

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,
Petitioner,

v.

Sportsmen, Inc.,
Respondent.

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Docket # 43-5-20 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on April 20, 2020, and filed with the Superior Court, Environmental Division, on May 27, 2020, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 3rd day of June 2020.



Thomas S. Durkin, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Sportsmen, Inc.,
Respondent

VIOLATION

Commencing construction of a development without an Act 250 land use permit. 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (“Board”) and Sportsmen, 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 is a domestic non-profit corporation with a principal office business address of 2081 Creamery Road, Guilford, VT 05301 (the “Property”).
2. Respondent owns the Property, which is further described in a deed dated August 31, 1966 and recorded in Book 40, Page 54 of the Town of Guilford land records. The Property is also assigned the School Property Account Number (“SPAN”) 273-086-10890.
3. Respondent promotes responsible fishing, hunting, trapping, archery, and shooting sports by, for example, hosting special events for the community including, but not limited to, camps and hunter education events.
4. Respondent offers memberships to the public for a fee. Membership entitles an individual to use the Property.
5. The Property contains a pond, which is a Class II Wetland and which Respondent’s members use to fish. In 1991, Respondent dredged and enlarged this pond. It also replaced the existing beaver dam with a manmade dam. Respondent obtained a Conditional Use Determination from the Vermont Department of Environmental

Conservation to perform these improvements (the “Pond Improvements”). Respondent did not obtain an Act 250 Permit to perform the Pond Improvements.

6. The Property also contains a clubhouse. In 1988 and 1989, Respondent enlarged this clubhouse from 12 feet by 24 feet to 24 feet by 34 feet. As part of this project, Respondent added a food prep and serving area and replaced the existing outhouses with indoor restrooms and a sewage disposal system (the “Clubhouse Improvements”). Respondent did not obtain an Act 250 Permit to perform the Clubhouse Improvements.
7. From the enactment of Act 250 to 2011, Respondent built and rebuilt three outbuildings at the property: a pavilion for trap shoots, a storage shed, and a score shack to shelter the scorer in rainy weather during trap shooting events (the “Outbuilding Improvements”). Respondent did not obtain an Act 250 Permit to perform the Outbuilding Improvements.
8. The Property also contains a shooting range. The range has three backstops, which correspond to the three available target distances. The backstops are 25 yards, 50 yards, and 100 yards away from the shooting stations, respectively. In 2013, the Vermont Fish and Wildlife Department awarded Respondent \$34,000 to conduct the following “Shooting Range Improvements,” all of which Respondent has completed:
 - a. Rebuild the 25-yard backstop and elevate it by six feet to a total height of 15 feet.
 - b. Install below grade a 12 foot by 16 foot rubber liner for the 25-yard backstop.
 - c. Rebuild the 50-yard backstop.
 - d. Install below grade a 12 foot by 60 foot rubber liner for the 50-yard backstop.
 - e. Elevate the 100-yard backstop by five feet for a total height of 20 feet.
 - f. Install below grade a 12 foot by 20 foot rubber liner for the 100-yard backstop.
 - g. Connect the 100-yard backstop to a berm on its right side.
 - h. Install a 40 foot by 25 foot by 12 foot wall and noise abatement materials in connection with the 100-yard backstop.

The purpose of the Shooting Range Improvements was to further protect the safety of Respondent’s members and neighbors. As recognized in an April 24, 2014 letter from Respondent to its members, some of the Shooting Range Improvements inadvertently increased the sounds of shooting heard by at least one of Respondent’s neighbors. Respondent did not obtain an Act 250 Permit to perform the Shooting Range Improvements.

9. The Pond Improvements, Clubhouse Improvements, Outbuilding Improvements, and Shooting Range Improvements are hereinafter referred to collectively as the “Improvements.”
10. On June 16, 2015, Act 250 District Coordinator April Hensel issued a jurisdictional opinion, which concluded that the Improvements constituted a substantial change to a pre-existing development and, therefore, needed an Act 250 land use permit. Respondent

did not appeal this jurisdictional opinion.

11. On February 29, 2016, Respondent applied for an Act 250 land use permit for the Improvements. This application has been assigned land use permit identification number 2W1334 (“Land Use Permit Application 2W1334”).
12. On May 6, 2016, District Coordinator Stephanie Gile issued a letter stating that Respondent’s land use permit application was incomplete and directing Respondent to supplement it in seven ways. Respondent has since provided additional information, which Coordinator Gile is reviewing to determine whether the application is now complete.
13. The Board alleges that the construction of the improvements without an Act 250 land use permit constitutes a violation of 10 V.S.A. § 6081(a).
14. Respondent admits the factual findings described above, solely for purposes of resolving this case.
15. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed claims, and is in the public interest.

AGREEMENT

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

- A. Respondent shall diligently pursue Land Use Permit Application 2W1334. For the purposes of this Assurance, “diligently pursue” shall mean that Respondents shall (a) respond to any and all future requests for information from the Coordinator for the Commission by the date set by the Commission or Coordinator, and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission. Respondent shall not be responsible for delays outside its control, including those caused by the Coordinator or Commission.
- B. According to the below payment schedule and pursuant to 10 V.S.A. Ch. 201, Respondent shall pay: (i) a civil penalty in the amount of **Five Thousand Dollars and Zero Cents (\$5,000.000) (U.S.)**; and (ii) **Eight Hundred Fifty Five Dollars and Ten Cents (\$855.10) (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the “State of Vermont.”
 1. On or before October 1, 2021, **Two Thousand Nine Hundred Twenty Seven Dollars and Fifty-Five Cents (\$2,927.55) (U.S.)**, by check made payable to the “State of Vermont.”

2. On or before October 1, 2022, **Two Thousand Nine Hundred Twenty Seven Dollars and Fifty-Five Cents (\$2,927.55) (U.S.)**, by check made payable to the “State of Vermont.”
- C. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the amount of **Fifteen (\$15.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Guilford land records, by check made payable to the “Town of Guilford, Vermont.”
- D. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above to resolve all outstanding disputes.
- E. Respondent agrees that the violations alleged are deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of Respondent’s past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- F. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board a notarized, written acknowledgement of receipt of the Court’s Order.
- G. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- H. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent’s reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- J. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent’s continuing obligation to comply with applicable state or local statutes, regulations or directives.
- K. 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.

- L. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
- M. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond either Respondent's control.
- N. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- O. 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.
- P. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- Q. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted by Sportsmen, Inc. as acknowledged by signer Jane Wheeler, President of Sportsmen, Inc., who represents that she has the authority to contract on behalf of Sportsmen, Inc. and that she has been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Brattleboro, Vermont, this 20 day of April, 2020.

Sportsmen, Inc.

By Jane Wheeler
Jane Wheeler, President and
Duly Authorized Agent for
Sportsmen, Inc.

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

Dated at Montpelier, Vermont, this 26 day of May, 2020.

Natural Resources Board

By:

Diane B. Snelling
Diane B. Snelling, Chair