

STATE OF VERMONT
ENVIRONMENTAL COURT

FILED
APR 3 2008
VERMONT
ENVIRONMENTAL COURT

Vermont Natural Resources Board)
Land Use Panel,)
Petitioner,)
v.)
Frank Briscoe, Jr.,)
Respondent.)

Docket # 54-4-08 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on March 22, 2008, and filed with the Environmental Court on April 1, 2008, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 3rd day of April 2008.

A handwritten signature in cursive script that reads "Merideth Wright".

Merideth Wright,
Environmental Judge

STATE OF VERMONT

ENVIRONMENTAL COURT
DOCKET NO. _____

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
Petitioner,)
)
v.)
)
FRANK BRISCOE, JR.,)
Respondent)

VIOLATION

Construction of improvements for commercial purposes without first obtaining a Land Use Permit 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 Frank Briscoe, Jr. ("Respondent") hereby enter into this Assurance of Discontinuance ("Assurance" or "AOD"), and stipulate and agree as follows:

I. STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Frank Briscoe, Jr. is the owner of a 2.18 acre parcel of improved land in Brandon, Vermont, commonly known as the Old Brandon High School ("Project Site"). The land is identified in Book 193, Page 7, and Book 171, Page 453 of the Town of Brandon Land Records.

2. The only improvement on the land is a large brick building built in 1916 used for many years as a school, first, as the Brandon High School and then as the Brandon Elementary School. The building was used as administrative offices and a community center following the move of the elementary school to Forest Dale in the late 1960s. Since becoming vacant more than 20 years ago, the building has suffered from extensive vandalism and deterioration.

3. Briscoe, who studied historic preservation at Cornell University in Ithaca, New York, and has work experience in the care and preservation of historic structures, proposes to renovate the building and convert it to condominiums (the "Project").

4. In September 2006, Briscoe began working with architect Jay A. White, of Robert Carl Williams Associates, P.C., of Pittsfield, Vermont, on plans for the Project. No one at Robert Carl Williams Associates told Briscoe that he needed an Act 250 permit for the Project.

5. In August 2007, Briscoe applied for a permit from the Town of Brandon to convert the building into 14 residential condominium units. Subsequently, Briscoe and the Project architect decided to reduce the number of units to 12. The Town granted a permit for the renovation of the building into 12 units on October 9, 2007. During the permit process, no one at the Town of Brandon told Briscoe he would need an Act 250 permit for the Project. Briscoe believes that part of the confusion may have arisen from a previous discussion between himself and NeighborWorks of Western Vermont, a non-profit housing organization in Rutland, which would have precluded the necessity for Act 250 review by making more than 15% of the units "affordable."

6. On or about November 7, 2007, Briscoe, working with Naylor and Breen Builders, Inc., a general contracting firm in Brandon, Vermont, began removing debris from the property and performing interior demolition of the building in preparation for the Project. No exterior work was performed at the Project Site.

7. Meanwhile, on or about November 14, 2007, Briscoe was advised by the Town's then-acting Brandon Zoning Administrator, Charles Jakiela, that personnel in the Department of Environmental Conservation had heard about the Project (through articles in the newspaper) and had questions about it. Mr. Jakiela suggested that Briscoe call Rick Oberkirch at DEC. Briscoe promptly called Oberkirch and arranged a meeting with him. On November 19, 2007, Oberkirch made a site visit to the Project and met with Briscoe. Oberkirch advised Briscoe to contact Bill Burke, the Environmental Commission District #1 Coordinator in Rutland, Vermont. Briscoe promptly called Burke and arranged a meeting with him.

8. On December 3, 2007, Briscoe met with Burke at the District Commission offices in Rutland, to discuss the possibility that Act 250 jurisdiction may apply to the Project based on Briscoe's then existing plans for the Project (for 12 unit residential condominiums) and activity on the property thus far (salvage of flooring, radiators, and other features to be reused in the renovated building; repair of broken windows and other actions to dry-in the structure; removal of two obsolete underground fuel storage tanks; and selective interior demolition). Also present at the meeting was Briscoe's attorney, Donald R. Powers, Esq., (and associate attorney, Carolyn Kelly, Esq.) of Middlebury, Vermont.

9. At the December 3 meeting with Mr. Burke, Briscoe described the Project and activity to date, showed Mr. Burke the proposed plans, and answered all of Mr. Burke's questions. Mr. Burke then stated that he believed Act 250 jurisdiction had attached to the Project on the day Briscoe began interior demolition work on the building. Under the facts, Briscoe appeared to be in violation of 10 V.S.A. §6081(a) requiring a permit before commencing construction on a development. Briscoe does not dispute the conclusion.

10. Following the meeting with Mr. Burke, Briscoe ceased work on the building.

11. Briscoe has since decided to pursue construction of a 9 unit residential condominium development at the Project Site.

II. AGREEMENT

Based on the foregoing Statements of Facts and Description of Violation, the parties agree as follows:

A. Although jurisdiction has attached to the Project Site, because Briscoe has scaled down his Project to less than ten (10) units, a Land Use Permit will not be required for construction of improvements at the Project. Changes to the Project may require a permit, however, and Briscoe is advised to consult with the District 1 Coordinator before engaging in changes to the Project as revised.

B. 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.

C. 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.

D. 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.

E. Pursuant to 10 V.S.A. §8007(d), the Respondent 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 Respondent fully complies with the agreements set forth above.

F. 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.

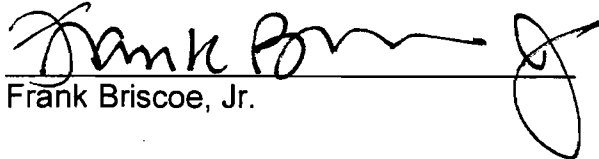
G. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. Chapters 201 and/or 211.

H. This Assurance is subject to the provisions of 10 V.S.A. §8007.

III. SIGNATURES

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

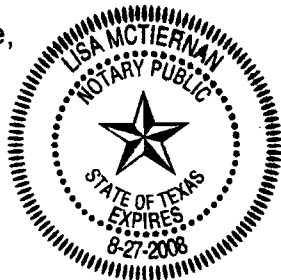
Dated at Richmond, ~~Vermont~~ ^{Texas}, this 22nd day of March, 2008.



Frank Briscoe, Jr.

STATE OF TEXAS
Fort Bend COUNTY, SS.

BE IT REMEMBERED that on the 22nd day of March, 2008, personally appeared Frank Briscoe, Jr., 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.

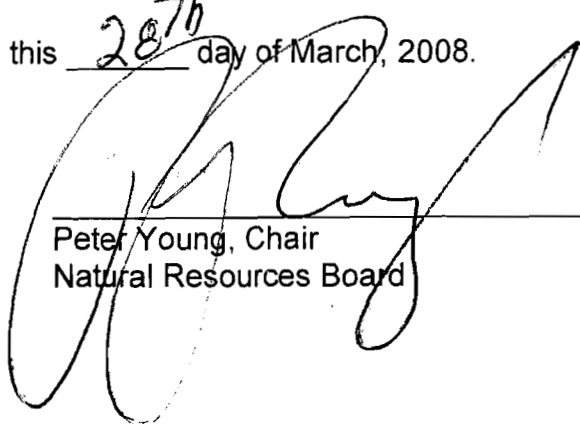
Before me,




Notary Public
My Commission Expires: 8-27-08

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

Dated at Montpelier, Vermont, this 28th day of March, 2008.



Peter Young, Chair
Natural Resources Board