

**STATE OF VERMONT
SUPERIOR COURT - ENVIRONMENTAL DIVISION**

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|--------------------------|---|------------|
| Land Use Panel of the |] | |
| Natural Resources Board, |] | |
| PETITIONER |] | |
| |] | |
| |] | Docket No. |
| |] | |
| v. |] | |
| |] | |
| Caleb Temple, |] | |
| RESPONDENT |] | |

ASSURANCE OF DISCONTINUANCE

VIOLATION

Construction of improvements for commercial purposes without the required Land Use Permit.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Caleb Temple owns an approximately 6.5 acre parcel in Kirby, Vermont (Project Tract).
2. Kirby does not have duly adopted zoning and subdivision bylaws, so is a "one-acre" town for purposes of determining Act 250 jurisdiction.
3. Sometime in 2010 Respondent constructed a large, 3-bay garage on his residential property for use in his excavation and landscaping business, for equipment and material storage and employee parking.
4. This construction meets the 10 V.S.A. § 6001 (3)(A)(ii) definition of "development," "the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality that has not adopted permanent zoning and subdivision bylaws."

5. Respondent commenced said construction of improvements without an Act 250 permit, and has operated this business since then without an Act 250 permit.
6. The Respondent has not been found to have violated Act 250 or other Agency of Natural Resources programs previously.
7. A project review sheet Jurisdictional Opinion (JO) was issued in April 26, 2011 stating the project required an Act 250 permit.
8. On June 1, 2011, a reconsidered project review sheet JO was issued, based on additional information provided by Respondent. The reconsidered JO also states that the project required an Act 250 permit.

AGREEMENT

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

- A. Within **60 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall file a complete application with the District 7 Environmental Commission (Commission) for a Land Use Permit for the construction and activities on the Project Tract.
- B. Respondent shall diligently pursue said application.
- C. Respondent shall file a copy of the Assurance of Discontinuance and associated Court Order along with said Act 250 application.
- D. If Respondent fails to timely file said permit application, or timely file said application and it is denied by the Commission and said denial becomes final, then all commercial use of the Project tract shall be prohibited effective 30 days from such failure or final denial. This prohibition shall not apply to any commercial use for which the Respondent has obtained an Act 250 permit, or a final jurisdictional opinion holding that such proposed use does not require an Act 250 permit.
- E. Within **30 days** of the date upon which the Superior Court Environmental Division enters this Assurance as an Order, the Respondent shall pay:
 - i. A civil penalty pursuant to 10 V.S.A Ch 201 for the violation set forth herein, in the amount of **\$4,500.00** (U.S. Dollars), by check made payable to: "Treasurer, State of Vermont."
 - ii. The amount of **\$10.00** (U.S. Dollars), to pay the recording fee for the filing of a notice of this Assurance of Discontinuance in the land records of the municipality where the Project is located, by check made payable

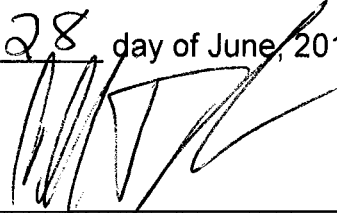
to the Town of Kirby.

- F. Respondent shall send all payments required by this Assurance 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
- G. Respondent shall neither deduct nor attempt to deduct any payment, penalty or other expenditure required by this Assurance from state or federal taxes.
- H. The State of Vermont and the Land Use Panel 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 Respondent's continuing obligation to comply with all other 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, this Assurance shall be null and void.
- K. 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 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 this agreement.
- L. 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 Superior Court, Environmental Division. 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.
- M. Any violation of this Assurance or any part of it 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 set forth in 10 V.S.A. chapters 201 and/or 211.
- N. 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 Lyndonville, Vermont, this 28 day of June, 2011.

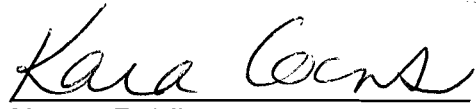


Caleb Temple

STATE OF VERMONT
COUNTY OF Caledonia, ss.

BE IT REMEMBERED that on the 28 day of June, 2011, personally appeared Caleb Temple, 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,

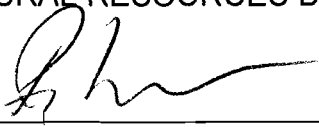


Notary Public
My Commission Expires: 2-10-15

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

DATED in Montpelier, Vermont, this 30th day of June, 2011.

LAND USE PANEL
NATURAL RESOURCES BOARD

By: 

Ronald A. Shems, Chair