

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No.

Land Use Panel of the  
Natural Resources Board,  
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

McCullough Brothers, Inc.  
Respondent

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 McCullough Brothers, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. McCullough Brothers, Inc. owns an approximately 1.20 acre parcel in Brandon, Vermont (Project Tract).
2. Brandon has duly adopted zoning and subdivision bylaws, but has elected to remain a "one-acre" town for purposes of determining Act 250 jurisdiction.
3. Sometime in 2009 Respondent constructed a large, 5-bay pole barn on their property for use in their tree service business.
4. This construction is development pursuant to 10 V.S.A. § 6001 (3)(A)(ii).
5. The Respondent commenced and has operated said development without an Act 250 permit.
6. The Respondent has not been found to have previously violated Act 250 or other Agency of Natural Resources programs.

7. In August 2009, the Respondent received approval from the Town of Brandon Development Review Board for the construction of the pole barn. This approval found that the project complied with Act 250 Criteria 6, 7 and 10 (Town Plan). 10 V.S.A. §6086(a)(6), (7) and (10).

8. The Respondent has filed a complete application with the District 7 Environmental Commission (Commission) for a Land Use Permit for the construction and activities on the Project Tract. The Commission has noticed this application as a "minor" application pursuant to Act 250 Rule 51.

### AGREEMENT

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

- A. Within 30 days of the date upon which the Superior Court Environmental Division enters this Assurance as an Order, the Respondent shall pay:
1. a civil penalty pursuant to 10 V.S.A. Ch. 201 for the violation set forth herein, in the amount of Three Thousand Five Hundred (\$3500.00) Dollars (U.S.) by check made payable to: "Treasurer, State of Vermont."
  2. the amount of Ten (\$10.00) Dollars (U.S.), 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 Brandon, Vermont."
- B. 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
- C. Any payment by the Respondent 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, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- D. 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.

- E. 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 applicable to the Respondent.
- F. 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.
- G. 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 the agreements set forth above.
- H. 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.
- I. 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.
- J. 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. Further, I, Adam McCullough, the undersigned, hereby state under oath that I have the authority to contract on behalf of McCullough Brothers, Inc. and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

DATED in Rutland, Vermont, this 16<sup>th</sup> day of September 2011.

McCullough Brothers, Inc.

By: 

Adam McCullough

Title: President  
McCULLOUGH BROTHERS, INC.

STATE OF VERMONT  
COUNTY OF RUTLAND, ss.

BE IT REMEMBERED that on the 16<sup>th</sup> day of September 2011, personally appeared Adam McCullough, 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

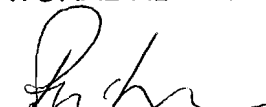
My Commission Expires: 2/15/14

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

DATED in Montpelier, Vermont, this 20<sup>th</sup> day of September 2011.

LAND USE PANEL  
NATURAL RESOURCES BOARD

By:   
Ronald A. Shems, Chair