

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

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

v.

**ASSURANCE OF
DISCONTINUANCE**

**WILLIAM MILES SHERTS and
SKY MEADOW RETREAT, LLC**
Respondents

VIOLATIONS

Failure to comply with Land Use Permit #7C1027, Conditions 1 and 6

Failure to comply with Land Use Permit Amendment #7C1027-1,
Conditions 4, 8, and 15

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and William Miles Sherts and Sky Meadow Retreat LLC (Respondents) enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On April 16, 1997 the District 7 Environmental Commission issued Land Use Permit #7C1027 (Permit) to William Miles Sherts for the conversion of a portion of an existing barn into a year-round retreat and conference facility center for up to 16 people with overnight accommodations and cafeteria style meals and parking for up to 40 cars on a 107 acre parcel located in Stannard, Vermont and identified in Book 11, Page 322 of the Stannard Land Records.
2. On June 29, 2001 Mr. Sherts formed a Vermont limited liability company known as Sky Meadow Retreat LLC whose purpose in part was to operate the retreat approved in the Permit.
3. On June 6, 2002 the District 7 Environmental Commission issued Land Use Permit #7C1027-1 (Permit-1) to Respondent William Miles Sherts. Permit-1 authorized the Permittee to develop ten primitive tent sites as alternative residential/ sleeping quarters for up to 16 overnight

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guests, to be used only by registered organized groups and not open to the public at large. Permit-1 also authorized the construction of a vault privy to serve the ten-site area and permitted the use of the Retreat Center for up to 40 people for daytime events.

Motions to Alter Permit-1 were filed by Miles Sherts on June 29, 2002 and by Armour Moodie and Rose Gilman on July 5, 2002. District Coordinator Chuck Gallagher sent a letter to all parties on August 5, 2002 stating the Commission's intention to reconvene a hearing to consider these motions. This was the last official notice sent out by the District Commissioner on the matter of Permit-1.

Respondent Sherts wrote a letter to Mr. Gallagher and the Commission on September 17, 2002 stating his intention to withdraw his permit amendment application saying that he no longer wanted to pursue this permit. No hearing was ever held to consider the motions to alter, and none of the parties concerned were ever notified of any conclusive action taken by the District Commission on the Alter petitions.

It is Respondent Sherts' position that the vault privy was never completed (although it was partially constructed), the tent sites were never erected and that the 16 tent primitive campground does not exist. Respondent Sherts therefore avers that he had every reason to assume that Permit-1 was not in effect and that he therefore cannot be held in violation of any of the Permit-1 conditions.

4. Condition 1 of the Permit states:

The project shall be completed, maintained and operated in accordance with the plans and exhibits on file with the District, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Commission.

5. Similarly, Condition 4 of Permit-1 states:

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.

6. Several buildings beyond those authorized by the Permit or Permit-1 have been constructed on the premises since April 15, 1997. These buildings include a gazebo, utility shed, music studio, cider house and structures referred to by the Respondents as the Cob House, and the Robin's Nest.

7. By constructing said buildings without written approval by the

Commission or Coordinator, Respondents have violated Condition 1 of the Permit and Condition 4 of Permit-1. In addition, construction of these buildings violated then Environmental Board rule 34 (A) now known as Act 250 Rule 34 (A) (Material change to an existing project)

II.

8. The privy authorized by Permit-1 was partially completed prior to the issuance of Permit-1.

9. On July 24, 2001 a Notice of Alleged Violation was issued by former District 7 Environmental Coordinator Chuck Gallagher for the construction of the vault privy before Permit-1 was issued.

10. By partially constructing the privy before it was authorized by Permit-1, Respondents have violated Condition 1 of the Permit.

III.

11. Condition 6 of the Permit states:

Prior to the construction of any additional buildings on the lot approved herein, the permittee shall submit a design to the District Commission for a wastewater disposal system by a registered engineer or certified site technician which makes best efforts to meet the standards for sewage disposal in Chapter 7, of the Vermont Environmental Rules.

12. No wastewater disposal system design has been submitted to the Commission for the buildings noted in Paragraph 6 above.

IV.

13. Condition 8 of Permit-1 states:

Prior to construction of the new building/privy, and erection of the proposed tents, Permittee must submit a formal plan/agreement for controlling dust on the town road leading into the retreat. This plan must make clear the application of calcium chloride responsibilities, between the town and Permittee, and must be approved by the District Commission.

14. The new building/vault privy has been partially constructed and no plan to control dust on the town road leading to the retreat has been submitted to or approved by the Commission.

15. Respondents have violated Condition 8 of Permit-1.

V.

16. Condition 15 of Permit-1 states:

Daily retreat use attendance records will be submitted to the Regional Engineer ... and a copy of each year's annual records shall be forwarded to the District 7 Environmental Commission

17. No attendance records for the retreat have been submitted to the Regional Engineer nor have annual records been forwarded to the Commission.

18. Respondents have violated Condition 15 of Permit-1.

AGREEMENT

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

A. Within Sixty (60) days from the date this Assurance is signed by the Environmental Court, Respondents shall file with the Commission and diligently pursue a complete Act 250 Land Use Permit Amendment authorizing all improvements not currently approved.

B. If Respondents fail to file a complete application by the above date, or timely file said application and said application is denied by the Commission and said permit denial becomes final, then Respondents shall immediately cease all unpermitted activity and remove all unpermitted improvements from the premises.

C. Unless the Commission decides otherwise (see "A" above) Respondents shall submit to the Commission a formal plan/agreement for controlling dust on the Town road leading into the retreat. This plan must make clear the application of calcium chloride responsibilities, between the Town and Permittee, and must be approved by the Commission.

D. Unless the Commission decides otherwise (see "A" above) If Respondents fail to submit a formal dust plan/agreement, or the Commission does not approve the submittal and said disapproval becomes final, the Respondents shall immediately cease all unpermitted activity at the premises.

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E. Unless the Commission decides otherwise (see "A" above), respondents shall file with the Commission annual Retreat attendance records pursuant to Condition 15 of Permit-1 on or before October 1 of each year. It is understood that there are no such records for all years prior to 2009.

F. Within One Hundred and Twenty (120) days from the date this Assurance is signed by the Environmental Court, Respondents shall submit a wastewater disposal system design to the Commission prepared by a registered engineer or certified site technician, which makes best efforts to meet sewage disposal standards now established by the Department of Environmental Conservation.

G. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Six Thousand, Five Hundred Dollars (\$6,500.00) for the violations noted herein pursuant to the payment schedule set forth below:

\$2,500.00 on or before July 15, 2009.

\$1000.00 on or before August 15, 2009.

\$1000.00 on or before September 15, 2009.

\$1000.00 on or before October 15, 2009.

\$1000.00 on or before November 15, 2009.

Respondents shall make said payments by check made payable to the "Treasurer, State of Vermont" and forwarded to:

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

Late payments shall bear interest at the rate of twelve percent (12%) per annum. In the event that Respondents fail to make any payment by the date due, the Land Use Panel, at its option, may declare the whole amount then owing under this Assurance due and payable, any terms herein to the contrary notwithstanding.

H. Any payment by Respondents pursuant to this Assurance is made to resolve the violations set forth in this Order and shall not be considered to be a charitable contribution, business expense, or other

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deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondents' state or federal taxes.

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

J. 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 applicable to the Respondents.

K. 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.

L. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for any 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 Respondents fully comply with the agreements set forth above.

M. 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.

N. 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.

O. 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.

Dated at Montpelier, Vermont, this 4th day of June, 2009.

William Miles Sherts, Individually
Sky Meadow Retreat, LLC

By William Miles Sherts
William Miles Sherts, Duly
Authorized Agent

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 4 day of June, 2009, personally appeared William Miles Sherts, individually and as the duly authorized agent of Sky Meadow Retreat LLC signer and sealer 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 and the free act and deed of Sky Meadow Retreat, LLC and that he has the authority to contract on behalf of Sky Meadow Retreat LLC and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

David W. White
Notary Public
My Commission Expires :2/10/2011

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

Dated at Montpelier, Vermont, this 4th day of June, 2009.

LAND USE PANEL

By: Peter F. Young, Jr.
Peter F. Young, Jr., Esq., Chair