

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No.

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

Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

C-11 CORPORATION,

Respondents.

VIOLATIONS

- I. Changing the design of a permitted project without the written approval of the District 4 Environmental Commission or its Coordinator and without obtaining a permit amendment in violation of Condition 1 of Land Use Permit #4C0680-1.
- II. Commercial development outside of approved area without written approval of the District 4 Environmental Commission in violation of Conditions 3 and 6 of Land Use Permit #4C0680-12.
- III. Failure to implement erosion controls in violation of Conditions 15, 16, 17, 18 and 19 of Land Use Permit #4C0680-12.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and C-11 Corporation (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. In 1988, the District 4 Environmental Commission (Commission) issued Land Use Permits #4C0680 and #4C0680-1 to William Sawyer, authorizing the creation of a commercial subdivision commonly referred to as "Haydenberry Park," located in Milton, Vermont and identified in Book 139, Pages 85 and 88 of the Milton land records.
2. Respondent obtained an ownership interest in Haydenberry Park in 1992.

I.

3. Condition 1 of Permit #4C0680-1 states:

The project shall be completed, operated and maintained as set forth in Findings of Fact and Conclusions of Law #4C0680-1 and in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission and with the conditions of this permit. No changes shall be made without the written approval of the District Environmental Commission.

4. On November 30, 1994, Respondent filed Land Use Permit Amendment Application 4C0680-7 with the Commission, requesting authorization for "the filling of a ravine on lot 9C" of the Haydenberry Park subdivision.
5. On September 18, 1995, the Commission issued Findings of Fact and Conclusions of Law and Order #4C0680-7, denying the Application.
6. On October 24, 2006, Environmental Enforcement Officer Ted Cantwell visited the Haydenberry Park subdivision and observed fill had been added to the ravine on lot 9C.
7. Respondent failed to obtain written approval from the Commission to add any fill to the ravine on lot 9C.
8. Upon the request of the District 4 Environmental Commission Coordinator, Peter Keibel, Respondent removed the fill from the ravine on lot 9C and has revegetated the area.

II.

9. On August 12, 2004, the Commission issued Respondent Land Use Permit #4C0680-12, which specifically authorized the construction of a 64,600 s.f. ice skating facility with an associated parking lot and a circulation drive on lot 10C of Haydenberry Park.
10. Condition 3 of Permit #4C0680-12 states, "[t]he project shall be completed, operated and maintained in accordance with the plans and exhibits on file with the District Environmental Commission and the conditions of this permit."
11. Condition 6 of Permit #4C0680-12 states, "[n]o changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules."
12. On November 8, 2006, Coordinator Keibel conducted a site visit of Respondent's

property and observed that an area of lot 10C had been cleared and disturbed outside of the permitted footprint of the project approved by Permit #4C0680-12.

13. Respondent failed to obtain written approval for such expanded development from either the Commission or Coordinator.

III.

14. Condition 15 of Land Use Permit #4C0680-12 states in relevant part:

The Permittees shall comply with Exhibits #4 and 33 (Schedule B; Details Plan) for erosion control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed area.

15. Condition 16 of Permit #4C0680-12 states:

All mulch, hay bales, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Hay bales shall be incorporated four inches into the soil and equipped with filter fence on the upstream side, butted together and all joints filled with loose hay. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.

16. Condition 17 of Permit #4C0680-12 states, “[g]rading shall be phased so that all exposed earth is mulched and water bars are in place at the end of each construction day.”

17. Condition 18 of Permit #4C0680-12 states:

All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading. All disturbed areas not involved in winter construction shall be mulched and seeded before October 1. Between the periods of October 1 to April 15, all earth disturbing work shall conform with the “Winter Construction” standards and specifications of the *Vermont Handbook of Soil Erosion and Sediment Control on Construction Sites* (1987).

18. Condition 19 of Permit #4C0680-12 states:

Prior to construction of the approved work, the Permittees shall complete the following: a) construction limits shall be clearly delineated with

flagging or snow fencing; b) diversion ditches shall be placed on the uphill limits of the construction area; and c) temporary siltation controls shall be placed on the downhill limits of the construction. Immediately following the above, the permanent drainage system and/or roads shall be installed after which normal construction can begin.

19. On November 8, 2006, Coordinator Keibel conducted a site visit at the Respondent's property and observed that, although earth disturbance and construction had begun, none of the erosion control devices described in Permit #4C0680-12 Conditions 15 - 19 had been implemented on lot 10C, and the Respondent had not seeded or mulched the disturbed areas as required.

AGREEMENT

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

- A. Within thirty (30) days of the date on which this Assurance is signed 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 Ten Thousand Dollars (\$10,000.00) (U.S.), for the violations noted herein. Respondent shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded 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 Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- C. With respect to the violation involving placing fill in the ravine on lot 9C, Respondent shall comply with the Wetland Restoration Plan dated January 8, 2007 unless and until such plan, or the need for such plan, is modified by a subsequent Act 250 Land Use Permit or permit amendment.
- D. With respect to the violations on lot 10C, Respondent shall comply with condition 18 of Permit #4C0680-12, and seed and mulch all remaining disturbed areas on lot 10C that have not been revegetated. The seed to be planted shall be a "conservation mix" or equivalent grass-like vegetation. Respondent shall seed and mulch these areas prior to October 15, 2007.

- E. 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.
- F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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 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 signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- I. 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 Environmental Court. 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.
- J. 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.
- K. 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. Further, I, Jim Truax, the undersigned, hereby state under oath that I am Treasurer of C-11 Corporation, that I have the authority to contract on behalf of C-11 Corporation, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Essex Jct., Vermont, this 3rd day of October, 2007.

C-11 CORPORATION

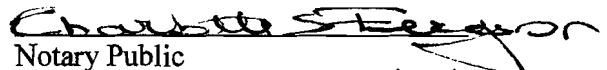
By: 

Jim Truax, Treasurer
(Print Name and Title)

STATE OF VERMONT
COUNTY OF CHITTENDEN, ss.

At Essex Jct., Vermont, this 3rd day of October, 2007,
Jim Truax personally appeared and swore to the truth of the foregoing.

Before me,

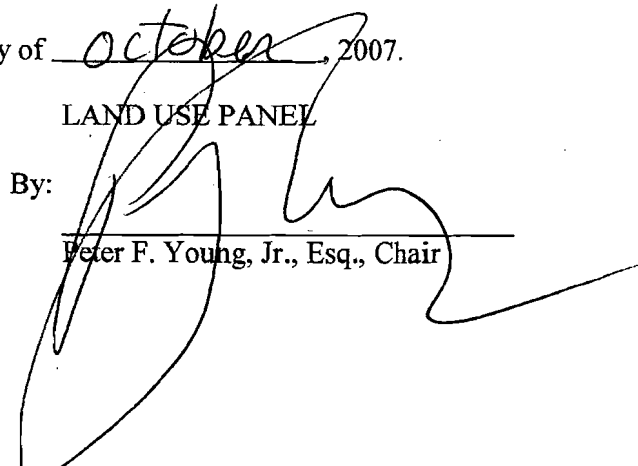

Notary Public
My Commission Expires: 02/10/11

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

Dated in Montpelier, Vermont, this 9th day of October, 2007.

LAND USE PANEL

By:


Peter F. Young, Jr., Esq., Chair