

STATE OF VERMONT

Superior Court

Environmental Division
Docket No. _____

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Bartlett Corner Inc. and
David Merriss
Respondents

VIOLATIONS

- I. *Failure to comply with condition 2 of Land Use Permit #3W0276, and failure to obtain a Land Use Permit Amendment pursuant to Act 250 Rule 34(a);*
- II. *Failure to obtain a wastewater permit pursuant to Wastewater System and Potable Water Supply Rule 1-303.*

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Natural Resources Board (Board) and Bartlett Corner, Inc. and Dave Merriss (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. The Respondent, Bartlett Corner, Inc. owns approximately 13 acres at the Junction of Route 100 and Route 107 in Stockbridge, Vermont (the Project Tract).
2. Respondent, David Merriss, is a principal of Bartlett Corner, Inc. and has been actively involved in the operations on the Project Tract.
3. Act 250 Violation
Land Use Permit 3W0276 (the Permit) applies to the Project Tract and authorizes the construction of a restaurant, visitor reception area, and offices.
4. Condition 2 of the Permit states:

This project must be completed as set forth in the Certification of Compliance attached hereto, the plans and exhibits on file, the Findings of Fact attached hereto, and the Conditions of this permit. No change in the project as set forth in these documents may be made without prior approval from the District Environmental Commission.

5. Since the issuance of the Permit, the following activities have occurred on the Project Tract:
 - i. Respondents held approximately eight flea markets in 1995 and approximately six antique engine shows over the past six years with no more than 100 people in attendance at each event.
 - ii. Respondents hosted at least two music festivals- Ziontific (2011, 2012, 2013) and Tweed River Music Festival (2009, 2010, 2011, 2012, 2013)- each lasting two to three days. Admission fees were charged for each event and overnight camping was provided by the production companies. Also, Moon River Tavern operated music events in 1995, 1996, and 1997 without any outdoor camping. The Respondents allege that permission was granted by the District 3 Coordinator and enforcement staff for the music festivals held in 2011, 2012, and 2013.
 - iii. Respondents operated a river tubing business with shuttle services. Again, the Respondents allege that permission was granted by the District 3 Coordinator for the operation as long as a permit application was actively pursued.
 - iv. The Respondents converted office space into at least three residential apartments.
6. The Respondents have not received an Act 250 Permit Amendment for the activities on the Project Tract described above.
7. Since August of 2011, the Respondents have been actively pursuing an Act 250 Permit Amendment to authorize the conversion of office space to residential apartments and the operation of various outdoor festivals. The Respondents are cooperating with the District 3 Environmental Coordinator.
8. On July 27, 2011 the District 3 Environmental Coordinator issued Jurisdictional Opinion #3-143 (Revised) (the JO), which concluded that an Act 250 Land Use Permit Amendment was required for the described activities on the Project Tract.
9. The Respondents received notice of the JO and did not appeal, therefore the

JO is final as to the Respondents.

10. The Respondents have not obtained an Act 250 Land Use Permit Amendment for the activities on the Project Tract, and therefore the Respondents have failed to comply with the Permit, condition 2, and have violated Act 250 Rule 34(A).

Waste Water Rules Violation

11. The original waste water permits, Certificate of Compliance (COCs) #3W0276 and #3W0276-1, covered the sewage disposal and water use on the Project Tract for an 85-seat restaurant and a 120-seat restaurant (plus office space for 25 people), respectively.
12. Wastewater System and Potable Water Supply Rule 1-303(a) requires a permit amendment for:
 - (5) the modification of an existing building or structure in a manner that increases the design flow or modifies other operational requirements of a potable water supply or wastewater system;
13. Neither of the COCs addressed the changes of use of the buildings or Project Tract including conversion of office spaces into residential apartments or use of the Project Tract as an event venue for festivals and over-night camping. See 5. above.
14. Since August 2011, the Respondents have been in the process of applying for their necessary permits.
15. Respondents' conversion of office spaces to residential apartments and use of the Project Tract as an event venue for festivals and overnight camping without obtaining a wastewater system or potable water supply permit violates Rule 1-303(a).

AGREEMENT

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

- A. The Respondents shall comply with Permit series 3W0276.
- B. The Respondents shall immediately cease all operations and uses not in conformance with the Permit including, but not limited to, antique engine shows, flea markets, music festivals, and tubing operations, unless and until an Act 250

Land Use Permit Amendment (Amendment) is obtained from the District Commission for those activities, uses, and related construction.

Notwithstanding the above, the Respondents shall be allowed to continue commercial operation of the existing residential apartments where renters are currently living until a permit is obtained. If a permit amendment is denied or not obtained for the continued use of the apartments, the Respondents shall then immediately commence and diligently pursue any necessary processes to legally remove the current residents and discontinue the use of all apartments.

- C. No later than **60 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall file and diligently pursue a complete application for an Amendment with the District 3 Environmental Commission for any activities or operations considered a material change under Act 250 Rule 2(c)(6) or otherwise unauthorized by the Permit (3W0276).
- D. If the Respondents fail to diligently pursue the Amendment within the 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division or if the Respondents timely files said application for the Amendment and Respondents' permit application is denied by the Commission and said permit denial becomes final, then the Respondents shall immediately cease all operations and uses not in conformance with the Permit including the use of the property for snowmobile tours, antique engine shows, flea markets, music festivals, and tubing operations, and the use of the apartments shall be discontinued as described in provision B above.
- E. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 3 Environmental Commission, the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR. Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.
- F. No later than **60 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 **Five Thousand Seven Hundred Fifty Dollars and Zero Cents (U.S.) (\$5,750.00)** for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".

2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **Two Hundred Twelve Dollars and Forty-One Cents (U.S.) (\$212. 41)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
 3. pursuant to 10 V.S.A. §8010, the amount of **Sixty-Six Dollars and Eighteen Cents (U.S.)(\$66.18)**, to reimburse the Agency of Natural Resources for the costs of this enforcement action by good check made payable to the "State of Vermont Agency of Natural Resources".
 4. the amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Stockbridge land records, by good check made payable to the "Town of Stockbridge, Vermont ."
- G. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respondent has actual notice of the Judicial Order and Assurance of Discontinuance.
- H. 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
- I. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- J. 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.
- K. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- L. 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.

- M. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided the Respondents fully comply with this Assurance.
- N. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondents' control.
- O. 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.
- P. 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.
- Q. 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.
- R. 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 Attleboro, ^{MASS} Vermont, this 9th day of May, 2014.

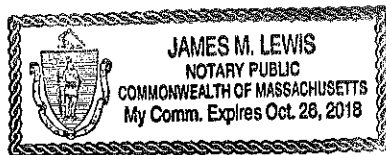
Bartlett Corner, Inc.

By David Merriss
David Merriss, individually and as the Duly Authorized Agent

~~STATE OF VERMONT~~
COUNTY OF Bristol, ss.

BE IT REMEMBERED that on the 9th day of May, 2014, personally appeared **Dave Merriss** individually and as the duly authorized agent of **Bartlett Corner, Inc.**, 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 **Bartlett Corner, Inc.** and that he has the authority to contract on behalf of **Bartlett Corner, Inc.** 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:

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

Dated in Montpelier, Vermont, this 17th day of June, 2014.

Natural Resources Board

By: [Signature]
Ronald A. Shems, Chair

