

SUPERIOR COURT

STATE OF VERMONT

ENVIRONMENTAL DIVISION
Docket No. _____ Vtec

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

ASSURANCE OF DISCONTINUANCE

Automaster Motor Company, Inc.,
Respondent

VIOLATION

Commencement of development without an Act 250 Land Use Permit. 10
V.S.A. §6081.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On October 15, 1999, the District 4 Environmental Commission issued Land Use Permit 4C1053 (Permit) to Respondent to construct the 30-space parking lot. The Permit applies to the lands owned by the Respondent and identified in Book 87, Pages 176- 178, of the land records of the Town of Shelburne, Vermont. The Respondent operates an automobile sales and service business on the said lands.

2. Condition 6 of the Permit reads:

No changes shall be made in the design or use of Phase I of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.

3. The Permit has been amended eight times between 1999 and 2011, subjecting to Act 250 (10 V.S.A. Ch. 151) jurisdiction other parcels of land in Shelburne adjoining or adjacent to the land identified in the Permit.

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4. The amended permits include conditions similar to Condition 6 of the Permit, all of which require written approval from the District 4 Commission or Coordinator before changes to the projects allowed under the permits occur. See, e.g., Condition 7 of Land Use Permit 4C1053-1 and Condition 6 of Land Use Permit 4C1053-2 (both amendments relating to land identified in Book 235, Pages 169 – 171 of the Shelburne land records); Condition 6 of Land Use Permit 4C1053-4 (relating to land identified in Book 235, Pages 169 – 171 and Book 296, Pages 37 – 39 of the Shelburne land records); and Condition 6 of Land Use Permit 4C1053-5B (Book 296, Pages 37 – 39): “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 Environmental Board Rules.”

5. Some time prior to September 14, 2012, the Respondent obtained ownership or control of a parcel of land adjoining the lands subject to the Permit, as amended, and located on the northwest corner of the intersection of US Route 7 and Bay Road in Shelburne (the project tract).

6. Situated on the project tract was a building which formerly housed a restaurant; over time, the building had devolved into a state of disrepair.

7. In early September 2012, the Respondent demolished the building, hauled away the debris, and graded the project tract.

8. The Vermont Division for Historic Preservation (DHP) considers the building to be of historic significance. However, photographs of the building in earlier years exist, and DHP would not have required further documentation of the building before it was demolished.

9. The building was demolished and the project tract was graded in order to prepare the property as a parking lot for the Respondent's inventory.

10. The activities on the project tract constitute a "material change" to the Permit, as amended, as that term is defined in Act 250 Rule 2(C)(6).

11. Act 250 Rule 34(A) states that an amended Land Use Permit “shall be required for any material change to a permitted development....”

12. The Respondent's failure to obtain a permit amendment before engaging in the "material change" at the project tract is a violation of 10 V.S.A. § 6081(a) and

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Act 250 Rule 34(A).

13. On January 18, 2013, the District 4 Environmental Commission issued Land Use Permit #4C1053-7 to the Respondents which authorizes the demolition of the restaurant and other activities at the project tract.

AGREEMENT

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

A. Act 250 jurisdiction attaches to the construction of improvements at the project tract.

B. The Respondent shall comply with Land Use Permit #4C1053 and all amendments thereto.

C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:

1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Six Thousand Seven Hundred Fifty (\$6750.00) Dollars (U.S.), for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont" and

2. the amount of Ten (\$10.00) Dollars (U.S.), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Shelburne land records, by good check made payable to the "Town of Shelburne, Vermont."

All payments required by this Assurance shall be sent to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
Dewey Building, National Life Drive
Montpelier, Vermont 05620-3201

D. Within thirty (30) calendar days of the date that this Assurance is entered as an order by the Superior Court, Environmental Division, the Respondent shall sign an acceptance of service, on a form approved by the Land Use Panel, showing that Respondent has actual notice of the Order and Assurance.

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E. The 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.

F. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

G. 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.

H. This Assurance shall become effective only after it is signed by all parties and entered as an order by 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.

I. 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.

J. 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.

K. When this Assurance is entered as a judicial order by the Superior Court, Environmental Division, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. Chapters 201 and/or 211.

L. 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.

Dated at SHELBURNE, Vermont, this 1 day of APRIL, 2013.

Automaster Motor Company, Inc.

By: [Signature]
its duly appointed agent

STATE OF VERMONT
COUNTY OF CHITTENDEN ss.

BE IT REMEMBERED that on the 1 day of APRIL, 2013, personally appeared JOHN DUBREUIL as the duly authorized agent of Automaster Motor Company, 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 his/her signature on this document and the free act and deed of Automaster Motor Company, Inc., and that he/she has the authority to contract on behalf of Automaster Motor Company, 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 8th day of May, 2013.

Land Use Panel
Natural Resources Board

By: [Signature]
Ronald A. Shems, Chair