

STATE OF VERMONT

Superior Court

Environmental Division
Docket No. 9-1-13

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Kerry F. Bourne & Barbara G. Bourne,
Respondents

VIOLATION

Commencement of development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Kerry F. Bourne & Barbara G. Bourne (Respondents) hereby enter into this Assurance of Discontinuance (AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondents, Kerry F. Bourne & Barbara G. Bourne own an approximately five (5) acre parcel on Whitney Hill Road in Brookline, Vermont (the Property).
2. Respondent, Kerry F. Bourne, owns Bourne Construction, a small sole proprietor commercial construction business.
3. In the year 2000, Respondents built a workshop/garage (the Workshop) on the property.
4. Respondents mistakenly believed that an Act 250 permit was not necessary.
5. Respondents have stored some construction equipment for Bourne Construction in and around the Workshop, such as trucks, a tractor, cement mixer, flatbed, trailer, and other small equipment such as gas cans, ladders, a lawn mower, wheelbarrows, etc.

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6. Respondents have commenced development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

AGREEMENT

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

- A. Respondents shall cease all commercial use of the Property including storage of materials used for commercial purposes no later than 30 days following the entry of this AOD as an Order by the Superior Court, Environmental Division.
- B. Respondents shall abide by all provisions of Attachment A of this Assurance.
- C. No later than 60 days following the entry of this AOD as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
 - 1. A civil penalty, pursuant to 10 V.S.A. Ch. 201, in the amount of **Three Thousand Dollars and Zero Cents (\$3,000.00) (U.S.)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".
 - 2. The reimbursement costs of this enforcement matter, pursuant to 10 V.S.A. § 8010(e)(2), in the amount of **Two Hundred Thirty-Four Dollars and Sixty-Five Cents (\$234.65) (U.S.)** to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
 - 3. The amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the land records of the municipality where the Project is located, by good check made payable to the "Town of Brookline, Vermont."
- D. Any late payment shall be subject to an annual interest rate of 12%.
- E. All payments required by this AOD shall be sent to:

Denise Wheeler, Business Manager
Natural Resources Board
Dewey Building

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1 National Life Drive
Montpelier, Vermont 05620-3201

- F. Respondent shall not deduct, nor attempt to deduct, any payment or interest paid to the State of Vermont pursuant to this AOD from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- G. 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.
- H. Nothing in this AOD 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.
- I. This AOD 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 AOD shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the AOD shall be null and void.
- J. 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 AOD.
- K. This AOD 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 AOD, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- L. When this AOD is entered as a judicial order, violation of any provision of this AOD 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.
- M. This AOD is subject to the provisions of 10 V.S.A. § 8007 and §8020.
- N. Upon the entry of this AOD as an Order by the Superior Court, Environmental Division, the December 27, 2012 Administrative Order in this matter is dismissed.

SIGNATURES


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

Dated at Townsend, Vermont, this 9 day of July, 2013.


Kerry F. Bourne

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

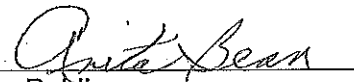
Dated at Townsend, Vermont, this 9 day of July, 2013.


Barbara G. Bourne

STATE OF VERMONT
COUNTY OF WINDHAM, ss.

BE IT REMEMBERED that on the 9TH day of July, 2013, personally appeared KERRY F. BOURNE and BARBARA G. BOURNE, signer(s) of the foregoing instrument who are known to me or who satisfactorily established their identity to me and acknowledged the same to be their free act and deed.

Before me,


Notary Public
My Commission Expires: 7/10/15

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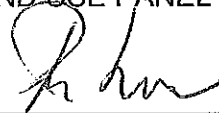
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 20th day of August, 2013.

LAND USE PANEL

By:



Ronald A. Shems, Chair

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Attachment A

1. This attachment applies to the Assurance of Discontinuance between Kerry and Barbara Bourne and the Land Use Panel of the Natural Resources Board.
2. The following items shall be removed from and not used for commercial purposes on or stored at the Project Tract in accordance with this Assurance of Discontinuance:
 - a. 3 concrete chutes
 - b. 3 – 24” screw Jacks
 - c. 52 footing pins
 - d. Bull float w/ pole ext.
 - e. 3 pump jack staging brackets
 - f. Hilti Hammer drill
 - g. 753 Skidsteer with tooth bucket
 - h. Metal wall brackets
 - i. Pail with masons trowels and chisels
 - j. 4 sections of pipe staging
 - k. Van contains tools etc for work that is used and will be parked at home.
 - l. 14’ flatbed trailer
 - m. International Truck
 - n. 5’ Bushhog field mower
3. The following items may remain on the Project Tract as long as they are not used for commercial purposes no matter how limited in use:
 - a. Logging Winch
 - b. Kubota Farm tractor
 - c. Snow plow
 - d. Vintage cement mixer (used for rope tow)
 - e. 743 Skidsteer
 - f. Rock Bucket/for skidsteer
 - g. Lawnmower
 - h. Weedwackers /string/blade
 - i. Pail misc. masons trowels and chisels
 - j. Misc dimensional lumber
 - k. Wood roofing brackets
 - l. 2 - Aluminum tree pruning ladders
 - m. 32’ Aluminum extension ladder

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- n. 5' Snow blower
- o. Chainsaws
- p. Gas cans
- q. Ropes
- r. 5' x8' utility trailer
- s. Form panels
- t. Radial arm saw
- u. Leaf blower
- v. Miscellaneous cribbing/wood blocks
- w. Miscellaneous shop tools such as wrenches, screwdrivers, hammers, and pliers
- x. Drill press
- y. Floor jack
- z. Chain fall hoist
- aa. Air compressor
- bb. Welder
- cc. Misc. screws/nails/nuts/bolts
- dd. Vices
- ee. Forge
- ff. Nothing in this section shall limit the presence or use of personal property at the Project Tract, so long as not used for commercial purposes