

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

Hope Rowley and JM Rowley Corp.,
Respondents

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Hope Rowley and JM Rowley Corp., (Respondents) hereby enter into this Assurance of Discontinuance (Assurance) and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. For many years Respondents owned a 316-acre tract of land in Milton, Vermont, on which they have operated a sand extraction business; the tract is identified in Book 48, Pages 147 -149 of the land records of the Town of Milton.
2. On November 10, 1982, the District 6 Environmental Commission issued Land Use Permit #4C0534 to Raymond L. Rowley, Respondents' predecessor in interest, authorizing the operation of a sand and gravel pit on the said tract.
3. Condition 1 of Land Use Permit #4C0534 states:

The project shall be completed as set forth in Findings of Fact and Conclusions of Law #4C0534, in accordance with the plans and exhibits stamped "approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.
4. Land Use Permit #4C0534 has been amended three times by the District 4 Environmental Commission or the former Environmental Board. Each amended permit either repeats the sentence "No changes shall be made in the project without the written approval of the District Environmental Commission" or makes reference to and incorporates the sentence in earlier permits as a permit condition.

5. In 2008, Respondents subdivided the tract into three lots of 277 acres, 25 acres, and 9.8 acres.

6. Respondents retained the 277-acre lot on which the sand extraction business is located; Respondents have sold the 25-acre lot and the 9.8-acre lot. Residential homes have been partially or fully constructed on the two smaller lots.

7. No application for an amendment to Land Use Permit series #4C0534 for the subdivision or the house construction was filed by Respondents at the time of the subdivision. Respondents have since filed an application for an amendment to Land Use Permit series #4C0534. This application notes that only two lots have been created and calculates an application fee based on the creation of two lots and the construction of only one house on one of the transferred lots; the application does not include a fee for the house on the other transferred lot that was under construction at the time of the application.

8. As of the date of this Assurance of Discontinuance, no amendment has been issued by the District 4 Environmental Commission.

9. Respondents' subdivision and sale of the lots violates the prohibitions against unauthorized changes referenced in Land Use Permit #4C0534, as amended.

AGREEMENT

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

- A. Respondents shall comply with Land Use Permit series #4C0534, as amended.
- B. Respondents shall diligently pursue the Act 250 permit application presently pending before the District 4 Environmental Commission for the subdivision and improvements constructed on, and use of, the transferred lots.
- C. If the said Act 250 permit application is denied by the Commission or a court on appeal, within sixty (60) days after the denial becomes final:
 1. Respondents shall remove all improvements on the transferred lots.
 2. Respondents shall arrange to have ownership of the transferred lots transferred back to the Respondents and shall file a deed or deeds in the Milton land records which recombines all the

subdivided lots into the lot that existed prior to any subdivision or transfer.

- D. Respondents shall recalculate the application to include a fee for the third lot and the construction costs for the house that was under construction at the time of the application. Respondents shall pay the recalculated fee.
- E. Within thirty (30) 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 Five Thousand Five Hundred (\$5500.00 (U.S)) Dollars, for the violation noted herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded 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
- F. Any payment by the Respondents 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 or business expense under the federal or state tax codes.
- G. 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.
- H. 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.
- I. 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.
- J. 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.

- K. 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.
- L. 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.
- M. This Assurance is subject to the provisions of 10 V.S.A. § 8007.
- N. This Assurance or a notice thereof may be filed within the land records of the town(s) in which the property is located.

SIGNATURES

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

Dated at Milton, Vermont, this 13th day of Aug, 2009.

Hope Rowley
Hope Rowley

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

Dated at Milton, Vermont, this 13th day of Aug, 2009.

JM Rowley Corp.,

By [Signature]
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Chittenden ss.

BE IT REMEMBERED that on the 13th day of Aug, 2009,
personally appeared Leslie Rowley, as the duly authorized agent of JM Rowley
Corp., 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/her
free act and deed and the free act and deed of JM Rowley Corp., and that he/she has
the authority to contract on behalf of JM Rowley Corp., and that he/she has been duly
authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,


Notary Public

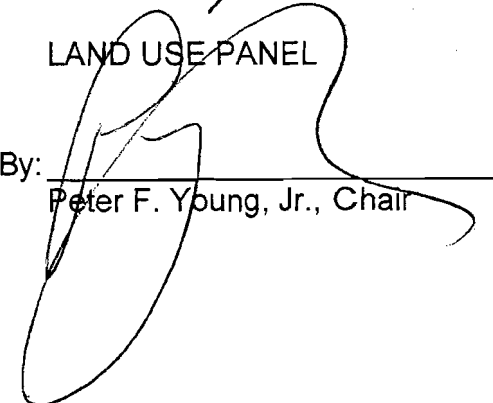
My Commission Expires: 2-10-2011

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

Dated in Montpelier, Vermont, this 10th day of AUGUST 2009.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair