

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner)
)
)
v.)
)
McMahon Brothers, LLC,)
Respondent)
_____)
)

**ASSURANCE OF
DISCONTINUANCE**

VIOLATIONS

*Condition 1 of Land Use Permit 6L0170-1
and
Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A)*

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and McMahon Brothers, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. On December 18, 2015, Respondent filed application number 6L0170-2 for a project generally described as the demolition of existing buildings and construction of an automobile dealership for McMahon Chevrolet consisting of 15,400 sq. ft. building on 6.04 acres at 868 Vermont Route 15 East, Hyde Park, Vermont (the Project Tract).
2. The Project Tract is subject to Act 250 Land Use Permit 6L0170 (series), as amended (the Permit).
3. Condition 1 of the Permit states:
"The project shall be completed in accordance with the plans and exhibits stamped, "approved," and on file with the District Environmental Commission."
4. Sometime prior to April 13, 2016, Respondent commenced demolition and disposal of interior portions of the existing buildings on the Project Tract, and removed the roofing.
5. On Thursday April 14, 2016, at 4:32 PM, Respondent's engineer submitted a draft Construction Waste Reduction Plan to the Agency of Natural Resources Solid Waste Program for review.

6. By Friday April 15, 2016, Respondents had removed everything that they planned to remove from the buildings for recycling.
7. On Monday, April 18, 2016, as part of its normal review of the Respondent's draft Construction Waste Reduction Plan, ANR's Solid Waste Program discovered that demolition of the buildings had already commenced. By that time, with the exception of two drop boxes and portions of the concrete foundations, all of the demolition debris had been hauled off of the Project Tract for disposal.
8. On April 26, 2016, the District 5 Environmental Commission issued Land Use Permit Amendment 6L0170-2.
9. Act 250 Rule 34(A) states, in relevant part:

"An amendment shall be required for any material change to a permitted development or subdivision, or any administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited."

Act 250 Rule 2(C)(6) defines "material change" as "any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. §§ 6086(a)(1) through (a)(10)."
10. The Respondent violated Permit Condition 1 and Act 250 Rule 34(A) by failing to obtain a Land Use Permit Amendment pursuant to Act 250 Rule 34(A), prior to commencement of demolition on the Project Tract in furtherance of the proposed auto dealership.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series 6L0170.
- B. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$3,300.00**, for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. § 8010(e)(2), the amount of **\$444.13**, to reimburse the Natural

Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."

3. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Hyde Park land records, by check made payable to the "Town of Hyde Park, Vermont."
- C. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- D. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- E. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- F. Nothing in this Assurance 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.
- G. This Assurance 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 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 set forth herein, provided that the Respondent fully complies with this Assurance.
- I. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond either Respondent's control.
- J. This Assurance sets forth the complete agreement of the parties, and except as provided herein, may be altered, amended, or otherwise modified only by subsequent written

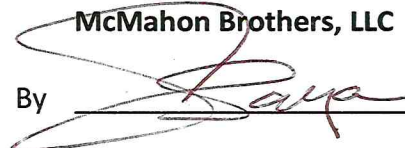
agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division.

- K. 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.
- L. When this Assurance is entered as a judicial order, violation of any provision of this Assurance 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 Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

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

Dated at Morrisville, Vermont, this 5th day of December, 2016.

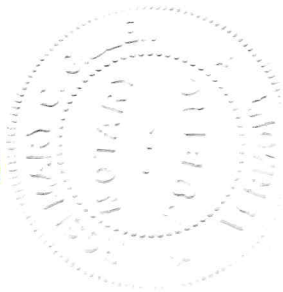
McMahon Brothers, LLC
By 
STEPHEN SAYCE
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF LAMOILLE, ss.

BE IT REMEMBERED that on the 5th day of December, 2016, personally appeared Stephen Sayce, as the duly authorized agent of **McMahon Brothers, 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 **McMahon Brothers, LLC** and that he has the authority to contract on behalf of **McMahon Brothers, LLC** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Notary Public
My Commission Expires:



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

Dated in Montpelier, Vermont, this _____ day of _____, 2016.

Natural Resources Board

By: _____
Diane B. Snelling, Chair