby agreed to and
accepted.

DATED in Montpelier, Vermont, this 15th day of December, 2008.

LAND USE PANEL

By:

Peter F. Young, Jr., Chair

ORDER

So ordered.

DATED at Berlin, Vermont, this 8th day
of December, 2008.

VERMONT ENVIRONMENTAL COURT

Thomas S. Durkin

The Hon. Thomas S. Durkin
Presiding Judge