

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner)
)
v.)
)
Very Vermonty, Corp.,)
Respondent)
_____)

**ASSURANCE OF
DISCONTINUANCE**

VIOLATIONS

*Land Use Permit 5L0156, Condition 16
and
Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A)*

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns approximately 4.5 acres located at 4492 Mountain Road (Vermont Route 108) in the town of Stowe, Vermont (the "Project Tract"). On November 27, 1972, the District 5 Environmental Commission issued Land Use Permit 5L0156 (the Permit), to convert a silver shop into a restaurant (the Project).
2. Condition 16 of the Permit states:
"There will be no substantial exterior changes to the existing building."
3. 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.
4. On March 12, 2014, District 5 Coordinator Clancy DeSmet met with Respondent's representative Brian Benoit of Stowe Properties & Associates, LC and Stowe Zoning Director Rich Baker to discuss the demolition of the Woodchip Inn, the development of new housing units on the Project Tract, and the connection of the proposed housing units to the municipal wastewater system.

5. On March 12, 2014, District 5 Coordinator Clancy DeSmet met with Respondent's representative Brian Benoit of Stowe Properties & Associates, LC and Stowe Zoning Director Rich Baker to discuss the demolition of the Woodchip Inn, the development of new housing units on the Project Tract, and the connection of the proposed housing units to the Town of Stowe municipal wastewater system to seek clarity with regard to the applicability of the Town's Act 250 permit condition which limits wastewater system connections to development within a PUD or to existing structures.
6. According to Stowe Zoning Administrator Rich Baker, since 1972, the subject property has changed ownership multiple times, additions were built and the use of the property has changed. For example, the lodge and restaurant were expanded and the use was changed to a boarding house. Mr. Baker was unaware that the property was subject to Act 250 and knows of no Act 250 permit amendments ever being sought for the property.
7. The 1972 permit was not indexed in the Act 250 state database which caused the Respondent's attorney to issue a title opinion that did not identify that there was Act 250 jurisdiction over the property.
8. On April 7, 2014, Coordinator DeSmet issued a Project Review sheet that included an Act 250 Jurisdictional Opinion that a permit amendment is required for the conversion of the restaurant to housing units because the "Project is a material change to a previously-permitted development (5L0156) pursuant to Act 250 Rules 2(C)(6) and 34." The Respondent did not understand that the jurisdictional opinion was premised upon an existing permit, instead of being based upon the number of housing units being proposed, which they then reduced from 12 to 9 units to remain under the jurisdictional trigger but which in reality was to no avail since the property was already subject to an Act 250 permit. The Respondent did not appeal this decision, and the decision became final 30 days from issuance.
9. In May and June of 2014, Respondent demolished, recycled, and disposed of the existing building on the Project Tract without first obtaining a land use permit amendment.
10. The Board issued a Notice of Alleged Violation on December 20, 2016, which required Respondent to file an Act 250 Land Use Permit Amendment with the District 5 Environmental Commission by February 15, 2017. Respondents filed an application on February 13, 2017.
11. On April 24, 2017 the District 5 Environmental Commission issued Land Use Permit Amendment 5L0156-1 authorizing the after-the-fact demolition of the Woodchip Inn.
12. Respondent violated Permit Condition 16 and Act 250 Rule 34(A) by failing to obtain a Land Use Permit Amendment, prior to demolishing the former building on the Project

Tract in furtherance of the construction of housing units.

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 5L0156.
- 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, in separate checks, the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$3,300.00**, 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 **\$378.82**, 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 Town of Stowe land records, by check made payable to the "Town of Stowe, Vermont."
- C. All payments and documents required by this Assurance shall be sent to the following address:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- 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.

SIGNATURES

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

Dated at San Juan, ^{Puerto Rico as of} Vermont, this 19th day of July, 2017.

Very Vermonty, Corp.

By [Signature]

Duly Authorized Agent

^{Puerto Rico as of}
STATE OF VERMONT
^{San Juan as of}
COUNTY OF LAMOILLE, ss.
AFF. 1619

BE IT REMEMBERED that on the 19th day of July, 2017, personally appeared José Martin Saavedra Castro as the duly authorized agent of **Very Vermonty, Corp.** 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 **Very Vermonty, Corp.** and that he has the authority to contract on behalf of **Very Vermonty, Corp.** 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: Perpetual

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

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

Natural Resources Board

By: _____
Diane B. Snelling, Chair

