Vermont Superior Court
Filed 06/21/24
Environmental Division

VERMONT SUPERIOR COURT

Docket No. 24-ENV-00049

Environmental Division
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Burlington, VT 05401
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Town of Berlin v. Harr, LLC d/b/a Berlin Mobile Home Park

ENTRY REGARDING MOTIONS

Title: Emergency Motion for Ex Parte Temporary Restraining Order

Filer: Stephen L. Cuisick

Filed Date: June 11, 2024

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Title: Motion to Continue Emergency Hearing

Filer: Stephen J. Craddock

Filed Date: June 19, 2024

Memorandum in Opposition, filed on June 20, 2024 by Stephen Cuisick, attorney for the Town of Berlin.

The Motion to Continue is DENIED. We ORDER partial injunctive relief as set forth below.

This is a municipal enforcement action brought by the Town of Berlin (Town) against Harr, LLC d/b/a Berlin Mobile Home Park (Respondent) to prevent the pouring of concrete and any future construction without a permit at the property located at 135 Partridge Farm Road in Berlin, Vermont (the Property).

The Town filed this action on June 11, 2024, along with an emergency motion for an ex parte Temporary Retraining Order. The Court scheduled this matter for a motion hearing to occur on June 21, 2024, and directed the Town's attorney to serve Respondent with a copy of the Complaint and a copy of the Notice of Hearing. Respondent was served on Monday, June 17, 2024 and Respondent's attorney subsequently filed a notice of appearance on June 19, 2024 accompanied by a motion to continue the June 21 hearing. The motion requested additional time to prepare for the hearing but indicated that Respondent would be willing to not pour any

additional foundations until the Court can rule on the Town's motion. The Town opposed the motion to continue, and the Court held the hearing as scheduled. The Town appeared through counsel, Attorney Stephen Cusick. Randy Rouleau, the manager of Harr, LLC attended. Respondent's attorney, Stephen Craddock, was unable to attend.

This Court has authority to issue injunctive relief pursuant to Vermont Rules of Civil Procedure (V.R.C.P.) Rule 65. "No preliminary injunction may be granted without notice and a hearing . . . ." V.R.C.P. 65(b)(1). An injunction should only be granted upon a showing of irreparable harm during the pendency of the action and to preserve the status quo. State v. Glens Falls Ins. Co., 134 Vt. 443, 450 (1976). The party seeking a preliminary injunction has the burden of demonstrating: (1) irreparable harm; and (2) likelihood of success on the merits. Taylor v. Town of Cabot, 2017 VT 92, ¶ 19.

While this Court has denied Respondent's motion to continue the June 21, 2024 hearing, as the Court recognized on the record at said hearing, Respondent's counsel required additional time to prepare for the required Rule 65 hearing and was unavailable at that date. Considering the interest of all parties the Court orders as follows:

1. Respondent is ordered to refrain from any further concrete work at the Property.
2. Respondent is ordered to refrain from any construction work at the Property except for the following:
    a. As for existing homes on the Property, repairs of water damage may occur. This is repair work only, no construction of additions or expansions may occur.
3. Respondent is ordered to refrain from any grading or filling within the floodway.
4. This order is effective from this date forward until further order of the Court.

The Town asserts that Respondent requires a permit for all work within the floodway. Respondent is on notice that if it continues with construction activities without necessary Town approvals, and later seeks approval, even if granted Respondent may still be subject to fines and penalties for work completed prior to securing Town approval. Furthermore, if Respondent fails to obtain Town approval, Respondent may also be subject to fines and penalties as well as injunctive relief to remove any construction in violation of the Town's zoning regulations.

This matter is set for a hearing on the Town's motion on July 11, 2024 at 9:00 AM via the WebEx platform.

Electronically signed this 21st day of June 2024, pursuant to V.R.E.F. 9(D).



Thomas G. Walsh, Judge
Vermont Superior Court, Environmental Division