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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)

EMERGENCY MOTION FOR EX PARTE ISSUANCE OF A TEMPORARY RESTRAINING ORDER

Plaintiff Town of Berlin, Vermont, through its attorneys Main Street Law LLP, hereby submits this Emergency Motion for Ex Part Issuance of a Temporary Restraining Order pursuant to 24 V.S.A. § 4452, V.R.E.C.P. 3(6) and V.R.C.P. 65(a).

Pursuant to 24 V.S.A. § 4452, if a building or structure is being "erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the [municipal] 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 constituting a violation."

Pursuant to Rule 3(6) of the Vermont Rules of Environmental Court Proceedings, this Court has original jurisdiction of municipal civil actions brought pursuant to 24 V.S.A. § 4452.

Pursuant to Rule 65(a) of the Vermont Rules of Civil Procedure, a plaintiff may move for ex parte issuance of a temporary restraining order "if it clearly appears from specific facts shown by affidavit or the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition." Plaintiff's Verified Complaint is filed herewith and incorporated by reference herein.

V.R.C.P 65(a) for ex parte temporary restraining orders tracks the language of the Federal Rules of Civil Procedure, and the standards for approval are the same as those for issuance of a preliminary injunction. *See Oeschger v. GeneThera, Inc.*, 395 F.Supp.3d 345, 355 (D.Vt. 2019) (explaining that the same factors for considering a preliminary injunction apply to temporary restraining orders). A party seeking a preliminary injunction must show a 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*.

The Town can establish immediate and irreparable harm. The property is located in the Regulated Floodway, which prohibits new construction of single- or two-family dwellings and related structures and infrastructure, pursuant to Zoning Regulations § 2202.G. The unregulated construction of manufactured homes and related structures and infrastructure in the Floodway without a permit or meaningful review by the Town exposes the Town and its residents to the threat of immediate and irreparable harm resulting in the loss of life and property. Further, any such unregulated development in the Floodway could jeopardize the eligibility of the Town and its residents to obtain flood insurance and other emergency flood assistance.

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 within 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.

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.

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 and property, and that the Town and its residents retain their eligibility to obtain flood insurance and other relief in the event of flooding.

Pursuant to VRCP 65(c) governing the posting of security for a temporary restraining order, Plaintiff requests that the Court waive the requirement. *See* V.R.C.P. 65(c) ("for good cause shown and recited in the order, the court may waive the giving of security"). First, a short delay while a hearing is pending does not work great financial hardship on Defendant. *See* V.R.C.P. 65(c) ("The waiver provision is desirable for Vermont in view of the smaller amounts that are at stake in state court.") Second, the Town is exercising its enforcement rights under 24 V.S.A. § 4452 and, as such, good cause exists not to require security of a municipality when exercising its rights and authority under law. Finally, as a political subdivision of the State of Vermont, the exemption granted to the State of Vermont should apply to the Town. *See* VRCP 65(c) ("No such security shall be required for the State of Vermont or an officer or agency thereof.")

The Defendant's violation of the Zoning Regulations is flagrant. HARR, LLC, has commenced construction without a permit in the highly restrictive Special Flood Hazard Area and Regulated Floodway zones on property that was devastated by the July 2023 flood. The former Berlin Mobile Home Park located on the land faced catastrophic flooding and some

residents had to be rescued by emergency workers by boat during the flood. A vast majority of the manufactured homes in the park had to be demolished and removed and the few that remain are uninhabitable.

Given the scope of that destruction and the purpose of the Special Flood Hazard Area designation, it is not difficult to conclude that Defendant's unpermitted and unregulated construction in the Floodway poses the threat of immediate and irreparable harm to the Town and its residents.

WHEREFORE, Plaintiff requests that the Court issue a temporary restraining order prohibiting Defendant and any of its agents from building any further new structures on the former Berlin Mobile Home Park property located at 135 Partridge Farm Road in Berlin, including any new single- or two-family dwellings, new manufactured homes, new concrete slabs or pads, new accessory structures, new water and sewer systems, and new storage tanks, pending a hearing on this matter.

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

TOWN OF BERLIN, VERMONT

By: /s/ *Stephen L. Cusick*

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