

**STATE OF VERMONT  
ENVIRONMENTAL COURT**

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

Petitioner

**ASSURANCE OF DISCONTINUANCE**

v.

**THOMAS WYCKOFF,**  
Respondent

**VIOLATION**

Commencement of construction on more than ten housing units in five years without an Act 250 permit.

**ASSURANCE OF DISCONTINUANCE**

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

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

**18, 21 and 27 Clark Drive**

1. These properties originated from land purchased by Roland Fournier in January 2002. Mr. Fournier then obtained Department of Environmental Conservation (DEC) Wastewater Disposal and Water Supply (WW) permit 5-3588 which acknowledged the creation of lots 2A, 2B and 2C, subsequently identified, respectively, as 21, 18 and 27 Clark Drive.
2. During May-July 2002, construction took place on the lots for the installation of water and sewer infrastructure, including a house foundation and driveway at 21 Clark Drive.
3. In July 2002, Mr. Fournier sold a newly constructed house on 21 Clark Drive to the Barton family. The Bartons added a basement apartment to the structure.
4. Department of Environmental Conservation Wastewater Permit 5-1994 was issued to Mr. Fournier on November 18, 2002 authorizing triplexes at 18 and 27 Clark Drive.

5. Mr. Fournier constructed some level of improvements for water, sewer and power services on 18 Clark Drive.
6. Respondent acquired 27 Clark Drive around January 2003. On May 6, 2003 Respondent requested additional sewer allocation from the Village of Jeffersonville for 27 Clark Drive, upon which construction was underway for a triplex.
7. The May 6, 2003 request to the Village also included a request by Respondent for added flows for one more bedroom at 18 Clark Drive. Respondent then acquired the property at 18 Clark Drive around November 2003 and constructed the triplex.
8. During July and August 2003, Respondent's consultant filed letters with the Department of Environmental Conservation confirming inspection and testing of the pump stations and force mains at 18 and 27 Clark Drive.
9. Mr. Barton obtained Department of Environmental Conservation Wastewater Permit 5-3693 on May 15, 2006 in order to add 2 apartments to his existing duplex at 21 Clark Drive. Mr. Barton commenced rough grading and site utility work for the 2 additional units. Respondent acquired 21 Clark Drive in June 2006 and the 2 apartments were then substantially completed.

36, 37, 40, 192 and 206 Greystone Drive

10. In 2004 and 2005, 3 spec homes and two triplex buildings - for a combined total of 9 units - were constructed on these properties.
11. On March 10, 2004, a jurisdictional Project Review Sheet was issued by a District 5 assistant coordinator with respect to the proposed units described in #10 above. At that time, the units proposed were for what was then a 24± acre tract. The Project Review Sheet stated a conclusion that the proposal did not trigger Act 250 jurisdiction noting that "1) property is not contiguous to land under 5L1383, 2) owners have not created more than five lots in 5 years and 3) owners have not constructed more than 9 residential units in 5 years."
12. The March 10, 2004 Project Review Sheet included a reference that an existing duplex was present on the tract. This duplex is on the property at 224 Jefferson Heights Road on which Respondent had constructed a spec house in 2001 and then modified to add an apartment later in 2001, thus transforming the structure to a duplex.

13. It is unclear whether, at the time the March 10, 2004 Project Review Sheet was issued, whether the assistant coordinator knew or was told if Respondent intended to construct the "spec houses" on the created lots.

235 Upper Pleasant Valley Road

14. Randall Davis purchased the property at 235 Upper Pleasant Valley Road in 1997 and then obtained Department of Environmental Conservation Wastewater Permit 5-3015 on February 14, 2004 for a 4-unit apartment building on the property.
15. Davis conveyed the property to Respondent on December 29, 2004.
16. Construction commenced on this lot at some time before December 29, 2004. Specifically, the foundation had been dug, footers had been poured, site grading had been complete, the sewer hookup had been established and power was run to the site.

2000 VT Route 108 North

17. Respondent constructed a "spec home" on this property in 2002. Subsequently, the apartment may have been converted to storage space.

Pumpkin Harbor Road

18. On March 21, 2008 Respondent filed an application with the Department of Environmental Conservation for a WW permit for the construction of a 4 bedroom residence on a 1.19 acre lot on Pumpkin Harbor Road. However, Respondent has since decided not to build any residential units on this lot.

Upper Pleasant Valley Road Tract

19. On July 29, 2008, Respondent filed for an amendment to Department of Environmental Conservation Wastewater Permit 5-2800 to subdivide 6.6 acres of the 10-acre tract discussed above in # 17 into three lots of 0.12 acres each and a fourth retained lot of 6 acres. Single family homes are proposed for each of the three 0.2 acre lots, and at least two of these have been built.
20. Chenette Associates had prepared a plan dated June 28, 2006 for a 36 lot subdivision on the tract and, as recently as May 14, 2007, Respondent had water and sewer allocations for 17,400 gpd from the Town of Jeffersonville.

21. On or about June 22, 2008 a Project Review Sheet was issued asserting jurisdiction over certain proposed lots and units. Reconsidered Jurisdictional Opinions were issued on September 26, 2008 and October 7, 2008, clarifying which lots and units required an Act 250 permit. None of these decisions was appealed.
22. On or about December 22, 2008, Respondent obtained Land Use Permit #5L1503, authorizing the previously built units and the 4-lot subdivision on a 6.9-acre tract.
23. The permit was processed as a minor, because the project caused no significant adverse impact under any Act 250 criterion. In addition, no potential party requested a hearing on the permit.
24. Immediately upon learning of the violation, Respondent filed an Act 250 application to get into compliance. Moreover, Respondent cooperated fully with the district environmental coordinator by providing all requested information during the investigation and process of issuing the jurisdictional opinions.
25. Respondent commenced construction on more than 10 housing units within five years prior to 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 Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$1,000.00** (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  
Natural Resources Board, Land Use Panel  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

- 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 claimed by Respondent as a charitable contribution or business expense or other

deductible expense or contribution under the federal or state tax codes.

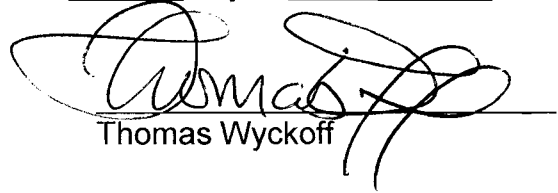
- C. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- D. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent 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 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 comply 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.

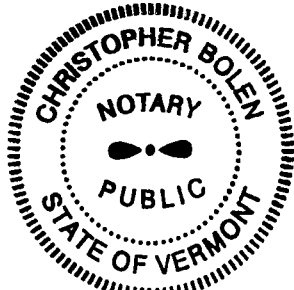
Jeffersonville

DATED at ~~22 June~~, Vermont, this 22 day of June, 2009.

  
Thomas Wyckoff

STATE OF VERMONT  
COUNTY OF LAMOILLE, ss.

BE IT REMEMBERED that on the 22<sup>ND</sup> day of JUNE, 2009,  
personally appeared Thomas Wyckoff, signer of the foregoing written instrument  
who is known to me or who satisfactorily established his identity to me and  
acknowledged the same to be his free act and deed.



Before me,

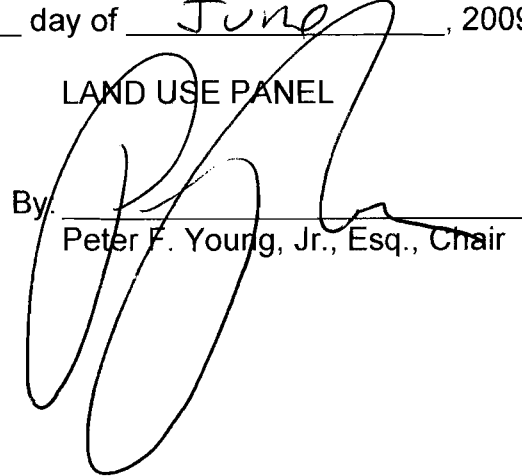
  
Notary Public  
My Commission Expires: 2/10/11

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

DATED in Montpelier, Vermont, this 24<sup>TH</sup> day of June, 2009.

LAND USE PANEL

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