

STATE OF VERMONT
ENVIRONMENTAL COURT

) Docket No. 109-6-08 Vtec
)
)

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

) **-vs-**
)

) **ASSURANCE OF**
) **DISCONTINUANCE**
)

) **JAKE FINANCIAL, LLC**
) **d/b/a Water Works**
) **Respondent.**
)

VIOLATIONS

- I: Commencing development by construction of a 36'x 50' commercial building without approval from the Act 250 District Commission in violation of 10 VSA § 6081[a] and of Conditions 1 and 3 of Land Use Permit #8B0490-2aa.
- II: Proceeding with an unauthorized change of use of the Subject Parcel identified in Paragraph 1, below, without approval from the Act 250 District Commission and in violation of Condition 3 of Land Use Permit #8B0490-2aa.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Jake Financial, LLC, d/b/a Water Works (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- 1. On December 10, 1993, the District 8 Environmental Commission (Commission) issued LUP #8B0490 (the Permit) to Respondent's predecessor in interest, which authorized the conversion of a single family home located north and adjacent to the Equinox Mountain Toll Road on

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- Rt. 7A in Sunderland (hereinafter the "Subject Parcel") into a retail shop. The Permit was amended by an Administrative Amendment dated March 21, 2001, and identified as LUP Amendment #8B0490-2aa.
2. Condition 1 of LUP Amendment #8B0490-2aa states that "The project shall be completed, operated and maintained in accordance with: (a) the plans and exhibits on file with the District Environmental Commission, and (b) the conditions of this permit."
 3. Condition 2 of LUP Amendment #8B0490-2aa states that "All conditions of Land Use Permit #8B0490 as amended are in full force and effect except as amended herein."
 4. Condition 3 of LUP Amendment #8B0490-2aa states that "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 Commission."
 5. On August 28, 2006, Respondent submitted an amendment request for a change of use and construction of a 36' x 50' storage building.
 6. On August 29, 2006, and in response to Respondent's amendment request, the Act 250 District Coordinator (Coordinator) issued an "incomplete letter" requesting additional information to Respondent. Thereafter, the Coordinator followed up with a phone call to Respondent and faxed the Respondent a copy of the "incomplete letter" on November 7, 2006.
 7. On November 15, 2006, the Coordinator observed that a new concrete slab had been poured on the Subject Parcel. At that time, the Coordinator also observed that signage indicating a change of use of the existing building on the Subject Parcel (from a café to a domestic water treatment operation with offices and a new building under construction) had been placed on the Subject Parcel.
 8. The Coordinator issued a Notice of Alleged Violation (NOAV) dated November 15, 2006 to Respondent which advised that Respondent had violated Conditions 1 through 4 of LUP #8B0490, as amended by LUP #8B0490-2aa, and directed Respondent to cease construction activity and file a complete application for a permit amendment.
 9. Thereafter, Respondent erected a 36' x 50' heated storage building (the Project Building) on the previously-poured concrete slab without first obtaining approval from the Commission.

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10. Respondent violated 10 VSA § 6081[a] and Conditions 1 and 3 of LUP #8B0490-2aa by constructing a 36'x 50' commercial building without first obtaining approval, in the form of a permit amendment, from the Commission.
11. Respondent also changed the use of the Subject Parcel from mixed retail/apartment to mixed office/apartment without first obtaining approval, in the form of a permit amendment, from the Commission.
12. Respondent violated 10 VSA § 6081[a] and Condition 3 of LUP #8B0490-2aa by changing the use of the Subject Parcel from mixed retail/apartment to mixed office/apartment without first obtaining approval, in the form of a permit amendment, from the Commission.
13. On November 13, 2007, Respondent filed an application amendment for LUP #8B0490, requesting post-construction approval for the Project Building and the change in use of the Subject Parcel.
14. On December 12, 2007, the District 8 Environmental Commission (Commission) issued LUP Amendment #8B0490-3 to Respondent, which authorized the post-construction approval of the Project Building and the change in use of the Subject Parcel.

AGREEMENT

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

- A. Pursuant to the payment schedule set forth below, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **SIX THOUSAND FIVE HUNDRED AND TWENTY-FIVE DOLLARS (\$6,525.00)** (U.S.), for the violations noted herein as follows:

On or before August 15, 2008: \$1,457.50

Twelve (12) additional payments commencing on September 15, 2008 and due each month on or before the 15th day thereof:

\$397.92

Penalty Due to State of Vermont: \$6,232.50

Respondents shall make said payments by check made payable to the

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"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

Furthermore, Respondent shall also remit the remaining **TWO HUNDRED NINETY-TWO AND 50/100 DOLLARS (\$292.50)** of the total fine to the **above address**, in a separate check due on or before August 15, 2008 payable to Powers & Byers, LLP for mediation services costs incurred by both Respondent and the State as a result of the above-captioned action.

Any further costs of enforcement with respect to the above-captioned matter (Docket No. 109-6-08 Vtec) are hereby waived provided that Respondent fully complies herewith.

Enforcement Costs Due & Payable to Mediator:	\$292.50
Penalty Due to State of Vermont:	\$6,232.50
Total Due from Respondent:	<u>\$6,525.00</u>

Late payments shall bear interest at the rate of twelve percent (12%) per annum. In the event that Respondent fails to make any payment by the date due, the Land Use Panel, at its option, may declare the whole amount then owing under this Assurance due and payable, any terms herein to the contrary notwithstanding.

- 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. 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.
- D. 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.
- E. 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

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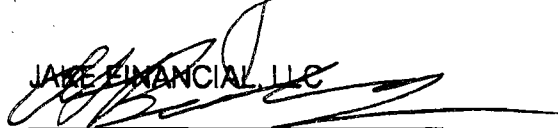
the Environmental Court, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.

- F. 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.
- G. 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.
- H. 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.
- I. 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 Manchester, Vermont, this 6 day of Aug, 2008.


 JAKE FINANCIAL, LLC
 By: ALAN BOOKSPAN
 Its: PRESIDENT (TITLE)

STATE OF VERMONT)
 COUNTY OF) ss.
Bennington)

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, ALAN S BOOKSPAN, the undersigned, hereby state under oath that I am PRESIDENT of Jake Financial,

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LLC, that I have the authority to contract on behalf of Jake Financial, LLC and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Manchester, Vermont, this 6 day of Aug, 2008

JAKE FINANCIAL, LLC

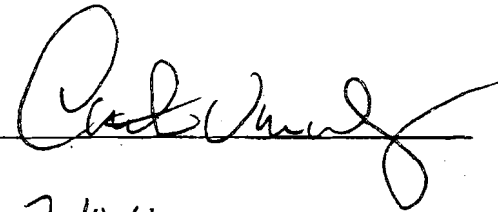
By: 

ALAN BOOKSPAN

Title: PRESIDENT, JAKE FINANCIAL, LLC

BE IT REMEMBERED that on the 6 day of Aug, 2008, personally appeared Alan Bookspan, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

Before me,



Notary Public
My Commission

Expires: 7-10-11

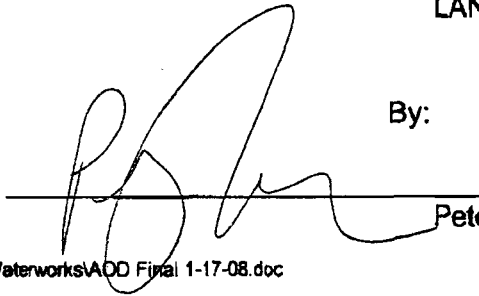
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 11th day of August, 2008.

LAND USE PANEL

By:



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