TOWN OF BERLIN, VERMONT

Washington County

Selectboard:
Brad Towne, Chair
Florence Smith, Vice Chair
Ture Nelson
Joe Staab
C. David Sawyer

Municipal Offices
108 Shed Road
Berlin, Vermont 05602
Telephone: 802-223-4405
Fax: 802-229-9530

August 2, 2023

VIA EMAIL
Randy Rouleau
Property Manager
Ran-Mar Corporation
1083 US Route 2
Berlin, VT 05602-8245

RE: Compliance With Berlin Regulations and Ordinances

Randy: I want to thank you in advance for all your efforts to help those Berlin residents who have been adversely impacted by the recent flooding. Ran-Mar has provided opportunities for affordable housing for many years at your various mobile home parks. Berlin is a better place because of the availability of affordable housing.

That said, the Berlin and River Run Mobile Homes Parks have recently suffered catastrophic damage to homes and infrastructure. All repairs and replacement of structures must comply with current Berlin Zoning and Utility regulations. These Parks lie in the Special Flood Hazard Area, (SFHA) adding additional compliance measures.

With this letter, you are notified that redevelopment of these Parks will require Site Plan and Conditions Use permitting through Berlin's Development Review Board. Berlin Public Works Board will require both Parks to be connected to municipal water and wastewater. There may likely be additional State permitting requirements that will need to be addressed.

If it is your intent to redevelop these Parks, I urge you to meet with Berlin staff to begin the conversation on next steps. Compliance with the SFHA is critical to Berlin's ability to offer flood insurance to its' constituency.

Sincerely,

Ture Nelson

Ture Nelson
Acting Town Administrator

cc: Ned Swanberg Vermont CFM

Section 2202. Flood Hazard (FLD) Overlay District

2202.A **Purpose.** The Flood Hazard Overlay District regulates land development within the special flood hazard area to:

(1) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;

(2) Ensure that land development within flood hazard areas will be reasonably safe from flooding; and

(3) Manage flood hazard areas in accordance with state and federal regulations so that the Town of Berlin, its residents and businesses will remain eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds.

2202.B **Precedence.** Any provision of this section will take precedence if it imposes a greater restriction than another provision of these regulations or any other town, state or federal regulations.

2202.C **Liability.** The provisions of this section do not:

(1) Imply that land outside this overlay district or that land development undertaken in conformance with this section will be free from flooding; and

(2) Create liability on the part of the Town of Berlin, or any town official or employee, for flood damage.

2202.D **Applicability.** The provisions of this section apply to the special flood hazard area as established in and on the most recent flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) National Flood Insurance Program as follows:

(1) The Town of Berlin has adopted the flood insurance studies and maps by reference and incorporated them into these regulations.

(2) If there is uncertainty with regard to the boundary of the special flood hazard area, the applicant may provide a letter of map amendment from FEMA to certify its location.

2202.E **Base Flood Elevations and Floodway Limits.** The Town of Berlin will use the base flood elevations and floodway limits provided by the National Flood Insurance Program where available to administer and enforce the provisions of this section. The applicant must provide the information necessary to demonstrate conformance with the standards of this section where the National Flood Insurance Program has not provided base flood elevations and/or floodway limits. The applicant must use data from FEMA or other federal or state agencies where available.

2202.F **Permit Required.** In addition to all other applicable provisions of these regulations, a property owner must obtain a zoning permit for all development (as specifically defined in this section) within the special flood hazard area not listed in Subsection 2202.G as exempt.

2202.G **Uses.** The Town of Berlin may allow land use and development within the special flood hazard area that conforms to the standards of Subsection 2202.H as specified below and to the extent allowed in the base zoning district:

		WITHIN THE FLOODWAY	OUTSIDE THE FLOODWAY	
			Rural 40 & 218 Upland & Shoreland Conservation Residential	All Other Districts
(1)	**Pre-Existing Structures and Uses**			
	(a) Non-substantial improvements to existing structures	P	P	P
	(b) Substantial improvements to existing structures	C	P	P
	(c) Replacement of existing structures	C	C	P
	(d) Reconstruction of substantially damaged structures	–	C	P
	(e) Demolition	EXEMPT	EXEMPT	EXEMPT
	(f) At grade parking accessory to existing uses	C	P	P
	(g) Outdoor storage accessory to existing uses	–	P	P
	(h) Replacement water or wastewater systems	C	P	P
	(i) Replacement storage tanks	C	P	P
	(j) Utilities serving existing structures	C	P	P
	(k) Fill needed to elevate existing structures	C	P	P
	(l) Maintenance of road or stormwater infrastructure	EXEMPT	EXEMPT	EXEMPT
(2)	**New Structures and Uses**			
	(a) Single- and two-family dwellings	–	–	–
	(b) Other principal and large accessory structures	–	–	C
	(c) Small accessory structures (500 sf or less)	–	P	P
	(d) New water or wastewater systems	–	P	P
	(e) New storage tanks	–	–	C
	(f) Utilities serving new structures	–	P	P
	(g) Fill needed to elevate new structures	–	P	P
	(h) Outdoor storage accessory to new uses	–	–	C
(3)	**Other Land Use and Development**			
	(a) Water-dependent structures and uses	P	P	P
	(b) Agriculture, forestry, open space & passive recreation	EXEMPT	EXEMPT	EXEMPT
	(c) Ponds	C	P	P
	(d) Stream channel management	P	P	P
	(e) Improvement of road or stormwater infrastructure	C	P	P
	(f) Grading or excavating	C	C	P
	(g) Fill for purposes other than elevating structures	–	–	C
	(h) Public utilities	C	C	P
	(i) Critical facilities	–	–	–

(4) Any use not listed as exempt, permitted (P) or conditional (C) above is prohibited.

(5) A use listed as exempt above is exempt from meeting the standards of this section, but still may require a zoning permit under other provisions of these regulations.

2202.H **Development Standards.** Development within the special flood hazard area must conform to all of the following:

(1) **All Development.** All development must be:

(a) Located outside the special flood hazard area or on the least hazardous portion of the lot that can reasonably accommodate the proposed development;

(b) Reasonably safe from flooding;

(c) Adequately drained to reduce exposure to flooding;

(d) Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure, including the effects of buoyancy;

(e) Constructed with materials resistant to flood damage;

(f) Constructed using methods and practices that minimize flood damage (the Town of Berlin strongly recommends that applicants follow the flood construction requirements of the International Building Code or International Residential Code, as applicable);

(g) Constructed with electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during a flood;

(h) Constructed with any fuel storage tanks located above the base flood elevation or placed underground, and securely anchored to prevent flotation; and

(i) Constructed without fully enclosed areas below grade on all sides (including below-grade crawlspaces and basements).

(2) **No Base Flood Elevation.** Where base flood elevations have not been determined, the applicant must demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1 foot at any point within the Town of Berlin, as certified by a registered professional engineer based on technical data that conforms to standard hydraulic engineering principles.

(3) **Elevation Certificate.** The applicant must document the base flood elevation and the specific elevation to which new or substantially improved structures are floodproofed with a FEMA floodproofing certificate.

(a) The Zoning Administrator must have a completed FEMA floodproofing certificate and other certifications required under these regulations on file prior to issuing a certificate of compliance.

(4) **Residential Structures.** Applicants must locate and design new or substantially improved residential structures with the lowest floor (including basement) elevated at least 1 foot above the base flood elevation. Applicants must securely anchor manufactured homes (whether on their own lot or within a manufactured home park) to a permanent foundation system to resist flotation, collapse and lateral movement.

(5) **Manufactured Home Parks.** Applicants must conform to the provisions of Paragraph (4), above, and must elevate the manufactured home's lowest floor at least 1 foot above the base flood elevation except:

(a) If it is not possible to elevate a manufactured home within an existing manufactured home park to at least 1 foot above the base flood elevation, the structure's lowest floor must be supported by reinforced piers or other equivalent foundation elements that are at least 48 inches above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(6) **Nonresidential Structures.** Applicants must locate and design new or substantially improved nonresidential structures:

(a) With the lowest floor (including basement) elevated at least 1 foot above the base flood elevation; or

(b) So that the structure, together with attendant utility and sanitary facilities, is watertight to least to 2 feet above the base flood elevation with walls that will be substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy as certified by a registered professional engineer or architect.

(7) **Above-Grade Development within Floodways.** The Town of Berlin prohibits encroachment (including fill) and above-grade development within the floodway unless a registered professional engineer performs hydrologic and hydraulic analyses in accordance with standard engineering practice and certifies that the proposed development will:

(a) Not result in any increase in flood levels during the base flood; and

(b) Not increase any risk to surrounding properties, facilities or structures from erosion or flooding.

(8) **Below-Grade Development within Floodways.** Applicants may place utilities underground within the floodway provided that a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

(9) **Subdivisions and PUDs.** Applicants for new or expanded subdivisions, planned unit developments or manufactured home parks must provide base flood elevation data and design the project:

(a) With lots, home sites and/or building envelopes located outside the special flood hazard area to the maximum extent feasible;

(b) With lots, home sites and/or building envelopes that can be developed in accordance with the provisions of this section;

(c) To be accessible by dry land outside the special flood hazard area;

(d) To minimize flood damage within flood-prone areas;

(e) To provide adequate drainage to reduce exposure to flood hazards; and

(f) With utilities and facilities, such as water, wastewater, and electrical systems, that will be located and constructed to minimize or eliminate flood damage.

(10) **Fully Enclosed Areas Below the Lowest Floor.** The Zoning Administrator must condition approval of any zoning permit on the applicant using any fully enclosed areas, not including basements, that are below the lowest floor and below the base flood elevation solely for storage, parking and building access. Additionally, applicants must design such areas:

(a) To automatically equalize hydrostatic flood forces on exterior walls by allowing floodwaters to enter and exit the enclosed area as certified by a registered professional engineer or architect; or

(b) With a minimum of two openings having a total net area of at least 1 square inch for every square foot of enclosed area subject to flooding. The bottom of all openings must be no higher than 1 foot above grade. Openings may be equipped with screens, louvers, valves or other devices if they automatically allow floodwaters to enter and exit the enclosed area.

(11) **Small Accessory Structures.** A small accessory structure (floor area of 500 square feet or less) does not have to be elevated above the base flood level if it meets the criteria of Paragraph (10), above.

(12) **Recreational Vehicles.** A recreational vehicle located within the special flood hazard area must:

(a) Be fully licensed and ready for highway use;

(b) Be on its wheels or jacking system;

(c) Be attached to the site by only quick disconnect type utilities; and

(d) Have no permanently attached additions or accessory structures.

(13) **Utilities.** Applicants must locate new or replacement public or private utilities outside the special flood hazard area to the greatest extent feasible. If the applicant will locate utilities within the special flood hazard area, he/she must locate and design the utilities to:

(a) Minimize or eliminate the infiltration of floodwaters into the system;

(b) Minimize or eliminate discharges from the system into floodwaters;

(c) Avoid impairment of the system during flooding; and

(d) Avoid contamination from the system during flooding.

(14) **Stream Channel Management.** The applicant must:

(a) Maintain the flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse; and

(b) Not reduce stream stability as a result of any stream channel management activities.

(15) **Water-Dependent Structures.** Applicants may need to obtain a stream alteration permit from the Vermont Agency of Natural Resources for bridges, culverts and other water-dependent structures, which by their nature must be placed in or over a watercourse.

2202.I **Nonconformities.** Applicants must obtain conditional use approval from the Development Review before the Zoning Administrator may issue a permit to substantially improve, repair after substantial damage, relocate, replace or enlarge a nonconforming structure within the special flood hazard area as follows:

(1) The proposed development must conform to the applicable development standards in Subsection 2202.H.

(2) If a nonconforming structure is substantially damaged or destroyed, the applicant:

(a) Must not substantially improve the structure if it is located within the floodway unless it is a water-dependent structure.

(b) May reconstruct the structure in its original location outside the floodway only when the structure cannot reasonably be relocated to a less hazardous location on the property.

(3) The applicant must rebuild a nonconforming structure that is substantially damaged or destroyed above the base flood elevation and must otherwise comply with all requirements of the National Flood Insurance Program.

2202.J **Variances.** The Development Review Board must only approve variances within the special flood hazard area in accordance with the applicable criteria and procedures in Section 4503.

2202.K **Administrative Requirements.** In addition to the requirements of Part 4 of these regulations, the following special administrative procedures apply within this overlay district:

(1) **Project Review Sheet.** The applicant must submit a Vermont Agency of Natural Resources Project Review Sheet as part of a complete application. The applicant must submit evidence that he/she obtained all state or federal permits identified on the Project Review Sheet to the Zoning Administrator prior to commencing any work.

(2) **Referral.** The Zoning Administrator must:

(a) Send a copy of all complete applications for development within the Special Flood Hazard Area to the State National Flood Insurance Program Coordinator.

(b) Send copies of the complete application to adjacent upstream and downstream communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, the Army Corps of Engineers, and the Federal Insurance Administrator if the application involves the alteration or relocation of a watercourse.

(c) Not act to approve or deny the application for 30 days following the referral or until comments have been received, whichever is sooner, in accordance with Section 4202.

(3) **Certificate of Compliance.** The Zoning Administrator must issue a certificate of compliance in accordance with Section 4208 for all development within the special flood hazard area.

(4) **Records.** The Zoning Administrator must properly file and maintain a record of all elevation certificates, as-built elevations, letters of map amendment, base flood elevations, floodway determinations, flood proofing certifications, and other data or certifications required under this section.

(5) **Enforcement.** The Zoning Administrator must:

(a) Send a copy of any notice of violation issued in accordance with Chapter 470 within the special flood hazard area to the State National Flood Insurance Program Coordinator.

(b) Notify the Administrator of the National Flood Insurance Program in writing of the violation and request a denial of flood insurance for the property, if the violation is not resolved.

(c) Report any violation of the state's Accepted Agricultural Practices within the special flood hazard area to the Secretary of Agriculture for enforcement.

2202.L **Definitions.** The terms below are specifically defined as used in this section. All other terms are as defined in Chapter 530.

(1) BASE FLOOD means the flood having a 1% chance of being equaled or exceeded in any given year, commonly known as the 100-year flood.

(2) BASE FLOOD ELEVATION (BFE) means the elevation of the water surface resulting from the base flood. The BFE is usually shown on the Flood Insurance Rate Map.

(3) BASEMENT means any area of a building with a floor elevation that is below ground level on all sides.

(4) CHANNEL means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.

(5) COMMON PLAN OF DEVELOPMENT means a phased project to improve a structure or lot over a period of time.

(6) CRITICAL FACILITIES means structures the community identifies as essential to residents' health and welfare and that are especially important following a disaster such as fire and rescue facilities, hospitals, disasters, shelters, police stations, schools, nursing homes, water supply treatment facilities, grocery stores, and fueling stations.

(7) DEVELOPMENT means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

(8) FILL means any imported material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity of land.

(9) FLOOD means either:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of surface waters, the unusual and rapid accumulation or runoff of surface waters from any source, and/or mudslides caused by flooding that result in a river of liquid and flowing mud; or

(b) The collapse or subsidence of land along a water body as a result of erosion or undermining that is caused by waves or currents of water exceeding anticipated cyclical levels, or that is suddenly caused by an unusually high water level in a natural water body, accompanied by a severe storm, flash flood or similar unforeseeable event that results in flooding.

(10) FLOOD INSURANCE RATE MAP (FIRM) means an official map on which the National Flood Insurance Program Administrator has delineated the special flood hazard areas and the risk premium zones within the town. The map for Berlin is now available in PDF or GIS formats as a Digital Flood Insurance Rate Map (DFIRM).

(11) FLOOD INSURANCE STUDY (FIS) means an examination, evaluation and determination of flood hazards and the corresponding water surface elevations, or of mudslide and/or flood-related erosion hazards.

(12) FLOODPLAIN or FLOOD-PRONE AREA means any land area susceptible to being inundated by water from any source (see definition of flood).

(13) FLOOD PROOFING means any combination of structural and non-structural additions, changes or modifications to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, buildings and their contents.

(14) FLOODWAY or REGULATORY FLOODWAY means the channel of a river, stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot at any point. Special flood hazard areas and floodways may be shown on separate panels or sheets of the FIRM.

(15) HISTORIC STRUCTURE means any structure that is:

(a) Listed individually on the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminary determined by the Secretary of the Interior as contributing the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district; or

(c) Individually listed on the Vermont Register of Historic Places.

(16) LETTER OF MAP AMENDMENT (LOMA) means a letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the special flood hazard area based on information provided by a registered professional engineer or surveyor. FEMA issues a LOMA when upon the landowner demonstrating that a structure or lot is located above the base flood elevation and has been inadvertently included in the special flood hazard area.

(17) LOWEST FLOOR means the lowest floor of the lowest enclosed area within a building, including a basement. An unfinished or flood-resistant enclosure used solely for storage, parking or building access will not be considered a building's lowest floor if it is built in conformance with Paragraph 251.H(10).

(18) MANUFACTURED HOME means a building, transportable in one or more sections that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. This definition specifically excludes recreational vehicles.

(19) MANUFACTURED HOME PARK means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(20) MANUFACTURED HOME PARK, EXISTING means a manufactured home park for which the construction of facilities for serving the sites on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of roads, and either final site grading or the pouring of concrete pads) was completed before the Town of Berlin adopted floodplain management regulations. Any expansion to an existing manufactured home park resulting in additional manufactured home sites will be considered new construction.

(21) NEW CONSTRUCTION means structures for which the start of construction commenced after the Town of Berlin adopted floodplain management regulations, and includes any subsequent improvements to such structures.

(22) RECREATIONAL VEHICLE means a vehicle that is:

(a) Built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light-duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

(23) SPECIAL FLOOD HAZARD AREA means the floodplain within the Town of Berlin that is subject to being inundated by the base flood. The special flood hazard area is usually labeled Zone A or AE in the flood insurance study and on the flood insurance rate maps. The base flood elevation has not been determined in Zone A. In Zone AE, the base flood elevations are shown on the flood insurance rate maps.

(24) START OF CONSTRUCTION means the date the Zoning Administrator issued a zoning permit provided that the actual start of construction was within 180 days of the permit date. Development is subject to the flood insurance rate map and flood regulations in effect at the start of construction.

(25) START OF CONSTRUCTION, ACTUAL means the date of:

(a) The first placement of permanent construction of a principal structure on a site, such as pouring a slab or footings, installing piles, constructing columns, or any work beyond the stage of site preparation or excavation;

(b) The placement of a manufactured home on a foundation; or

(c) The first alteration of any wall, ceiling, floor or other structural part of a building.

(26) STRUCTURE means:

(a) A building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

(b) A gas or liquid storage tank that is principally above ground; or

(c) A manufactured home.

(27) SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure that results in the cost of restoring the structure to its pre-damage condition equaling or exceeding 50% of the market value of the structure before the damage occurred.

(28) SUBSTANTIAL IMPROVEMENT:

(a) Means any reconstruction, rehabilitation, addition or other improvement of a structure that cumulatively over three years or over a common plan of development costs 50% or more of the market value of the structure before the start of construction of the improvement.

(b) Means any repair of a substantially damaged structure.

(c) But does not mean any improvement of a structure to correct existing violations of state or town health, sanitary or safety code identified by the applicable code enforcement officer to the minimum extent necessary to assure safe living conditions.

(d) But does not mean any alteration of a historic structure that will not preclude the structure's continued designation as a historic structure.

(29) TOP OF BANK means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys, it is generally the point where the stream is able to overflow the banks and enter the floodplain. For streams in steep and narrow valleys, it is generally the same as the top of slope.

(30) TOP OF SLOPE means either:

(a) A break in slopes adjacent to steep-banked streams that have little or no floodplain; or

(b) A break in slope where the side slopes adjacent to an incised or deeply cut channel meet floodplains that have been abandoned or are undergoing abandonment.

(31) VIOLATION means the failure of a structure or other development to be fully compliant with the provisions of this section. The Zoning Administrator will presume that a structure or other development without the elevation certificate, other certifications or other evidence of compliance required in these regulations to be in violation until the property owner provides that documentation.