

STATE OF VERMONT

SUPERIOR COURT - ENVIRONMENTAL DIVISION

_____)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
Petitioner)
)
v.)
)
JONATHAN CROWELL, d/b/a)
AMAZING PLANET FARM,)
Respondent)
_____)

Docket No. _____ Vtec

Assurance of Discontinuance

VIOLATION

- I. Substantial change to a preexisting development without obtaining an Act 250 Land Use Permit, in violation of 10 V.S.A. §6081(b).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Jonathan Crowell, d/b/a Amazing Planet Farm (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. Respondent Jonathan Crowell owns and operates the Amazing Planet Farm in Newfane, Vermont (Project).
- 2. The Project is on a tract of land that is more than one acre in area.
- 3. Newfane has adopted zoning and subdivision bylaws.
- 4. The Project tract, with a house, garage and barn, was used for commercial purposes beginning in 1967, when the garage was used as a mechanic's shop and upholstery business.
- 5. In the 1980s the property was sold to new owners who added a one-bedroom apartment over the garage, which was later converted to office space.
- 6. In 2004, Barbara O'Neil purchased the Project tract and made extensive renovations to the barn and house so she could run a massage and yoga business where clients could stay overnight. However, Ms. O'Neil had very few customers and ceased commercial use in 2006. She discontinued her business due to lack of clients and marketed the property as

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residential in February 2007.

7. On or about August 30, 2007, a Project Review Sheet was issued to Respondent, holding that an Act 250 permit was required for commercial improvements on the Project tract. At that time, Respondent was considering purchasing the Project tract for use as a working farm with residential rentals, and to offer classes and hold public events. This Project Review Sheet was not appealed.
8. On or about January 14, 2008, a Jurisdictional Opinion was issued based on additional information, holding that the work Ms. O'Neil completed on her property did not constitute a substantial change to the preexisting development, so did not require an Act 250 permit. This Jurisdictional Opinion was not appealed.
9. Respondent purchased the Project tract in 2008, and constructed :
 - a. A 26 x 96-foot greenhouse with electricity and water pump.
 - b. A 12 x 45-foot chicken coop with electricity.
 - c. A 20 x 28-foot farmstand with electricity.
 - d. Improvements to the barn, including the addition of a kitchen facility.
10. Respondent changed the use of the Project tract to a Peace and Justice Center, which includes hosting events on the Project tract such as weddings, retreats, youth camps, music events, contra dances, parties, educational workshops, kayaking and tubing activities, and parties.
11. Respondent also changed the use of the Project to include weekend and week-long rentals in the barn for up to eight guests, and short-term rental of the apartment over the garage for up to four guests. These events take place outside on the grounds and in the yoga studio and downstairs space of the rental barn (previously the massage studio).
12. The Project has been changed to accommodate up to 60 overnight guests, including camping on the Project site, and up to 100 daytime guests.
13. These changes have the potential for significant impact under at least one Act 250 Criterion, such as Criteria 1(B)(waste disposal), 1(F)(shorelines), 2 and 3 (water supplies), and 5 (traffic) and 8 (aesthetics).
14. On or about June 22, 2010, a Jurisdictional Opinion was issued to Respondent's counsel, holding that these changes constitute a substantial change to a preexisting development requiring an Act 250 permit. This Jurisdictional Opinion was not appealed.
15. On or about August 17, 2010 and August 24, 2010, Respondent hosted weddings at the Amazing Planet Farm, for a fee of \$1,000 each. There were approximately 75 people attending the first wedding, and approximately 100 people attending the second wedding.
16. Respondent did not obtain an Act 250 permit for the Project prior to making the changes described herein, and has not obtained a permit to date.

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17. Respondent violated 10 V.S.A. § 6081(b) by making a substantial change to a preexisting development without first obtaining an Act 250 permit.

AGREEMENT

Based on the above Statement of Facts and Description of Violation, the parties agree as follows:

- A. Within **60 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall file a complete application for a Land Use Permit for the construction and activities noted herein. Respondents shall diligently pursue said application.
- B. If Respondent fails to timely file said permit application, or timely files said application and it is denied by the Commission and said denial becomes final, then:
- i. Unless Respondent obtains an Act 250 permit or a jurisdictional opinion holding that the proposed use does not require an Act 250 permit, Respondent shall cease all commercial use of the Project tract within 60 days of the failure to timely file said application or within 60 days of the final permit application denial.
 - ii. If Respondents wish to use the Project tract for any commercial purpose, then within 30 days of said failure to timely file or of said denial becoming final, Respondents shall request a jurisdictional opinion from the District Coordinator to ensure that any proposed commercial use of the Project site constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), "farming" as defined at 10 V.S.A. § 6001(22), or is otherwise exempt from Act 250 jurisdiction.
 - iii. Any commercial use of the Project tract that is not determined to be exempt from Act 250 in a final jurisdictional opinion shall be prohibited, unless an Act 250 permit is obtained prior to the commencement of that activity.
- C. Within **30 days** of the date upon which the Superior Court Environmental Division enters this Assurance as an Order, the Respondents shall pay:
- i. A civil penalty pursuant to 10 V.S.A Ch 201 for the violation set forth herein, in the amount of **\$1,600.00** (U.S. Dollars), by check made payable to the **"Treasurer, State of Vermont."**
 - ii. The amount of **\$2,000.00** (U.S. Dollars), to reimburse the State for the economic benefit from the violation, by check made payable to the **"Treasurer, State of Vermont."**
 - iii. The amount of **\$29.00** (U.S. Dollars), to reimburse the Natural Resources Board for costs of this enforcement action pursuant to 10 V.S.A. §8010(e)(2), by check made payable to the **"Treasurer, State of Vermont."** This payment shall be

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made within **30 days** of the date upon which the Superior Court Environmental Division enters this Assurance as an Order.

- iv. The amount of **\$10.00** (U.S. Dollars), for the purpose of paying the recording fee for the filing of a notice of this Assurance of Discontinuance in the land records of the municipality where the Project is located, **by check made payable to the Town of Newfane.**

D. Respondent shall send all payments to:

Denise Wheeler, Business Manager
Natural Resources Board, Land Use Panel
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- E. Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty then remaining to become immediately due and owing.
- F. Late payments may be subject to an annual interest rate of 12%.
- G. Any payment by the Respondents pursuant to this Assurance is made to resolve the violation set forth herein and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.
- H. 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 violation set forth herein above.
- I. The Land Use Panel reserves the right to grant reasonable extensions of deadlines in this Assurance, upon request, and if needed for reasons beyond the Respondent's control.
- J. Nothing in this Assurance 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 or directives applicable to the Respondents.
- K. 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.
- L. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the

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Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.

- M. This Assurance 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 Superior Court, Environmental Division. 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.
- N. 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.
- O. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES

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

DATED at Battleboro, Vermont, this 17 day of Nov, 2010.

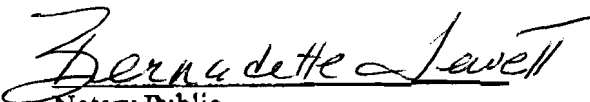


JONATHAN CROWELL

STATE OF VERMONT
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 17 day of November, 2010, personally appeared JONATHAN CROWELL, 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 2/10/2011

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

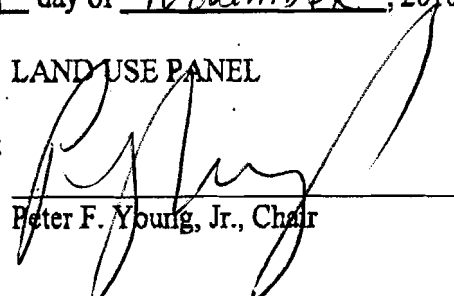
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DATED in Montpelier, Vermont, this 22nd day of November, 2010.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair