

STATE OF VERMONT
SUPERIOR COURT — ENVIRONMENTAL DISVISION

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)

Docket No. _____

Petitioner,)

**ASSURANCE OF
DISCONTINUANCE**

v.)

R.E.M. DEVELOPMENT, LLC and)
CHAMPLAIN COLLEGE, INC.,)

Respondents.)

VIOLATION

Commencing development for a commercial or industrial purpose without first obtaining an amendment to Land Use Permit #4C0515 in violation of 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 R.E.M. Development, LLC ("R.E.M.") and Champlain College, Inc. ("C.C.I.") (hereinafter collectively "Respondents") hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. R.E.M. is a Vermont Limited Liability Company whose business includes

- commercial development and leasing. R.E.M. offers services including the “fit-up” and customization of leased space for commercial tenants.
2. R.E.M. owns parcel of land of less than ten (10) acres located at 175 and 189 Lakeside Avenue in Burlington, Vermont (the Project Tract), Warranty Deed from Casella Waste Management, Inc. dated August 21, 2009 and recorded in Volume 1081, Page 129 the Land Records of the City of Burlington, Vermont.
 3. R.E.M. is currently constructing a commercial building and incidental infrastructure at the Project Tract (the Project).
 4. Prior to commencing construction, R.E.M. requested and received a Project Review Sheet (PRS) from the District Coordinator for the District 4 Environmental Commission indicating that an Act 250 Land Use Permit was not required for the Project pursuant to 10 V.S.A. § 6081 (“Act 250 permit”).
 5. The PRS did not mention C.C.I. or in any way indicate that C.C.I. was the intended tenant of the Project. At the time construction commenced, the Project had not been leased from R.E.M. to C.C.I. There was likewise no purchase agreement between R.E.M. and C.C.I.
 6. R.E.M. commenced construction of the Project based upon its receipt of the PRS on or about September of 2009.
 7. C.C.I. is a private, non-profit educational institution located in Burlington, Vermont. Although not adjacent to the Project Tract, its main campus is within (5) five miles of the Project Tract. C.C.I. is subject to Act 250 jurisdiction pursuant to Land Use Permit # 4C0515.
 8. C.C.I. does not own any portion of Project and/or or the Project Tract.
 9. As of the commencement of construction, a Memorandum of Understanding between C.C.I. and the City of Burlington required C.C.I. to obtain permission from the Burlington City Council in order to purchase or lease the Project and/or the Project Tract.
 10. It was C.C.I.’s intent to lease or purchase the Project and the Project Tract if permitted to do so by the City of Burlington.
 11. On August 9, 2010, the Burlington City Council voted to allow C.C.I. to lease or purchase the Project and the Project Tract.
 12. The Panel has determined that sufficient indicia of control are present within the meaning of 10 V.S.A. § 6001(3)(A) to establish that the Project involves the

construction of improvements controlled by C.C.I. which requires an amendment to Land Use Permit #4C0515.

13. Both R.E.M. and C.C.I. dispute the Panel's determination with respect to 10 V.S.A. § 6001(3)(A). By entering into this Assurance, neither R.E.M. nor C.C.I. concede that the Project is subject to jurisdiction under 10 V.S.A. Ch. 151. R.E.M. and C.C.I. have nonetheless agreed to file an amendment application for Land Use Permit #4C0515 for this Project as co-permitees.
14. Any failure by R.E.M. or C.C.I. to seek an amendment to Land Use Permit #4C0515 prior to commencing construction was inadvertent and based on their good-faith belief that no such amendment was necessary.

AGREEMENT

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

- A. Within five (5) business days, Respondents shall file and diligently pursue their application for an amendment for Act 250 Land Use Permit #4C0515 with respect to the Project and Project Tract.
- B. Respondents shall obtain any outstanding and required environmental permits issued by the Vermont Agency of Natural Resources and/or required by applicable federal law(s) no later than October 1, 2010 or shall have filed and be diligently pursuing applications for the same.
- C. No later than 30 days following the entry of this Assurance as an Order by the Environmental Division of the Superior 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 **Three Thousand Dollars (\$3,000.00)** (U.S.), for the violations noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and 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

- D. 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, business expense, or other deductible expense under the federal or state tax codes. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's respective state or federal taxes.
- E. 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.
- F. 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.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Division of the Superior Court. When so entered by said 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.
- H. Pursuant to 10 V.S.A. § 8007(d), Respondents 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 Respondents fully complies with the agreements set forth above.
- I. 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 Division of the Superior 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.
- J. 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.
- K. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

- L. This Assurance or a notice thereof shall be filed within the land records of the town(s) in which the property is located. Respondents shall be responsible for the payment of the recording fee for such notice and shall send to the Panel a check in the amount of Ten (\$10.00) Dollars, made payable to the said municipality.
- M. Subject to the District 4 Environmental Commission's final decision on the amendment application, R.E.M. and C.C.I. may continue construction of the Project provided that they are in compliance with the terms and conditions of this Assurance.

SIGNATURES

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

Dated at Williston, Vermont, this 25TH day of August, 2010

R.E.M. Development Company, LLC
By: Timothy R. Miller

Timothy R. Miller J.P.
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 25TH day of August, 2010, personally appeared Timothy R. Miller, as the duly authorized agent of R.E.M. Development Company, LLC, 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 R.E.M. Development Company, LLC, and that he/she has the authority to contract on behalf of R.E.M. Development Company, LLC, and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,
Louise M. Bashaw

Notary Public
My Commission Expires
February 10, 2011

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

Dated at Burlington, VT, Vermont, this 24th day of August, 2010.

Champlain College, Inc.
By: [Signature]
David J. Provost, Sr. Vice President
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 24th day of August, 2010, personally appeared David J. Provost, as the duly authorized agent of Champlain College, 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 Champlain College, Inc., and that he/she has the authority to contract on behalf of Champlain College, Inc., and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,
[Signature]
Notary Public
My Commission Expires
February 10, 2011

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

Dated in Montpelier, Vermont, this 30th day of August, 2010.

LAND USE PANEL
By: [Signature]
Peter F. Young, Jr., Chair