

STATE OF VERMONT
SUPERIOR COURT — ENVIRONMENTAL DIVISION

LAND USE PANEL of the)	
NATURAL RESOURCES BOARD,)	
)	
)	Docket No. _____
Petitioner,)	
)	ASSURANCE OF
v.)	DISCONTINUANCE
)	
RICK SHARP and RUTH MASTERS,)	
Respondents.)	

VIOLATIONS

- I. Commencing development for a commercial purpose by engaging in the construction of improvements for a commercial paragliding operation without an Act 250 permit in violation of 10 V.S.A. § 6081(a).
- II. Commencing development for a commercial or industrial purpose by constructing a barn to be used for retail sales and recreational rentals without an Act 250 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 Rick Sharp and Ruth Masters (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Rick Sharp and Ruth Masters (Respondents) own 84.6 acres on Cobble Hill Road in Milton, Vermont (the Subject Property). The parcel is recorded as Wells to Sharp, volume 85, Page 330; Sharp to Sharp & Masters, Volume 122, page 213 in the Land Records of the Town of Milton, Vermont.

2. Respondents commenced construction of improvements for a commercial purpose at some point prior to 1993 when Respondents began a paragliding operation on the Subject Property. Such improvements included the construction of a parking lot and the addition of certain trails to the Subject Property.
3. Respondents did not seek an Act 250 permit for these paragliding improvements. The paragliding operation has operated continuously on a seasonal basis, since 1993.
4. Thereafter, Respondents also constructed a barn on the Subject Property on or about September of 2009 (the Project Building). The Project Building is a 1,350 square-foot structure which was erected for commercial purposes including, without limitation, retail sales of holiday-related items, and for use as a base to conduct recreational activities on the Subject Parcel, such as paragliding, "Segway" tours, snowtubing and mountain biking (including bike rentals) and zip line rides.
5. Respondents constructed the Project Building without an Act 250 permit notwithstanding the fact that the District #4 Environmental Coordinator issued a Project Review Sheet dated July 29, 2009 (the PRS) notifying Respondents that an Act 250 Land Use Permit was required for the construction of the Project Building because the intended use constituted a commercial purpose.
6. Accordingly, in 1993 and again in 2009, Respondents commenced construction for commercial purposes without first obtaining an Act 250 Land Use Permit as required by 10 V.S.A. § 6081[a]. By commencing development for a commercial purposes without first obtaining an Act 250 Land Use Permit, Respondents have violated 10 V.S.A. § 6081[a], and remain in violation of 10 V.S.A. § 6081[a].
7. Respondents subsequently filed an application on March 26, 2010 for an Act 250 Land Use Permit. That application is pending.

AGREEMENT

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

- A. Respondents shall diligently pursue their application for an Act 250 Land Use Permit.

- B. Should the District 4 Environmental Commission deny Respondents' Act 250 permit application, and should said denial become final, then Respondents' shall immediately cease commercial and/or industrial operation of the Facility. Since Respondents intended to use the Project Building for retail purposes in connection with a pre-existing Christmas tree farm, purely agricultural uses of the Project Building would be permitted if the Commission were to deny Respondents' Act 250 permit application under such circumstances.
- C. No later than 30 days following the entry of this Assurance as an Order by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a total civil penalty in the amount of **Four Thousand Dollars (\$4,000.00)** for the violations noted herein.

Payment shall be made **by two (2) checks**, one check in the amount of **Three Thousand Nine Hundred and Four Dollars (\$3,904.00)** and a second check in the amount of **Ninety Six Dollars (\$96.00)**, each by check made payable to the "Treasurer, State of Vermont" and shall be sent to:

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

- D. Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- 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 violations set forth herein above.
- F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- 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), the Respondent shall not be liable for 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 complies with the agreements set forth above.
- 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.
- L. This Assurance or a notice thereof shall be filed within the land records of the town(s) in which the property is located. Respondents shall be responsible for the payment of the recording fee for such notice and shall send to the Panel a check in the amount of Ten (\$10.00) Dollars, made payable to the said municipality.

SIGNATURES

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

Dated at S. Burlington, Vermont, this 21st day of October, 2010



Rick Sharp

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 21st day of October, 2010, personally appeared Roch Sharp, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established **his/her/their** identity to me and acknowledged the same to be **his/her/their** free act and deed.

Before me,

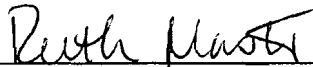


Notary Public

My Commission Expires: 2/10/14

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

Dated at S. Burlington, Vermont, this 21st day of October, 2010.



Ruth Masters

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 21st day of October, 2010, personally appeared Ruth Masters, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established **his/her/their** identity to me and acknowledged the same to be **his/her/their** free act and deed.

Before me,



Notary Public

My Commission Expires: 2/10/14

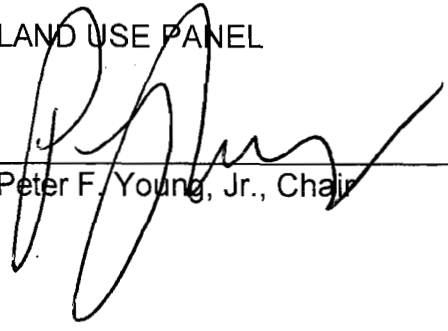
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

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Dated in Montpelier, Vermont, this 26th day of October, 2010.

LAND USE PANEL

By:



Peter F. Young, Jr., Chair