

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

Costco Wholesale Corp.
Respondent

VIOLATION

Failure to comply with permit condition 8 of Land Use Permit #4C0288-19A

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On February 19, 1993, the District 4 Environmental Commission issued Land Use Permit #4C0288-19A (Permit) to Kreizel-Perry Associates and Raymond Pecor, Jr., Respondent's predecessor in interest. The Permit amended Land Use Permit series #4C0288, which authorizes a commercial subdivision in Colchester.

2. Condition 8 of the Permit states:

8. The Permittees shall monitor the US 7/Mountain View Drive intersection approximately 6 months after the completion of the building additions approved herein to determine whether the intersection is functioning with an acceptable level of service. The study should consist of a capacity analysis of the intersection based on recent turning movements of the PM peak (3:00-6:00) and Saturday noon peak hours. The Permittees shall submit the traffic report to the District Commission and the Vermont Agency of Transportation for review.

3. The study required by Condition 8 of the Permit has never been submitted to the District Commission, nor, to the Commission's knowledge, has it ever been performed.

4. Respondent, as Permittee, is in violation of Condition 8 of the Permit.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series #4C0288.
- B. On or before July 1, 2009, Respondent shall submit the study required by Condition 8 of the Permit to the Commission and the Vermont Agency of Transportation.
- C. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Four Thousand Seven Hundred (\$4700.00) Dollars (U.S.), for the violation noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont," which shall be sent 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

Any payment by Respondent pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.

- 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 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 Respondent.

- F. 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.
- G. Pursuant to 10 V.S.A. § 8007(d), Respondent shall not be liable for 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.
- H. 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.
- 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.
- J. 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, Mark Hall, the undersigned, hereby state under oath that I am the attorney for of Costco Wholesale Corp., I have the authority to contract on behalf of Costco Wholesale Corp., and I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Burlington, Vermont, this 1st day of May, 2009.

Mark Hall
for Costco Wholesale Corp.

STATE OF VERMONT,
COUNTY OF Chittenden, ss.

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. Costco Wholesale Corp.

Page 4 of 4

On the 1 day of May, 2009, personally appeared Mark Hall, 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.

Before me,

Joan S. Matte

Notary Public

My Commission Expires: 2-18-11

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

Dated in Montpelier, Vermont, this 4th day of MAY, 2009.

LAND USE PANEL

By: 

Peter F. Young, Jr., Esq.
Chair