VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 23-ENV-00132

Village of North Bennington, Plaintiff v. Edward Corey, Margaret Corey, Keith Corey, Kenneth Corey and K&E Partnership, Respondents	**DECISION ON MOTION**

This is a zoning enforcement action commenced by the Plaintiff, Village of North Bennington, against the above-named Respondents by complaint filed November 17, 2023. In this action, Plaintiff is represented by John D. Stasny, Esq. Respondents are represented by Thomas Lamar Enzor, Esq. Presently before the Court is Plaintiff's motion for summary judgment.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). In determining whether there is a dispute over a material fact, "we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A). The party opposing a motion for summary judgment "cannot simply rely on mere allegations in the pleadings to rebut credible documentary evidence or affidavits . . . but must respond with specific facts that would justify submitting [their] claims to the factfinder." Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. (citing Gore v. Green Mtn. Lakes, Inc., 140 Vt. 262, 266 (1981); V.R.C.P. 56(e); State v. G.S. Blodgett Co., 163 Vt. 175, 180 (1995)). If a party fails to properly address another party's assertion of fact as required by Rule 56(c), the court may consider the fact undisputed for purposes of the motion or may grant summary judgment if the motion and supporting materials show that the movant is entitled to it. V.R.C.P. 56(e).

Undisputed Material Facts

We recite the following factual background and procedural history, which we consider to be undisputed unless otherwise noted, based on the record now before us and for the purpose of deciding the pending motion.[1] The following are not specific factual findings relevant outside the scope of this decision on the pending motion. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

1. Respondents Edward Corey, Margaret Corey, and Keith Corey own certain real property located at 163 Corey Acres Road, North Bennington, Vermont (the Corey Property).

2. Respondent K&E Partnership (K&E) owns certain real property located at 153 Corey Acres Road, North Bennington, Vermont (the K&E Property).

3. The Corey Property and K&E Property are adjoining parcels, both of which are located in the Village Residential District, as set forth in the duly adopted Village of North Bennington Zoning Bylaws (the Zoning Bylaws).

4. On August 25, 2023, the Village Zoning Administrator (ZA) sent a Notice of Violation via certified mail, return receipt requested, to Edward and Margaret Corey, identifying multiple conditions of the Corey Property alleged to be in violation of the Zoning Bylaws (the Corey NOV).

5. Also on August 25, 2023, the ZA sent a Notice of Violation via certified mail, return receipt requested, to K&E Partnership, identifying multiple conditions on the K&E Property alleged to be in violation of the Zoning Bylaws (the K&E NOV).

6. Certified mail return receipts were signed and returned for both NOVs.

7. Neither NOV was timely appealed.[2]

8. On October 17, 2024, Village representatives conducted a site inspection of both Properties.

9. Photographs from the site inspection at the Corey Property depict extensive gravel surfacing, a structure containing small boats, and fencing. Plaintiff's Exhibits 13–22.

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[1] On February 12, 2025, the Court granted Respondents an extension of time to respond to Plaintiff's motion, which we directed Respondents to file on or before February 20, 2025. On February 20, Respondents filed a one-page, unsigned document with no accompanying exhibits. A week later, Respondents filed an amended response to Plaintiff's motion which was accompanied by a single exhibit— an affidavit from Respondent Edward Corey. Respondents did not provide any explanation for their failure to initially file a complete response by the Court's deadline. We find this conduct particularly problematic where, as here, the initial filing failed to comply with Rule 11 of the Vermont Rules of Civil Procedure. Lastly, we note that Respondents did not file a paragraph-by-paragraph response to Plaintiff's Statement of Undisputed Material Facts. V.R.C.P. 56(c)(2).

[2] In response to the NOVs, Respondents' counsel sent letters to the Village entitled "Notice of Appeal," which were dated September 8, 2023 and postmarked September 12, 2023. Neither letter was mailed or received within the 15-day period required for the filing of a Notice of Appeal. 24 V.S.A. 4465(a).

10. Also on the Corey Property, Village officials observed paved areas, a gravel driveway, an arch-shaped structure, storage of construction vehicles, unpermitted fences, and an apartment that appears to be built into the garage building. Plaintiff's Exhibits 23–30.

11. With respect to the K&E Property, the unpermitted entryway structure has been relocated but remains on the lot. Plaintiff's Ex. 31. Additionally, fencing, vegetation, and other objects remain in the setback from the paved surface of the road. Plaintiff's Exhibits 32–34.

12. The above-referenced land development and site conditions/alterations have occurred without permits. Affidavit of Christopher Damon, ¶ 35.

Discussion

By failing to timely appeal the NOVs, those decisions are now final and binding. 24 V.S.A. § 4472(d). The violations identified therein cannot be challenged directly or indirectly at this time.[3] Id. Further, this court received from Plaintiff credible and undisputed material facts, supported by materials in the record, demonstrating that those violations listed in the NOVs are/were continuing, at least as recently as the October 17, 2024 site inspection.[4] Thus, it has been conclusively established that Respondents are in violation of the Zoning Bylaws.

Having established that Respondents were, and likely remain, in violation of the Zoning Bylaws, Plaintiff is entitled to injunctive relief requiring Respondents to comply with the Bylaws. 24 V.S.A § 4452.[5] Accordingly, we hereby **GRANT** summary judgment for Plaintiff and **ORDER** Respondents to bring the Corey and K&E Properties into compliance with the provisions of the Zoning Bylaws identified in the NOVs within sixty (60) days of this Decision. To the extent that Respondents have any questions regarding what steps they must take to bring the Corey and K&E

[3] Respondents attempt to defend the violations by citing to a previous agreement between the parties and by arguing that the Properties are now in compliance. Respondents had the opportunity to raise defenses to the violations by timely appealing the NOVs. Respondents cannot now collaterally attack the NOVs by reference to a previous agreement by the parties. Moreover, Respondents have not complied with the requirements of V.R.C.P. 56 to establish a dispute of material fact, nor have they offered any documentary evidence to demonstrate compliance with the Bylaws.

[4] In its motion for summary judgment, Plaintiff lists two alleged unpermitted uses—a boathouse and apartment built into the garage— which were not listed in either NOV. The Court lacks jurisdiction to rule that these two uses are enforceable violations when they were not noticed in the underlying NOVs and where Plaintiff has not demonstrated which Bylaw provisions are violated by these uses.

[5] Plaintiff cites to Sherburne v. Carpenter, 155 Vt. 126 (1990) for the proposition that when deciding to issue an injunction to enforce a statutory right, the Court may only consider whether the violation is substantial and whether the violation involves conscious wrongdoing. To clarify, the Court only needs to make these determinations when deciding not to issue an injunction against a violation. See City of St. Albans v. Hayford, 2008 VT 36, ¶ 13 (explaining that Carpenter involved a court's discretion to withhold a mandatory injunction). Here, there is a clear statutory right to an injunction under 24 V.S.A. § 4452 and there has been no credible showing by Respondents that those violations are insubstantial or innocent.

Properties into compliance, they shall promptly communicate those questions to the Village for response and clarification.

In addition to injunctive relief, Plaintiff seeks fines and penalties pursuant to 24 V.S.A. § 4451. The Court will set this matter for an evidentiary hearing for the purpose of establishing the period for which Plaintiff seeks daily penalties and any factors that the parties want the Court to consider when setting a reasonable penalty amount.[6] See Town of Pawlet v. Banyai, 2022 VT 4, ¶ 30 ("When determining a fine, the Environmental Division must 'balance any continuing violation against the cost of compliance and … consider other relevant factors, including those specified in the Uniform Environmental Enforcement Act.'") (internal citation omitted); see also Town of Plainfield v. Lynch and Lynch, No. 24-ENV-00031, slip op. at 7 (Vt. Super. Ct. Envtl. Div. Feb. 27, 2025) (McLean, J.) (explaining that when a municipality seeks fines and penalties, the Court expects the municipality to provide evidence on other relevant factors beyond just its costs of enforcement).

Electronically signed on March 14, 2025, pursuant to V.R.E.F. 9(d).

Joseph S. McLean
Superior Court Judge
Environmental Division

[6] As noted above, the Court is aware of the lengthy history between these parties, including a previous action in this Court which was resolved by way of a Stipulation of Settlement and Order, filed December 18, 2006, in Docket No. 84-4-06 Vtec. During the evidentiary hearing, the parties may each present evidence regarding this historical background to the extent that it is relevant to the Court's calculation of penalties.