

STATE OF VERMONT

Superior Court

Environmental Division
Docket No. .

Natural Resources Board,)
Petitioner,)
)
v.)
)
David R. Couture and)
Darcy Couture,)
Respondents)

ASSURANCE OF
DISCONTINUANCE

VIOLATION

Commencement of construction on a development without a Land Use Permit. 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and David R. Couture and Darcy Couture, (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent David Couture owns approximately 15.21 acres located at 49 Martell Road in the town of Alburgh, Vermont (the "Self-Storage Project Tract").
2. Respondent Darcy Couture owns approximately 2.13 acres located at 49 Martell Road in the town of Alburgh, Vermont (the "Auto Repair Garage Project Tract").
3. Alburgh is a "1-acre Town" for the purposes of determining jurisdiction under Act 250.
4. On January 30, 2017, Respondent David Couture registered the name, "Couture Storage," with the Vermont Secretary of State's Office, with a Principal Office Business Address located at 44 Truck Route in Alburgh. The NAICS sub code provided was "130-Lessors of Miniwarehouses and Self-Storage Units."
5. Respondents have constructed a driveway from Martell Road across the Garage Project Tract, extending to the Self-Storage Project Tract, as well as parking areas on both the Garage Project Tract and the Self-Storage Project Tract.
6. In November of 2016, Respondent David Couture poured a concrete slab for a proposed self-storage building on the Self-Storage Project Tract. Soon thereafter, through title research, it was determined that this slab had inadvertently been constructed within the VELCO power line right of way. Therefore, no building was

constructed atop this concrete slab.

7. Later in November of 2016, Respondent David Couture poured a second concrete slab and constructed a 25- by 70-foot commercial self-storage building on the Self-Storage Project Tract. Construction of the self-storage building was finalized by January of 2017.
8. Respondent David Couture placed three Sea Land containers on the bare concrete pad, and placed a fourth Sea Land container on a gravel pad located on the north side of the Self-Storage Project Tract for the purpose of renting those storage containers commercially.
9. In March of 2016, Respondent David Couture conveyed the Garage Project Tract to Darcy Couture.
10. In late summer of 2016, Respondent Darcy Couture poured a concrete slab for the construction of a new 50- by 60-foot commercial auto repair garage on the Garage Project Tract. The garage opened for business in early September of 2016, and the structure was completed by November of 2016.
11. Respondents never obtained Land Use Permits for the aforementioned commercial activities.
12. 10 V.S.A. § 6081(a) states, in part:

§ 6081. Permits required; exemptions

(a) No person shall commence construction on a development without a permit.
13. The Respondents' construction of two buildings and associated improvements for commercial self-storage and auto repair businesses constitute the construction of improvements for a commercial purpose on the Self-Storage and Garage Project Tracts. By commencing development on the Self-Storage and Garage Project Tracts without Land Use Permits, the Respondents violated 10 V.S.A. § 6081(a).
14. On April 3, 2017, Respondent David R. Couture submitted an application to the District 6 Commission for an Act 250 Land Use Permit for the subdivision of a 17.324 +/- acre parcel into 3 lots and the approval of a previously constructed storage building on Lot 3 (1.39 +/- acres).
15. On April 3, 2017, Respondent Darcy Couture submitted an application to the District 6 Commission for an Act 250 Land Use Permit Amendment for a previously constructed automotive garage with no water or sewer services on Lot 2 (the Garage Project Tract).

AGREEMENT

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

- A. Respondents shall diligently pursue applications for Land Use Permit series 6G0658. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 1 Environmental Commission, the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR. Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.
- B. Pursuant to 10 V.S.A. Ch. 201, the Respondents shall pay a civil penalty in the total amount of **\$6,000.00**, for the violations noted herein, pursuant to the schedule below. Each check shall be made payable to the "State of Vermont."
 1. First installment: **\$1,000** no later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 2. Second installment: **\$1,000** no later than **2 months** following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 3. Third installment: **\$1,000** no later than **3 months** following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 4. Fourth installment: **\$1,000** no later than **4 months** following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 5. Fifth installment: **\$1,000** no later than **5 months** following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 6. Sixth installment: **\$1,000** no later than **6 months** following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
- C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
 1. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$467.70**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 2. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a

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notice of this Assurance in the Alburgh land records, by check made payable to the "Town of Alburgh, Vermont."

- D. 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

- E. Respondents are jointly and severally liable for all obligations under this Assurance.
- F. Pursuant to 10 V.S.A. § 6081(s)(1), no permit amendment is required for farming, as defined in Act 250 jurisprudence, that: (A) will occur on primary agricultural soils preserved in accordance with section 10 V.S.A. § 6093 or (B) will not conflict with any permit condition issued pursuant to Act 250.
- G. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- H. 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.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- J. 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.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully complies with this Assurance.
- L. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond Respondents' control.

- M. 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.
- N. 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.
- O. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- P. 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 Essex Jct, Vermont, this 21 day of 08, 2017.



David R. Couture

State of Vermont
County of Chittenden, ss:

At Key Bank in said County and State, this 21 day of 08, 2017, David R. Couture personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me,



Notary Public

My Commission Expires

RACHEL S COOPER
~~Notary Public, State of Vermont~~
My Commission Expires 02 10, 2019

Dated at Alburgh, Vermont, this 22nd day of Aug, 2017.




Darcy Couture

State of Vermont
County of Grand Isle, ss:

At Alburgh in said County and State, this 22nd day of Aug 2017, Darcy Couture personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me,


Notary Public FCA James
My Commission Expires 7.10.2019

Dated at Montpelier, Vermont this _____ day of _____, 2017.

NATURAL RESOURCES BOARD

By: _____
Diane Snelling, Chair