

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
)
 v.)
)
TOWN MEADOW, LLC)
 Respondent)

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Constructing a street extension and sidewalk, sewer, storm and water extensions without approval in violation of Conditions No. 2 and 5 of Land Use Permit #4C1180.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. On September 6, 2007, the District 4 Environmental Commission (the Commission) issued Land Use Permit #4C1180 to Town Meadow, LLC, which specifically authorized the construction of a three-story, 48 unit congregate housing building, along with a 350 l.f. long extension of existing Carmichael Street in Essex, Vermont. This permit applies to the lands described in Book 621, Page 315 of the Town of Essex land records (the project tract).
2. Condition No. 2 of Land Use Permit #4C1180 states: "The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #4C1180, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit."
3. Condition No. 5 of Land Use Permit Amendment #4C1180 states: "No 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 Act 250 Rules."
4. On March 21, 2008, Respondent filed Act 250 Amendment Application #4C1180-2

for a 170 l.f. long extension of Carmichael Street, along with sidewalk, sewer, storm and water extensions. The Commission issued draft Land Use Permit Amendment #4C1180-2 on March 28, 2008. The Commission postponed issuance of the final permit amendment pending the issuance of a Construction General Permit (CGP) determination for the project from the Vermont Agency of Natural Resources Department of Environmental Conservation (the DEC).

5. As of February 2009, Respondent had constructed a 170 l.f. long extension of Carmichael Street, along with a sidewalk, sewer, storm and water extensions. At that time, Respondent had not submitted any CGP determination by the DEC to the Commission, and the Commission had not issued Land Use Permit Amendment #4C1180-2.
6. The construction of a 170 l.f. long street extension, along with a sidewalk, sewer, storm and water extensions on the project tract is a material change from the previously permitted project.
7. Respondent failed to obtain written approval from the District 4 Coordinator or the District 4 Environmental Commission for the change in use of the project.
8. Respondent failed to obtain a timely Act 250 Land Use Permit Amendment for this material change to Land Use Permit #4C1180.
9. Respondents violated Conditions No. 2 and 5 of Land Use Permit #4C1180 by constructing a 170 l.f. long street extension, along with a sidewalk, sewer, storm and water extensions on the project tract without first obtaining a Land Use Permit Amendment for those activities.
10. On March 25, 2009, Respondent received Land Use Permit Amendment #4C1108-2 as an after-the-fact approval of a 170 l.f. long extension of Carmichael Street, along with sidewalk, sewer, storm and water extensions.

AGREEMENT

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

- A. Respondent shall comply with all conditions of Land Use Permit #4C1108, as amended.
- B. Within thirty (30) days from 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 Two Thousand Eight Hundred Twelve Dollars (US) (\$2,812.00) for the violation 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


- C. Any payment by the Respondent pursuant to this Assurance is made to resolve the violation 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 Respondent's 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 violation 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 the 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), 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.
- 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.

Dated at SO. Burlington, Vermont, this 19 day of May, 2009.


Town Meadow, LLC

By: 
Sim Doudsiewicz
(Print Name and Title) member

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 19 day of May, 2009,
personally appeared Sim Doudsiewicz, the duly authorized agent of
Town Meadow, LLC signer and sealer of the foregoing instrument who is known to me
or who satisfactorily established his/her identity to me and acknowledged the same to be
the free act and deed of Town Meadow, LLC, and that he/she has the authority to contract
on behalf of Town Meadow, LLC and that he/she has been duly authorized to enter into
the foregoing Assurance on behalf of that entity.

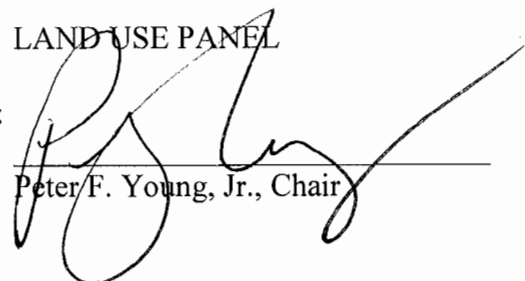
Before me,


Notary Public Brenda Berardinelli
My Commission Expires: 2/10/11

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

Dated in Montpelier, Vermont, this 20th day of MAY, 2009.

LAND USE PANEL

By: 
Peter F. Young, Jr., Chair