

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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

v.

Docket No.

**BRETT SANDERSON and
SANDERSON CONTRACTING, INC.
Respondent**

VIOLATION

Construction of improvements for a commercial purpose on a tract of land more than ten acres in area without having first obtained an Act 250 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 Brett Sanderson and Sanderson Contracting, Inc. (Respondents) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND VIOLATION

1. On September 15, 2006, Respondents filed an application for an Act 250 permit for a contracting, excavation and property management business on a 13 ± acre tract of land at 469 Commonwealth Avenue in Ludlow, Vermont (Project), including the previous construction of a 48-foot by 56-foot equipment and maintenance building, a 32-foot by 28-foot garage for storage of equipment with an apartment, a covered winter sand storage shed, an aggregate storage bunker, a fuel storage shed and snowmobile groomer building, and a new driveway and access, with culverting of approximately 130' of a stream to create an expanded area for material storage, and associated clearing and regrading of approximately .75 acres of wooded area.
2. On September 13, 2007, the District 2 Environmental Commission (Commission) issued Findings of Fact, Conclusions of Law, and Order (Decision), denying the application for failure to comply with Act 250 Criteria 1(E) (streams), 8 (aesthetics), and 10 (town plan). The Decision was not appealed.
3. With regard to the approximately 150' of culverted stream, the Commission found that the Agency of Natural Resources had "worked with the Applicants in developing a remedial plan which involved pulling back excessively steep

slopes, installing boulders and plantings and developing a riparian management plan. Exhibit 30." Decision at 6, Finding 5.

4. Respondents' failure to obtain an Act 250 permit prior to commencing construction of improvements for a commercial purpose constitutes a violation of 10 V.S.A. § 6081(a).

AGREEMENT

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

- A. No later than sixty (60) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$2,812.50** U.S. Dollars, for the violation noted herein. Respondents shall make said payment by check or money order payable to the "Treasurer, State of Vermont" and shall send it to:

Denise Wheeler, Business Manager
Natural Resources Board, Land Use Panel
National Life Records Center, National Life Drive
Montpelier, Vermont 05620-3201
- B. Any payment by the Respondents pursuant to this Assurance is made to resolve the violation set forth in this Assurance of Discontinuance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- C. On February 27, 2008, the Respondents filed a Motion to Reconsider with the District 2 Environmental Commission, requesting reconsideration the Commission's decision denying Respondents' denial as set forth in the Findings of Fact, Conclusions of Law, and Order #2S1227, dated September 13, 2007.
- D. If after hearing the Respondents' Motion to Reconsider, the Commission denies the Respondents' Act 250 application, then:
 1. Within sixty (60) days after said decision becomes final, Respondents shall cease all commercial use of the project site, except for use that constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or other use that would not be subject to Act 250 jurisdiction.

2. If Respondents wish to use the project site for any commercial purpose, then within thirty (30) days of said decision becoming final, Respondents shall request a jurisdictional opinion from the District Coordinator to ensure that any proposed commercial use of the project site constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or is otherwise exempt from Act 250 jurisdiction.
 3. Any commercial use of the project site that is not determined to be exempt from Act 250 in a final jurisdictional opinion shall be prohibited, unless an Act 250 permit is obtained prior to the commencement of that activity.
- E. 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 violation set forth herein above.
- F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives.
- G. 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.
- H. Pursuant to 10 V.S.A. § 8007(d), Respondents shall not be liable for 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 Respondents fully comply with the agreements set forth herein.
- I. 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.

- J. 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.
- K. 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. Further, I, Brett Sanderson, the undersigned, hereby state under oath that I am President of Sanderson Contracting, Inc., that I have the authority to contract on behalf of Sanderson Contracting, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

DATED at Ludlow, Vermont, this 31st day of July, 2008.

SANDERSON CONTRACTING, INC.

By: Brett Sanderson
Brett Sanderson, President

STATE OF VERMONT
COUNTY OF WINDSOR ss.

BE IT REMEMBERED that on the 31st day of July, 2008, personally appeared Brett Sanderson, duly authorized agent of Sanderson Contracting, Inc., 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 and the free act and deed of Sanderson Contracting, Inc..

Before me,

Regula Jacobs
Notary Public
Commission Expires: 02-10-11

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

DATED at Ludlow, Vermont, this 31st day of JULY, 2008.

Brett Sanderson
Brett Sanderson

STATE OF VERMONT
COUNTY OF WINDSOR, ss.

At Ludlow, Vermont, this 31st day of JULY, 2008, personally appeared Brett Sanderson, signer of the foregoing 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,

Quada Jacobs
Notary Public
Commission Expires: 02-10-11

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: [Signature]
Peter F. Young, Jr., Esq., Chair