

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

Land Use Panel of the
Natural Resources Board
Petitioner

v.

Assurance of Discontinuance

Rinker's, Inc.
Respondent

Violations

Failure to comply with Conditions 3, 4 and 14 of Land Use Permit Amendment #7C1219-2.

Assurance of Discontinuance

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

Statement of Facts and Description of Violations

1. Respondent Rinker's, Inc. leases approximately 2 acres of a 200 acre tract owned by Beverly and Wendell Shepard, and indentified in Book 59, Page 176, of the land records of the Town of Hardwick, Vermont.
2. On October 29, 2008, the District 7 Environmental Commission issued Land Use Permit Amendment #7C1219-2 (Permit) to Rinker's Inc. and Beverly and Wendell Shepard authorizing the replacement of an existing monopole communications tower with a new guyed lattice style communications tower and related improvements.
3. Condition No. 3 of the Permit states:

The project shall be completed, operated and maintained in accordance with the Findings of Fact and Conclusions of Law #7C1219-2, the plans and exhibits on file with the District Commission, and the conditions of this permit.

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4. Condition No. 4 of the Permit states:

No changes shall be made in the design or use of this project without a jurisdictional opinion from the District Coordinator or a permit amendment from the District Commission.

5. Condition No. 14 of the Permit states:

On lands owned and controlled by the Permittees, there shall be no cutting of live, healthy trees within a 250 foot radius around the tower. The purpose of the no cut zone is to insure that surrounding tree cover is protected as a visual buffer to the tower.

6. Findings of Fact and Conclusions of Law (Altered) #7C1219-2 includes the following facts:

5. No tree cutting is proposed for this project. (Testimony of Karl Rinker)

7. The access to the proposed tower is via an existing private road, and an existing field drive which are both currently used to access the existing 57' communications tower. (Exhibits 1 and 4).

8. Utility Service to the project site is existing and will remain unchanged. (Exhibit 1).

7. Exhibit 1 states in relevant part: "Electricity to the buildings will be underground from the existing utility pole on site now or from a utility pole that is a short distance away beside the road."

8. On or about October 4, 2011, Respondents installed a new underground power service to the tower site from the utility pole that is a short distance away beside the road. The utility company required the removal of four large maple trees located beside Bridgeman Hill Road, which were approximately 100 feet outside the 250 foot no-cut radius around the tower site. The underground conduit was then installed from the existing utility pole and runs in a southeasterly direction, perpendicular to Bridgeman Hill Road, following the existing field drive access right of way to its end at the edge of the field, then across the field to the tower site. All of the electrical service conduit was placed underground.

9. After installing the underground power service, Respondent re-stabilized the right of way surface by adding new stone material to the access right of way.

10. In the process of installing the new power service, Respondents removed smaller

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vegetation within the site access right of way within the 250 foot radius around the tower site.

11. By installing a new power service, further developing the site access and removing vegetation on the site, Respondents have violated Conditions 3, 4 and 14 of the Permit.

Agreement

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

- A. Pursuant to a planting plan which shall be approved by the Coordinator for the District 7 Environmental Commission, the Respondent shall plant twelve tall evergreens (pines or cedars) with a minimum height of 6' – 8' at or near the access right of way limits to replace the trees that were cut and to enhance the aesthetics of the project. The installation of all plantings shall be completed on or before July 15, 2012. The Respondent shall notify the Coordinator for an inspection on completion of the plantings, and the Respondent shall promptly remedy any deficiencies identified by the Coordinator, if any. The Respondent and all assigns and successors in interest shall continually maintain the landscaping by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner. The area of the plantings shall be maintained as an undisturbed, naturally vegetated area in which no cutting, clearing, mowing, vehicle operation or other disturbance is allowed.
- B. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
 1. A civil penalty pursuant to 10 V.S.A. Ch. 201, in the amount of Three Thousand Dollars (U.S.) (\$3,000.00), for the violations noted herein, by check made payable to the "Treasurer, State of Vermont."
 2. The amount of Ten Dollar (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 Hardwick land records, by check made payable to the "Town of Hardwick."

All payments required under this Assurance 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

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- C. Any payment made to the State pursuant to this Assurance is a penalty to resolve the violation set forth in this Assurance. Respondents shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from his reported income for tax purposes or attempt to get any other tax benefit from this payment.
- 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 Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- F. 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.
- G. 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 described herein, provided that the Respondents fully comply 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 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.
- 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.

Dated at Barre, Vermont, this 3 day of May, 2012.

Rinker's, Inc.

By: Karl A. Rinker

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 3rd day of May, 2012, personally appeared Karl A. Rinker as the duly authorized agent of Rinker's, Inc. signer of the forgoing instrument, who is known to me or who satisfactorily established his/her identity to me, and acknowledged the same to be the act and deed of Rinker's, Inc. and that he/she has the authority to contract on behalf of Rinker's, Inc. and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]
Notary Public

My Commission Expires: 2/10/15

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

DATED at Montpelier, Vermont, this 4th day of May, 2012.

Land Use Panel
Natural Resources Board

By: [Signature]
Ronald A. Shems, Chair