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Vermont Superior Court
Environmental Division
24-ENV-00049

STATE OF VERMONT

SUPERIOR COURT **ENVIRONMENTAL DIVISION**
Case No. _____

TOWN OF BERLIN, VERMONT,)
Plaintiff)
v.)
)
HARR, LLC d/b/a BERLIN)
MOBILE HOME PARK,)
Defendant)

VERIFIED COMPLAINT

Plaintiff Town of Berlin, Vermont, through its attorneys Main Street Law LLP, hereby complains as follows.

1. Plaintiff Town of Berlin, Vermont ("Town"), is a municipality of the State of Vermont located in Washington County, Vermont.

2. Defendant HARR, LLC, d/b/a Berlin Mobile Home Park ("HARR, LLC") is a domestic limited liability company with a principal place of business in the Town of Berlin, Washington County, Vermont.

3. The Environmental Court has original jurisdiction over this action pursuant to Rule 3(6) of the Vermont Rules of Environmental Court Proceedings. Rule 3(6) provides the Environmental jurisdiction over "[a]ctions by municipal administrative officers to prevent, retrain, correct or abate violations of bylaws enacted under 24 V.S.A. Chapter 117, as provided in 24 V.S.A. § 4452."

4. Section 4452 provides: "If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer shall institute in the name of the

municipality any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation." 24 V.S.A. § 4452.

5. The Defendant owns a 12.2-acre lot at 135 Partridge Farm Road in Berlin next to the Stevens Branch of the Winooski River. The property was the site of the Berlin Mobile Home Park until it was inundated by floodwaters from the Stevens Branch of the Winooski River on July 10, 2023. *See* aerial map of the property attached as Exhibit 1. The area in blue slashing delineates the Berlin Mobile Home Park property.

6. The floodwaters overwhelmed the approximately 30 manufactured homes existing on the property at the time, with water levels rising up to five feet deep in some of the structures. Some of the occupants of the homes had to be rescued by emergency services workers using boats.

7. As a result of the flooding and its aftermath, all of the homes on the property became uninhabitable and had to be evacuated. All but six of the structures were subsequently demolished and removed from the property. The six remaining structures have been condemned and are currently uninhabitable.

8. The HARR, LLC, property lies entirely within a Special Flood Hazard Area, more particularly, in the Regulatory Floodway. *See* Map at Exhibit 1. The Berlin Land Use and Development Regulations ("Zoning Regulations") define Floodway or the Regulatory Floodway as "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." *See* Exhibit 2, Zoning Regulations § 2202.L(14).

9. On or about June 6, 2024, HARR, LLC, commenced construction of a new structure by pouring a concrete slab on the property within the Floodway. The Town has obtained photographs of the June 6 pouring of the concrete slab, attached as Exhibit 3.

10. Town Zoning Administrator Thomas Badowski states, upon information and belief, that the new concrete pad is being constructed for the placement of a new manufactured home on the pad.

11. Badowski further states, upon information and belief, that the Town believes that HARR, LLC, intends to redevelop the Berlin Mobile Home Park by constructing additional new manufactured homes in Floodway on the property.

12. HARR, LLC, recently constructed multiple mail boxes on the property, consistent with plans to construct additional new manufactured homes on the property.

13. The Zoning Regulations prohibit, among other things, the building of new single- and two-family dwellings, other principal and large accessory structures, and small accessory structures within the Floodway. *See* Exhibit 2, Zoning Regulations § 2202.G.

14. Under the Zoning Regulations, a permit is required before developing or commencing construction on a project in the Flood Hazard Area. "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) with the special flood hazard area not listed in Subsection 2202.G as exempt." Exhibit 2, Zoning Regulations § 2202.F.

15. Any application for a permit to develop lands within the Special Flood Hazard Area must conform to the Development Standards enumerated in Zoning Regulations § 2202.H. Defendant has not applied for a permit.

16. The actual start of construction on a development project in the Special Flood Hazard Zone commences with "[t]he 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." *See* Exhibit 3, Zoning Regulations § 2202.L(24).

17. The purpose of the Special Flood Hazard Area regulations is 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 with 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 mitigations funds."

Zoning Regulations § 2202.A.

18. Besides the threat of future loss of life and property, unregulated development in the Floodway puts the Town and its residents at risk of losing eligibility for flood insurance and disaster funds, according to Zoning Administrator Badowski.

19. On August 2, 2023, Acting Town Administrator Ture Nelson wrote to Randy Rouleau of HARR, LLC, and advised that any redevelopment of the property in the Floodway or Special Flood Hazard Area would require Town zoning review because of the additional restrictions that applied to those areas. *See* Exhibit 4 attached.

20. HARR, LLC, and its agents have not submitted any permit applications or otherwise approached the Town about plans to build new structures in the Floodway.

21. HARR, LLC commenced construction of a prohibited new structure in the Floodway when it poured the concrete slab.

COUNT I
Violations of Zoning Regulations §§ 2202.F, 2202.G, 2202.H

22. Paragraphs 1-21 are restated and incorporated by reference herein.

23. Defendant has commenced new construction by pouring the concrete slab in an area designated as a Regulated Floodway under the Zoning Regulations.

24. Development of new structures in the Floodway zone is prohibited by Zoning Regulations § 2202.G.

25. Defendant has commenced construction and development in an area designated as a Special Flood Hazard Area under the Zoning Regulations.

26. Any development in the Special Flood Hazard Area requires a permit under § 2202.F and must meet the Development Standards for the Special Flood Hazard Area under § 2202.H.

27. Defendant has neither sought nor received a permit to redevelop the Berlin Mobile Home Park and has commenced construction in the Floodway in violation of §§ 2202.F, 2202.G, and 2202.H.

28. Plaintiff is entitled to an award of damages and, if appropriate, an assessment of penalties and costs against Defendant, for these violations of the Zoning Regulations.

COUNT II
Preliminary Injunction Pursuant to 24 V.S.A. § 4452,V.R.E.C.P. 3(6), V.R.C.P. 65(b)

29. Paragraphs 1-28 are restated and incorporated by reference herein.

30. Pursuant to 24 V.S.A. § 4452, "If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer shall institute in the name of the municipality any appropriate action, injunction, or other proceeding to prevent,

restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation."

31. Pursuant to V.R.E.C.P. 3(6) and V.R.C.P. 65(b), the Town brings this civil action in Environmental Court to preliminarily enjoin defendant from performing further acts of construction at the former Berlin Mobile Home Park located at 135 Partridge Farm Road in Berlin.

32. A party seeking a preliminary injunction must show the threat of irreparable harm to the movant, and a likelihood of success on the merits. *See Taylor v. Town of Cabot*, 2017 VT 92, § 19. In determining whether a preliminary injunction should issue, the court will also consider its impact on the other party and the public interest. *Id.*

33. The Town can establish irreparable harm. Allowing unregulated development in the Floodway can lead to the same results that occurred in July 2023 when floodwaters rendered the Berlin Mobile Home Park uninhabitable. The vast majority of the homes had to be demolished and removed, while the remaining structures have been condemned. Beside the potential threat of loss of life and property, the Town and its residents face the more immediate threat of potential loss of eligibility for flood insurance or other disaster relief for failure to regulate development in the Special Flood Hazard Area.

34. The Town has a high likelihood of success on the merits. The Zoning Regulations explicitly prohibit building of new structures in the Floodway zone under § 2202.G and require permitting for all development with the Special Flood Hazard Area under § 2202.F. Defendant has commenced construction by pouring a concrete slab in the Floodway zone and has commenced development in the Special Flood Hazard Area, both of which are direct violations of the Zoning Regulations.

35. Defendant will suffer no substantial harm. Upon information and belief, the Defendant to date has poured only one concrete slab for placement of a manufactured home and a brief reprieve would not result in undue economic loss for investments previously made or Defendant's future plans for the property.

36. There is high public interest in ensuring that the Town's zoning regulations are enforced and that the community be protected from unregulated development in the Floodway and potential loss of life, property, and ability to obtain insurance and other relief in the event of flooding.

37. Accordingly, the Town is entitled to preliminary injunctive relief prohibiting further construction on the property pending a hearing on the matter.

COUNT II
Permanent Injunction
24 V.S.A. § 4452,V.R.E.C.P. 3(6), Zoning Regulation § 2202.G

38. Paragraphs 1-37 are restated and incorporated by reference herein.

38. Pursuant to Zoning Regulations § 2202.G, development of new single- and two-family dwellings in the location of the former Berlin Mobile Home Park in the Regulated Floodway is prohibited.

40. The Town is entitled to permanent injunctive relief prohibiting construction of new manufactured homes on the property, consistent with § 2202.G.

REQUEST FOR RELIEF

Plaintiff requests that this honorable Court:

a. Take jurisdiction of this Complaint.

b. Grant judgment to Plaintiff Town of Berlin.

c. Issue a Preliminary Injunction prohibiting further construction on the former Berlin Mobile Home Park property pending a hearing.

d. Issue a Permanent Injunction prohibiting future construction of new manufactured homes and related structures or infrastructure related thereto in the Regulated Floodway, and requiring removal of all new structures already illegally built on the property.

e. Award damages to Plaintiff and, if appropriate, assess penalties against Defendants, resulting from its violations of the Zoning Regulations.

f. Grant such other relief the Court deems appropriate.

Dated at Montpelier, Vermont, this 10th day of June 2024.

TOWN OF BERLIN, VERMONT

By: /s/ *Stephen L. Cusick*

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VERIFICATION

NOW COMES Thomas Badowski, Zoning Administrator of the Town of Berlin, Vermont, duly sworn, and does depose and say that the factual allegations in this Verified Complaint are true to the best of my knowledge, information or belief, and where stated upon information and belief, I believe said statements are true.

Date at Berlin, Vermont, this 10th day of June 2024.

Thomas Badowski
Zoning Administrator
Town of Berlin, Vermont

STATE OF VERMONT
COUNTY OF WASHINGTON, ss.

At Berlin in said County this 10th day of June 2024, personally appeared Thomas Badowski, Zoning Administrator of the Town of Berlin, Vermont, and swore to the truth of the foregoing based on his own knowledge, information or belief and so as upon information and belief, stated that he believed this information to be true.

By: Chelsea E. Magwire
Notary Public
Name: Chelsea E. Magwire
Commission No. 157.0014660
My Commission Expires: 1/31/2025

