

STATE OF VERMONT

SUPERIOR COURT – ENVIRONMENTAL DIVISION

LAND USE PANEL of the  
NATURAL RESOURCES BOARD,  
Petitioner

Docket No.

v.

GARY BAIERLEIN, JANET BAIERLEIN,  
MICHAEL BEECHER, and  
BAIERLEIN LANDSCAPING, INC.  
Respondents

**VIOLATION**

- I. Commencement of development without an Act 250 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 Gary Baierlein, Janet Baierlein, Michael Beecher and Baierlein Landscaping, Inc., (collectively Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

1. Respondents Gary Baierlein, Janet Baierlein and Michael Beecher own approximately 5.13-acre parcel of land located on Bauer Road in West Pawlet, Vermont, described in Book 98, Pages 181-183 of the Town of Pawlet land records (Project Tract).
2. Pawlet has not adopted permanent zoning and subdivision bylaws. It is a "1-acre town" for purposes of Act 250.
3. Respondent Gary Baierlein operates a commercial landscaping business, Baierlein Landscaping, Inc., on the Project Tract.
4. Respondent Gary Baierlein is the President of Baierlein Landscaping, Inc.
5. Beginning in 2005, Respondent Gary Baierlein commenced construction of several buildings on the Project Tract, including the following buildings and related items built for commercial use by Baierlein Landscaping, Inc:

Assurance of Discontinuance

- A. a 14 40-square-foot commercial garage and studio apartment;
  - B. a 64 -square foot chemical storage shed with two fuel storage tanks out front;  
and
  - C. a 30-foot by 24-foot garage storage building.
6. Respondents did not apply for or obtain an Act 250 Land Use Permit prior to the construction of these improvements.
7. On February 17, 2010, Respondents Gary Baierlein, Janet Baierlein and Michael Beecher submitted an application for an Act 250 Land Use Permit for the previous construction on the Project Tract.
8. On March 31, 2010, the District 1 Environmental Commission issued Land Use Permit #1R0964 to the applicants, authorizing the previous construction on the Project Tract, including the buildings and related items listed above.
9. Respondents violated 10 V.S.A. § 6081(a) by commencing development without first obtaining an Act 250 Land Use Permit.

**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 #1R0964, and all applicable permit amendments.
- B. Respondents shall pay a civil penalty in the amount of **\$4,875.00** (U.S. Dollars) for the violation noted herein, by check made payable to the "Treasurer, State of Vermont," as follows:
  - i. Respondent shall pay \$875.00 no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
  - ii. Respondent shall pay \$1,000.00 no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
  - iii. Respondent shall pay \$1,000.00 no later than 90 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.


- iv. Respondent shall pay \$1,000.00 no later than 120 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
  - v. Respondents shall pay \$1000.00 no later than 150 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
  - vi. Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty to become immediately due and owing.
  - vii. In addition, late payment may be subject to an annual interest rate of 12%.
- C. Within thirty (30) days of the date on which this Assurance is entered as an Order by the Superior Court, Environmental Division, the Respondents shall pay **\$137.50**, by check made payable to "Treasurer, State of Vermont," to reimburse the Panel for enforcement costs pursuant to 10 V.S.A. § 8101(b)(7) and (e).
- D. Within thirty (30) days of the date on which this Assurance is entered as an Order by the Superior Court, Environmental Division, the Respondents shall pay **\$10.00** for the fee for recording notice of this Assurance in the land records, by check made payable to the Town of Pawlet.
- E. Payment shall be sent 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 made to the State pursuant to this Assurance is made to resolve the violation set forth in this Assurance. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance or attempt to get any other tax benefit from this payment.
- 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 violation 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 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.
- 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.

**SIGNATURES**

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

DATED at Manchester, Vermont, this 9<sup>th</sup> day of November, 2010.




GARY BAIERLEIN

BETH WATSON, Notary Public  
My Commission Expires 2/10/2011

STATE OF VERMONT  
COUNTY OF Bennington, ss.

BE IT REMEMBERED that on the 9 day of November, 2010,  
personally appeared Gary Baierlein, 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 2/10/2011

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

DATED at Manchester, Vermont, this 9<sup>th</sup> day of November, 2010.

BETH WATSON, Notary Public  
My Commission Expires 2/10/2011

  
JANET BAIERLEIN

STATE OF VERMONT  
COUNTY OF Bennington, ss.

BE IT REMEMBERED that on the 9 day of November, 2010,  
personally appeared Janet Baierlein, signer of the foregoing instrument who is  
known to me or who satisfactorily established her identity to me, and acknowledged  
the same to be her free act and deed.

Before me,



Notary Public  
My Commission Expires 2/10/2011

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

DATED at Manchester, Vermont, this 9<sup>th</sup> day of November, 2010.

BETH WATSON, Notary Public  
My Commission Expires 2/10/2011

Michael Beecher  
MICHAEL BEECHER

STATE OF VERMONT  
COUNTY OF Bennington, ss.

BE IT REMEMBERED that on the 9 day of November, 2010, personally appeared Michael Beecher, 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,

Beth Watson

Notary Public  
My Commission Expires 2/10/2011

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

DATED at Manchester, Vermont, this 9<sup>th</sup> day of November, 2010.

BAIERLEIN LANDSCAPING, INC.

By: [Signature]

Print Name: Gary Baierlein

Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF Bennington, ss.

BE IT REMEMBERED that on the 9 day of November, 2010,  
personally appeared Gary Baierlein, individually and as the  
duly authorized agent of Baierlein Landscaping, Inc., signer and sealer of the  
foregoing instrument who is known to me or who satisfactorily established his/her  
identity to me and acknowledged the same to be his/her free act and deed and the  
free act and deed of Baierlein Landscaping, Inc. and that he/she has the authority to  
contract on behalf of Baierlein Landscaping, Inc. and that he/she has been duly  
authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Felton Watson  
Notary Public  
My Commission Expires 2/10/2011

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

DATED in Montpelier, Vermont, this 15<sup>th</sup> day of November, 2010.

LAND USE PANEL

By:

Peter F. Young, Jr., Chair