

STATE OF VERMONT
ENVIRONMENTAL COURT

FILED

AUG 31 2007

VERMONT
ENVIRONMENTAL COURT

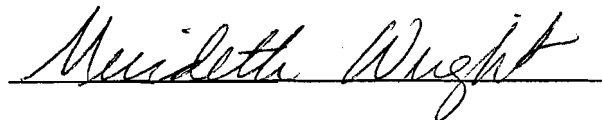
Vermont Natural Resources Board,)
Land Use Panel)
Petitioner,)
v.)
Sean R. Kelly and Ronald L. Butzlaff,)
Respondents.)

Docket # 180-8-07 Vtec

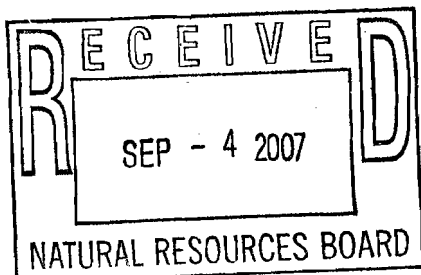
ORDER

The Assurance of Discontinuance signed by the Respondents on August 21, 2007, and filed with the Environmental Court on August 29, 2007, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007 (c).

Dated this 31st day of August 2007.



Merideth Wright,
Environmental Judge



STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

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

ASSURANCE OF DISCONTINUANCE

v.

**SEAN R. KELLY,
RONALD L. BUTZLAFF**
Respondents.

VIOLATIONS

- I. Construction of commercial improvements on more than 10 acres of land without obtaining an Act 250 Land Use Permit pursuant to 10 V.S.A. Ch. 151.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Sean R. Kelly and Ronald L. Butzlaff (collectively Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents Sean R. Kelly and Ronald L. Butzlaff own an approximately 18.5-acre parcel of land off of the Wallace Hill Road in Newbury, Vermont, described in book 135, page 711 in the Town of Newbury land records (project tract).
2. Respondents own and operate a commercial bed and breakfast referred to as "The Gargoyle House" located on the project tract.
3. Respondents converted the residential structure on the project tract to a bed and breakfast and constructed improvements including a deck, hot tub, sauna and fences all to be used in conjunction with the commercial bed and breakfast without obtaining an Act 250 permit.
4. On September 26, 2006, Julie Schmitz, the Coordinator for the District 3 Environmental Commission issued a Notice of Alleged Violation, which stated in relevant part, "[r]espondents have constructed amenities in connection with their bed and breakfast without first obtaining an Act 250 permit."

5. Respondents filed a complete Act 250 permit application on June 7, 2007 with the District 3 Environmental Commission (Commission). The Commission has yet to act on that permit application as of the date of this Assurance.
6. Respondents violated 10 V.S.A. §6081(a) by commencing construction on a development without first obtaining an Act 250 permit.

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 Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Five Hundred Dollars (\$500.00) (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
Drawer 20
Montpelier, Vermont 05620-3201
- B. Any payment by the Respondents 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. Respondents shall diligently pursue their Act 250 permit application to the District 3 Environmental Commission for the construction of improvements that occurred on their property.
- D. Should Respondents be denied an Act 250 permit for the construction of improvements that occurred on their property, they shall remove all improvements requiring an Act 250 permit and return those areas of the project site to their original condition within sixty (60) days of the denial of such Act 250 permit.
- 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 Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.
- 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 Respondents 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 Respondents fully comply 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.

Dated at Wells River, Vermont, this 21st day of August, 2007.

SEAN R. KELLY

By Sean R. Kelly
SEAN R. KELLY

STATE OF VERMONT
COUNTY OF Orange, ss.

At Wells River, Vermont, this 21 day of August, 2007, Sean R. Kelly personally appeared and swore to the truth of the foregoing.

Before me,

Gail Jackson
Notary Public
My Commission Expires: 2-10-2011

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

Dated at Wells River, Vermont, this 21 day of August, 2007.

RONALD L. BUTZLAFF

By: 
RONALD L. BUTZLAFF

STATE OF VERMONT
COUNTY OF Orange, ss.

At Wells River, Vermont, this 21 day of August, 2007, Ronald L. Butzlaff personally appeared and swore to the truth of the foregoing.

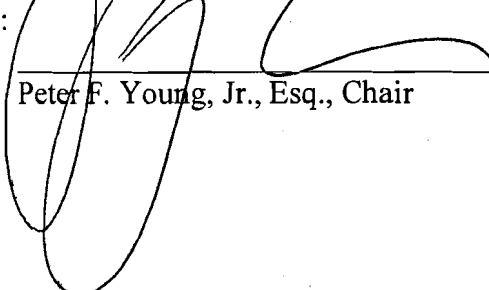
Before me,


Notary Public
My Commission Expires: 2-10-2011

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

Dated in Montpelier, Vermont, this 23rd day of AUGUST, 2007.

LAND USE PANEL

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