

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 24-ENV-00053

Town of Bennington v. Rowland et al

MERITS DECISION

This is a municipal zoning enforcement action initiated by the Town of Bennington (Town) against Brenda and Joshua Rowland (Respondents) for alleged violations of the Bennington Land Use & Development Regulations (Regulations) occurring on the property located at 860 Houghton Lane, Bennington, Vermont (the Property).

The Court held a one-day merits hearing via the Zoom platform on July 14, 2026.¹ Respondent Brenda Rowland (Brenda) appeared through Attorney Cristina Mansfield. Zachary Rowland (Zachary), who is not a respondent in this action, but who has Power of Attorney (POA) to act as an agent for his mother, Respondent Brenda Rowland, participated in the hearing on her behalf.² The Town was represented by Merrill Bent, Esq. In addition, the Court authorized Dane Whitman, a legal intern in Attorney Bent's office, to appear as legal counsel for the Town. The Town's zoning administrator/code enforcement officer, Bridget Gallant, also participated in the hearing.

¹ This enforcement action has been pending for just over two years, with the Town's Complaint filed on July 1, 2024. As outlined in our prior orders, it was continued multiple times by mutual agreement of the parties to facilitate settlement negotiations and/or to provide a reasonable opportunity for clean-up of the Property by Respondents. See e.g., Entry Orders dated October 1, 2024, December 12, 2024 and June 2, 2025. After the Town reported in September 2025 that it had concerns with the progress of clean-up activities and asked the Court to set the case for trial, questions arose regarding Brenda's competency/capacity to represent herself. See Entry Orders dated September 29, 2025 and October 16, 2025. In response to these concerns, the Court began a process of attempting to identify potential counsel to represent her, leading ultimately to Attorney Mansfield's entry of appearance in December 2025. We then further continued the proceedings for 90 days to allow Attorney Mansfield to familiarize herself with the case and consult with her client. Due to scheduling conflicts in May 2026, the Court asked the parties for their unavailable dates for a merits hearing in June or July 2026. See Entry Order dated April 7, 2026. After the merits hearing was scheduled for July 14, 2026, Zachary Rowland requested an additional continuance for medical reasons, which the Town opposed, and the Court denied for lack of supporting information.

² The POA is dated February, 26, 2025, and Zachary accepted his appointment as Brenda's agent on March 15, 2025. As discussed in prior Entry Orders, Respondent Brenda Rowland has a serious medical condition that negatively impacts her both physically and mentally and substantially limits her ability to participate in this matter. Nonetheless, Ms. Rowland filed an Answer to the Town's Complaint on July 17, 2024. Respondent Joshua Rowland (Joshua), Brenda Rowland's other son, has not appeared in this case and did not file an Answer to the Town's Complaint. The Court understands that Joshua Rowland was in DOC custody, but has been released on parole. DOC provided the Court with an address in New York for Joshua to which the Court sent notices without any response from Joshua.

Since both Respondents and Zachary share a surname, the Court uses first names in this decision where necessary for clarity.

At the close of the hearing, the Court offered the parties an opportunity to file post-trial memoranda, including proposed findings of fact.³ Thereafter, the Court took the matter under advisement. Based on the evidence presented at trial, the Court finds as follows.⁴

1. Respondents own the Property, located at 860 Houghton Lane, in the Town. The Property is developed with a single-family dwelling and is used for residential purposes.
2. The Property is situated within the Town's Rural Conservation (RC) zoning district, as identified in the Town's Land Use & Development Regulations (Ex. 1, Table 2.14). The RC district is a rural area primarily characterized by low-density residential development, although a Casella solid waste transfer facility is located immediately to the east of the Property.
3. On May 14, 2024, in response to a complaint filed by a resident with the Town, Ms. Gallant, acting as the Town's code enforcement officer, sent a Notice of Violation (NOV) to Respondents by USPS certified mail, return receipt requested, and First-Class mail. Ex. 2.
4. The mailing address to which the NOV was sent was correct and the return receipt (green card) was returned as delivered.
5. The NOV listed five violations of the Regulations: (1) Unregistered Camper/RV; (2) Camper being used as a dwelling; (3) Unregistered/uninspected/junk vehicles; (4) Parking on the lawn (not in driveway); and (5) Garbage, junk, debris.
6. The NOV indicated that the above-stated conditions were violations of the Regulations, including §§ 3.10 (Parking, Loading & Service Area Requirements), 3.13 (Storage of Junk Automobiles, Scrap, Waste & Hazardous Materials) and 4.6 (Campers/Recreational Vehicles).
7. The NOV described how to cure the violations and provided seven days in which to do so.⁵
8. The seven-day period to cure the violations identified in the NOV expired on May 21, 2024.
9. The NOV stated that no additional notice period would be provided if the violations were repeated within the next year.

³ The Town also filed a pre-trial memorandum of law. Respondent filed a post-trial memorandum, to which the Town responded.

⁴ The Town's Exhibits 1 through 5 and Respondent's Exhibits A and B were all admitted at trial by stipulation of the parties.

⁵ Specifically, the NOV provides: "To cure the violation of the [Regulations], you must remove or register the camper, stop using the camper as a dwelling, remove or register and inspect the vehicles, park vehicles in the approved driveway, remove all garbage, junk (including the lawnmowers), and debris from the property." Ex. 2.

10. The NOV contained information about appeal rights and stated that failure to appeal would result in Respondents potentially being unable to contest the NOV in any proceeding or enforcement action.
11. The 15-day period to appeal the NOV expired on May 29, 2024.
12. Respondents did not appeal the NOV.
13. Due to Brenda's health condition, she may or may not have been aware of the NOV. Joshua was in DOC custody at the time the NOV was issued. Zachary was living on the Property with Brenda at the time the NOV was issued, but he did not become aware of the NOV until after the appeal period expired.
14. By Complaint dated July 1, 2024, the Town commenced this enforcement action. Zachary had started making some efforts to clean up the Property before he was aware of the Complaint.
15. Despite Zachary and Joshua spending a significant amount of time during their childhood outside working on cars, small engines and other mechanical items, there is no history of zoning violations on the Property, or by Respondents, other than as identified in the NOV.
16. After learning of the NOV, Zachary reached out to Ms. Gallant about erecting a fence on the Property. She informed him that a fence could be constructed without a permit provided it was less than 8 feet in height. Ms. Gallant believed that the fence was desired for privacy purposes, whereas Zachary understood that fence construction was a potential solution to cure the identified zoning violations.
17. Following his discussions with Ms. Gallant, Zachary constructed a fence, consisting of posts and approximately five picket panels (without gaps between the pickets), which extends in a westerly direction from the residence on the Property to the wood line.⁶ Ex. B; Ex. 4-F, 4-G, 5-K, 5-L. The fence cost approximately \$1,300 to build and it screens portions of the Property's westerly side and rear yard from Houghton Lane.
18. During the initial status conference in this matter, on October 1, 2024, Zachary appeared and indicated that he had made ongoing efforts to clean up the Property. On that and other occasions, he requested additional time to bring the Property into compliance with the Regulations, which both the Town and the Court agreed to provide. This includes an

⁶ The exact dates of Zachary's discussion with Ms. Gallant and of the fence construction are not clear to the Court.

approximately 5-month request for stay, initiated by the Town and granted by the Court, to account for Brenda's health issues and the difficulties inherent in trying to clean up the Property during the winter.⁷

19. At various conferences with the Court in 2024 and 2025, Zachary continued to report to the Court and the Town that he was making progress in cleaning up the Property, including removing vehicles and loading a trailer with various materials. At least as of June 2025, the Town acknowledged that some progress had been made, that there was more work to be done, and that an inspection of the Property would be required in the future.
20. Ms. Gallant documented the condition of the Property with photographs taken in March 2024, December 2025 and July 2026.
21. The three photographs from March 2024 (Ex. 3-A through 3-C, respectively) depict: (1) the front of the Property, including a boat, a truck, a tractor and various household items that are not typically left outside in winter (e.g., two recliner-type chairs) (Ex. 3-A); (2) the westerly side/rear of the Property, including three vehicles parked on the grass (at the edge of the woods), a camper parked in the woods, Respondent's chicken coop, and various other items apparently stored outside (Ex. 3-B); and (3) a more limited view of the westerly side of the house, with a vehicle parked next to it, and Respondent's chicken coop and various items in the background (Ex. 3-C).
22. The twenty-five photographs from December 1, 2025 (Ex. 4-A through 4-Y), depict the condition of the Property at that time. Those photographs generally depict an assortment of items in Respondents' back and side yard (with the exception of Ex. 4-A through 4-C, which show vehicles in the front of the house), including multiple unregistered and/or uninspected motor vehicles, piles of tires, numerous riding lawn mowers (both covered with tarps and uncovered) and lawn mower components (e.g., mower decks and hoods), numerous snowblowers, push mowers, pressure washers, gasoline cans, lumber and wooden pallets, compressors, plastic bins and buckets, a camper trailer and propane tanks, a chicken coop and tables containing various items. Many of these items are located at or near the wood line, although some items are in the rear yard or immediately adjacent to the house or fence.

⁷ Due to persistent wet weather in the Spring of 2025 and other factors, this stipulated stay was effectively extended until the end of September 2025. Only after September 2025 did the Court begin to consider scheduling a merits hearing in this case in response to the Town's request.

23. The thirty-three photographs from July 1, 2026 (Ex. 5A through 5-GG), depict the condition of the Property during a site visit on that date. Those photographs generally depict two classic Cub Cadet garden tractors located in Respondents' front yard, stacks of tires, numerous riding mowers parked on the rear lawn, near the house and at the wood line, a golf cart, a tractor, trailers containing various items (e.g., personal property, mower decks), plastic bins, tarps, pallets, motor vehicles parked both in or near the wood line and immediately adjacent to the house, snowblowers, weed eaters, tables containing various items (in front of chicken coop), the camper trailer (with propane tanks and air conditioner), gas cans and other liquid containers, a Body Vision inversion table (near camper), a dry vac, a refrigerator or ice chest, a truck-bed storage chest with tools, lubricants and other items.
24. While previously unregistered, the camper trailer, which is owned by Zachary, was registered with the State of Vermont as of June 25, 2026. Ex. A.
25. During the July 1, 2026 site visit, the camper trailer was connected to propane and power and the air conditioner was running. There is no evidence that the camper was connected to water or wastewater and the Town did not inspect the interior of the camper.
26. Zachary has removed four unregistered/uninspected motor vehicles from the Property, although four motor vehicles remain (two registered and operable, but uninspected, and two unregistered, inoperable and uninspected). The golf cart has also been removed from the Property since the July 1 site visit.
27. Respondents voluntarily ceased parking vehicles within the front setback outside of an approved driveway.
28. Zachary has removed approximately twenty riding mowers from the Property.
29. Despite efforts by Zachary to clean up and organize the Property, including by removing vehicles and mowers, hauling away scrap material, putting items on pallets or in trailers and covering other items, as of the July 1 site visit, the following items still remain on the Property: 25 riding mowers, 9 push mowers, 9 snowblowers, 47 tires (for both motor vehicles and riding mowers), the camper, two trailers, items of personal property and various other items, including scrap or waste material generated on-site through work on the vehicles, mowers and other equipment.
30. The two classic Cub Cadet garden tractors in the front yard are valuable and Zachary views them as yard art.

31. Zachary purchased the vast majority of the mowers and other equipment on the Property in the Spring/Summer of 2023 in anticipation of resigning from his job at Home Depot because of issues with his back. He hoped to transform a long-standing hobby (i.e., small engine repair) into a source of income to help make ends meet. It did not occur to him at that time that he might need zoning approvals or create a violation as a result of his activities. At the time the Town first asked to inspect the Property, Brenda authorized the inspection and was not aware of the collection of mowers, equipment and other items in the backyard.
32. Zachary has sold a few cars and one riding mower, making approximately \$2,000-2,500 over the last year. On the whole, he estimates that he has lost money by scrapping mowers that he could have repaired and made money on. He did not make any money from the scrap.
33. Zachary began cleaning up the yard, removing garbage and items that he didn't think that he could get to because of his health, prior to the commencement of this litigation.
34. Despite his historic and ongoing back/health issues,⁸ Zachary made progress in cleaning up and organizing the yard prior to the July 2026 site visit. Although he hired someone to assist him with clean-up in the past, he cannot afford to do so again. Zachary intends to continue to work at the cleanup himself.
35. In addition to helping care for Brenda, who is essentially bed-bound and whose condition has been worsening over the last few years, Zachary shares custody of a 10-year-old daughter. He has been trying to obtain disability payments, but presently the family relies solely on Brenda's social security for its basic needs. As a result, their financial situation is very difficult.
36. The Town and Zachary take different views of the progress that has been made to clean up the Property over the last two years—the Town describes "some progress" and "small improvement," while Zachary describes his work as a "massive improvement."
37. Since the commencement of this matter, Zachary has taken the position that collecting lawn mowers and working on them is not a zoning violation since small engine repair is his long-standing hobby and many small engines only require maintenance to be put back into service. He describes the antique mowers among his collection as his "pride and joy." Nonetheless, he reduced the number of mowers on the Property in an attempt to satisfy the Town.

⁸ Zachary was involved in a car accident that led to a 2014 surgery on his back; he has experienced ongoing back issues since that time, including, most recently a herniated disk. In addition, he has experienced other significant health issues and was ultimately diagnosed with a hormone deficiency for which he is receiving treatment.

38. As distinct from “junk motor vehicle” and “junk yard,” the term junk is not separately defined in the Regulations.⁹
39. During her visits to the Property, Ms. Gallant did not observe wrecked motor vehicles, but she did observe vehicles that appeared unregistered, uninspected and inoperable. She also observed vehicles, equipment and materials that, based on their condition and location, appeared discarded, dismantled, ruined or scrapped. This included parts, pieces, and items that appeared to constitute scrap or waste material. She did not specifically inquire regarding whether each piece of equipment (e.g., mowers, snowblowers) was operable and/or whether it could be repaired. Instead, she generally characterized these vehicles, equipment and materials, collectively, as “junk” because they did not appear to have been used, had not moved, had grass growing up around them and some had been dismantled or were missing pieces, suggesting they were inoperable.
40. Other than the scrap and waste material described herein, there does not appear to be “garbage” (a term not specifically defined in the Regulations)—in the form of general household trash/trash bags, food scraps or refuse—outside on the Property at this time.
41. While the condition of the Property and/or the activities occurring there do not present a risk to public health, safety or welfare, there is evidence of risk to the environment, including a trail of oil on the ground (as depicted in Ex. 4-E) and numerous gasoline cans, lubricants and other liquids left outside and unattended.
42. Town staff have spent approximately 20 hours working on this enforcement matter. The Town has incurred in excess of \$7,000 in attorney fees, although Ms. Gallant has not

⁹ The Regulations, at Article 10, define “Junk Motor Vehicle” and “Junk Yard” as follows:

Junk Motor Vehicle: A discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or a motor vehicle, which is allowed to remain unregistered and/or uninspected for a period of thirty (30) days from the date of discovery by the Administrative Officer. This definition specifically excludes one on-premise utility vehicle per lot.

Junk Yard: (1) Any place of outdoor storage or deposit, whether in connection with another business or not, of two or more junk motor vehicles, whether for the purpose of reclamation, reuse and/or resale of used parts and materials, or for any other purpose; (2) a lot or building where one or more wrecked or disabled motor vehicles are stored for more than ninety (90) days regardless of intent; (3) any place of outdoor storage or deposit of dilapidated, damaged or scrapped material of any kind. This definition shall specifically exclude state-certified recycling, solid waste and hazardous waste management facilities, and municipally-operated or licensed impoundment facilities.

specifically calculated the Town's enforcement costs and copies of bills for legal services were not submitted into evidence.¹⁰

43. The Town seeks monetary penalties in this case of \$100 per day for every day of violation, running from May 21, 2024 (seven days after the NOV) to the date the violations are cured.¹¹
44. To the date of trial (July 14, 2026), the violations identified in the NOV have been in existence, and subject to penalties, for 784 days.
45. The Town also seeks injunctive relief requiring the Respondents to: (1) remove from the Property any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof, and to register and inspect any motor vehicles that remain on the Property, pursuant to Article 3, § 3.13(A) of the Regulations; (2) cease outdoor storage of scrap or waste materials on the Property, regardless of Respondents' intent regarding use of such scrap or waste materials, pursuant to Article 3, § 3.13(C); and (3) prohibit Respondents from using the camper as a dwelling unit, pursuant to Article 4, § 4.6(A) of the Regulations.
46. The Town also asks that the Court authorize it to take action to bring the Property into compliance—with resulting expenses imposed on Respondents—if Respondents fail to come into compliance within 30 days of the Court's order.
47. At the close of trial, the Town moved for a default judgment against Joshua Rowland.

Discussion

In a zoning enforcement action, the Town carries the burden of proving the existence of a violation. See In re Transtar, LLC, No. 46-3-11 Vtec, slip op. at 1–2 (Vt. Super. Ct. Envtl. Div. Sept. 15, 2011) (Durkin, J.) (explaining that in a zoning enforcement action, the Town bears the burden of proof). Where, as here, the NOV was never appealed, the Town merely needs to show that the violations are ongoing and continuous for the period in which the Town seeks penalties. As the Vermont Supreme Court has explained, municipalities “need not produce evidence of a continuing violation for each and every day.” City of Burlington v. Sisters & Brothers Inv. Grp., LLP, 2023 VT 24, ¶ 15 (quoting In re Jewell, 169 Vt. 604, 606 (1999)). Instead, municipalities may sustain their burden of proof with evidence that “weave[s] a sufficient pattern of violations for the court to infer

¹⁰ The Town's pre-trial memorandum puts the Town's attorney's fees at \$7,395.69 as of June 30, 2026, but, again, this figure has not been corroborated.

¹¹ The Town's complaint requests fines of \$200/day, as authorized by 24 V.S.A. § 4451(a), but its pre-trial memo reduces that request by half to \$100/day.

a continuing violation for some or all of the period for which the [municipality] requests that the court impose penalties.” *Id.* (alterations in original). At minimum, this standard requires submission of evidence that could lead the Court to conclude by a preponderance of the evidence that the stated violations continued after the expiration of the seven-day cure period. See Town of Plainfield v. Lynch, No. 24-ENV-00031, slip op. at 6–7 (Vt. Super. Ct. Env’tl. Div. Feb. 27, 2025) (McLean, J.) (declining to find a continuing violation where Town Zoning Administrator referenced past incidents and complaints but could not recall complainants and did not have personal knowledge of violations occurring after cure period); Town of Duxbury v. Kessler, No. 23-ENV-00128, slip op. at 5 (Vt. Super. Ct. Env’tl. Div. Oct. 28, 2025) (Walsh, J.) (concluding evidence of personal property at camp and Respondent’s presence at the camp at certain times did not suffice to establish use of pop-up camper as residence after cure period where Respondent could permissibly reside in pop-up camper fourteen days per month.)

In this case, the contents of the NOV and the process by which the NOV was sent to Respondents are consistent with the requirements of law, which no party disputes. See 24 V.S.A. § 4451(a); Regulations, Art. 9, § 9.7. By failing to timely appeal the NOV, that decision is now final and binding; it cannot be challenged, either directly or indirectly.¹² 24 V.S.A. § 4472(d).

With certain exceptions discussed below, the Town has provided credible documentary evidence and testimony that those violations listed in the NOV were ongoing and continuous up to and including the date of trial. The seven-day cure period provided in the NOV expired on May 21, 2024. Trial was held on July 14, 2026. Accordingly, Respondents are liable for 784 days of violations. 24 V.S.A. § 4451(a) (“Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than \$200.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days’ warning notice by certified mail.”); Regulations Art. 9, § 9.7.

The Town’s evidence does not support findings of ongoing/continuous violations for the entire 784 day period for which the Town seeks penalties in three areas: (1) although the date of cure was not specified, the Town admits that prior to trial, Respondents “voluntarily ceased allowing vehicles to be parked within the front setback outside of an approved driveway,” (2) although there

¹² Even acknowledging the somewhat unusual circumstances of this case, where Brenda had a serious health condition and Joshua was in DOC custody at the time the NOV was issued, the applicable statute, 24 V.S.A. § 4472, does not provide relief where a timely notice of appeal is not filed. See 24 V.S.A. § 4472 (providing that appeal is the “exclusive remedy” and binding all interested parties to unappealed decisions).

may have been some “garbage,” as that term is commonly understood (and as distinguished from scrap or waste material generated from work on vehicles or equipment), on the Property at one time, the Town’s evidence did not demonstrate the continuing presence of garbage during the period of violation; and (3) the Town’s evidence did not demonstrate the continuing use of the camper for dwelling purposes. To be clear, the violations identified in the NOV are established as a matter of law due to Respondents’ failure to appeal. However, in evaluating an appropriate penalty (or other remedies) in this case, the Court considers whether the Town’s evidence demonstrated a continuing violation—for each aspect of the NOV—for some or all of the period for which it seeks penalties.

The Court has “broad discretion” in determining the fine to be imposed. In re Beliveau NOV, 2013 VT 41, ¶ 22, 194 Vt. 1. “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.’” Town of Pawlet v. Banyai, 2022 VT 4, ¶ 30 (quoting Beliveau NOV, 2013 VT at ¶ 23). The Uniform Environmental Enforcement Act factors are:

- (1) the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;
- (2) the presence of mitigating circumstances, including unreasonable delay by the Secretary in seeking enforcement;
- (3) whether the respondent knew or had reason to know the violation existed;
- (4) the respondent's record of compliance;
- (5) Repealed by 2007, Adj. Sess. No. 191, § 5, eff. July 1, 2008.
- (6) the deterrent effect of the penalty;
- (7) the State's actual costs of enforcement;
- (8) the length of time the violation has existed.

10 V.S.A. § 8010(b)(1)–(8).

I. Actual or potential impact on public health, safety, welfare, and the environment

Although the Town does not claim, nor does its evidence support, an actual or potential risk to public health, safety or welfare arising from the violation(s), the evidence does support a potential risk of harm to the environment. Photographic evidence depicts a trail of oil on Respondents’ lawn leading to a vehicle (Ex. 4-E) and there are numerous, unsecured gasoline containers, lubricants and other containers holding liquids on the Property that have some potential for environmental harm.

In addition, as exemplified by the vehicle leaking oil, uninspected vehicles and vehicles and equipment in various states of repair (or disrepair) have the potential to discharge fuel, oil, coolant, washer fluid and similar liquids onto the ground or into a watercourse.¹³ Some, but not all, of the mowers and equipment are covered to protect them from the elements. This factor warrants a moderate penalty.

II. Presence of mitigating circumstances

There are several mitigating circumstances in this case. Although the Town did not delay in seeking enforcement, at the time that the NOV was issued and the Complaint was filed, Brenda was suffering from a serious medical condition that limited her both physically and mentally, and Joshua was in DOC custody. Brenda cooperated with the Town by authorizing an inspection of the backyard; she was not personally aware of the situation on the Property at that time, nor was she able to do anything about it.

The vast majority of the mowers and other equipment were purchased by Zachary and brought onto the Property in 2023 in anticipation of resigning from his job due to his own health issues. He hoped to generate some income from his long-standing hobby of working on small engines by repairing and reselling the mowers and other equipment. It did not occur to him at the time that this may require zoning approvals or give rise to a violation.

Since learning of the violations (and even before that time), Zachary has made some efforts to clean up the Property and improve its appearance.¹⁴ To that end, he conferred with Ms. Gallant and spent \$1,300 to construct a fence under the mistaken impression that this would cure the violations. While the fence does not cure the violations, it does almost completely screen the vehicles, mowers, equipment and other materials in the westerly side yard and backyard from Houghton Lane. Ex. B-1. He also moved or removed most of the mowers and equipment visible from the road on the east side of the house. Ex. B-3.

Although a substantial number of riding mowers (25), push mowers (9), snowblowers (9) and tires (47) remain on the Property, Zachary disposed of approximately 20 riding mowers and made a reasonable effort to clean up and organize the backyard in advance of the July site visit.¹⁵ Zachary's

¹³ There are no obvious watercourses or streams on or adjacent to the Property, but groundwater, stormwater runoff and overland flow still have some potential to move any contamination off-site.

¹⁴ In correspondence from Brenda, dated July 11, 2024, attached to her Answer, she states that Zachary had removed several trailer-loads of scrap material from her property which totaled well over 1,000 pounds. This is generally consistent with Zachary's testimony, and the Court's finding, that he started cleaning up even before he became aware of the Town's Complaint, dated July 1, 2024.

¹⁵ He did so despite disagreeing that the presence of the mowers constituted a zoning violation.

clean-up efforts occurred notwithstanding the back pain and adverse health issues that he has been experiencing.

Zachary also disposed of four motor vehicles, although four vehicles still remain on the Property. Two of the remaining vehicles are operable and registered, but not inspected. The other two are inoperable and unregistered/uninspected. We note that under the Regulations, one on-premise utility vehicle is exempt from the definition of “junk motor vehicle.”¹⁶ Therefore, assuming that the two operable vehicles are both inspected and registered, it is possible that Respondents need dispose of only one of the two remaining vehicles.

Recently, Zachary registered the camper with the State of Vermont. Vehicles are no longer parked on the front lawn or in the front setback outside of the driveway. Further, as noted above, there is no household garbage on the lawn, nor is there substantial evidence that the camper is being used/continues to be used for dwelling purposes (notwithstanding the unappealed NOV, which establishes a technical violation).

The cost of compliance and Respondents’ financial situation is also a mitigating factor. The Court understands that Respondents’ financial resources are extremely limited, which impairs their ability to pay compliance costs such as solid waste disposal/tipping fees, hiring assistance with clean up, and/or paying the fees to register/inspect vehicles (among other costs) while still meeting their basic needs. The Court is mindful of this and the other mitigating factors, discussed above, all of which impact Respondents’ ability to timely cure the violations. These mitigating factors, taken together, weigh in favor of a lower penalty amount.

III. Respondents’ Knowledge of the Violation

As noted above, Respondents did not know about the violations prior to the issuance of the NOV—Brenda was unaware because of her health condition and Joshua because he was incarcerated. Because of his long-standing small engine repair hobby, it also never occurred to Zachary that bringing many mowers and other equipment onto the Property may require a permit or create a violation. There is no evidence that the Code Enforcement Officer issued a warning letter or verbally advised Respondent regarding a potential violation before issuing the NOV. Therefore, it appears that the NOV itself was the first notice that Respondents received alerting them to the violations at issue.

¹⁶ “Utility vehicle” is not defined in the Regulations, but, in this context, we understand the exemption for one on-site utility vehicle to mean that one unregistered, uninspected vehicle, used for household purposes and driven only on the Property may be maintained without being considered a junk motor vehicle.

Respondents have known of the violations since the issuance of the NOV and have taken some steps to address them. This factor weights in favor of a lower penalty.

IV. Respondents' Record of Compliance

There is no evidence of zoning violations on the Property, or by Respondents, prior to the issuance of the NOV here. As outlined above, since receiving the NOV, Respondents have made some efforts to cure the violations, although certain violations still exist on the Property. The remaining violations have not been cured in part due to Zachary's reluctance to part with mowers and equipment that he believes have value (once repaired), and that he does not view as contributing to a zoning violation. This factor weighs in favor of a low to moderate penalty.

VI. Deterrent Effect of Penalty

The penalty amount should be sufficient to deter Respondents from continuing to violate the Regulations.¹⁷ Put differently:

A civil penalty in a zoning or environmental enforcement case should be calculated so as to make it more expensive for defendants to violate the law than to comply with it. To fail to impose an appropriate penalty on a . . . [respondent] who proceeds with a project after being notified of the violation makes a mockery of the great majority of citizens who apply for and abide by zoning permits and other municipal land use approvals.

Town of Calais v. Noordsij, No. 142-6-06 Vtec, slip. op. at 6–7, (Aug. 29, 2008) (Wright, J.).

The evidence regarding Respondents' full financial circumstances is unclear, but what is clear is that their financial situation is very difficult. Brenda is mostly bed-bound and suffers from a debilitating illness. Joshua is out of the picture. Zachary is unemployed, has responsibilities to both his mother and daughter, and has his own significant health issues that limit his physical activity. Brenda and Zachary presently survive off Brenda's social security monies. They also have incurred costs associated with the clean-up process, most notably the fence construction. The Town indicates that it is sympathetic to the difficulties and costs Respondents have faced (and this is evident in the patience the Town has shown in pursuing this matter), but it believes a substantial fine and penalty on Respondents is now appropriate given the lengthy period of violation and Respondents' failure to fully cure. It seeks an ongoing penalty to ensure deterrence.

¹⁷ The Court notes that some aspects of this factor may encourage consideration of the general deterrent effect of the penalty on the broader community to incentivize community-wide compliance with the Regulations. This is generally consistent with the overarching purpose of enforcement actions, which is to further the public interest in compliance with applicable regulations. The Court need not conduct an extensive analysis of these goals, given that both are functionally intrinsic to the application of the factors to this case and the Court's ultimate conclusion.

Taking into account the remedial goals of Regulations § 9.7 and 24 V.S.A § 4451 (including both specific and general deterrence), the costs of enforcement and compliance, and Respondents' ability to pay, among other factors, the Court concludes that this factor weighs in favor of a low to moderate daily fine. The Town is correct that Respondents have allowed some of the violations at issue to languish despite having knowledge of them since May 2024. Some delay in curing the violations may be attributable to Zachary's reluctance to part with the mowers, in particular, which he views as both a hobby and a potential source of income. However, it is less clear that Respondents had the practical or financial ability to cure all of the violations through the efforts of Zachary alone, given the number of mowers and other materials involved, the costs of compliance and Zachary's health issues. Respondents have also made some real efforts to clean up the Property and improve its appearance. The work is not complete, but reasonable progress has been made under the circumstances. Accordingly, the Court believes that the penalty imposed herein, and the injunctive relief contemplated below, provides adequate deterrence; it does not believe that a substantial, continuing penalty to compensate the Town for both accumulated and anticipated future expenses is warranted at this time. If Respondents fail to comply with this Court's orders, the Town may seek additional reimbursement (including attorney fees) in connection with any necessary contempt proceedings.

VII. Actual Costs of Enforcement

The Town's actual costs of enforcement in this case exceeded \$7,000, although Ms. Gallant did not have an exact figure for the Town's total enforcement costs and the Town did not support this amount with documentation.¹⁸ Accordingly, the Court does not know the precise basis for the Town's enforcement costs, nor can it fully assess their reasonableness without knowledge of factors like the number of hours billed by the Town's legal counsel and counsel's hourly rate. Respondents, however, do not challenge the Town's enforcement costs. Given its experience with other zoning enforcement matters, the Court believes that the Town's alleged enforcement costs are generally within the range of expenses typically incurred by Vermont municipalities for legal services and litigation costs in zoning enforcement cases of this nature.

¹⁸ As noted above, the Town states in its pre-trial memorandum that the Town has incurred \$7,395.69 in attorney fees in this case as of June 30, 2026. Although that figure is not supported by affidavit or copies of legal bills, it is consistent with Ms. Gallant's estimate. No dollar amount was provided for staff time, although Ms. Gallant also estimates that staff dedicated approximately 20 hours to this matter. The Town's post-trial reply memorandum asserts, also without corroboration, that the Town has incurred over \$3,000 in additional expenses for trial preparation, attendance and post-trial briefing.

VIII. Length of Time the Violation Has Existed

As of the date of the merits hearing, some of the violations in this case had existed for 784 days (using May 21, 2024, the expiration of the NOV's 7-day warning period, as the commencement date for the violations). This is a significant amount of time. As discussed above, however, there are several material, mitigating factors that have contributed to the length of the violation period. This weighs in favor of a moderate daily fine.

IX. Fine Imposed

For all of the foregoing reasons and considering the above factors, the Court imposes a penalty of \$3 per day for every day of violation, running from May 21, 2024 to July 14, 2026 (784 days) for a total fine of \$2,352, to be paid to the Town within 365 days of the date of this order.¹⁹ Respondents are jointly and severally liable for the penalty amount.²⁰ Among other things, this penalty amount takes into account the \$1,300 that Respondents spent to install the fence. The parties are free to agree to a mutually acceptable repayment schedule, provided that such schedule ensures repayment in full within the imposed deadline.

X. Injunctive Relief

The Town seeks injunctive relief, including a mandatory injunction: (1) “requiring Defendants [i.e., Respondents] to remove from the Property any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof, and to register and inspect any motor vehicles that remain on the Property”; (2) “cease outdoor storage of scrap or waste materials on the Property, regardless of Defendant’s intent regarding use of scrap or waste materials”; and (3) prohibiting the defendants from using a camper as a dwelling unit.” Town’s Pretrial Memorandum of Law at 9. The Vermont Supreme Court held in Town of Sherburne v. Carpenter, 155 Vt. 126, 131–32 (1990), and has subsequently

¹⁹ While the Town's costs of enforcement are a relevant factor in our penalty analysis, the Court is not obligated “to allow a town to recover all of its out-of-pocket expenses.” Town of Hinesburg v. Dunkling, 167 Vt. 514, 529 (1998). Rather, “the process of affixing a sanction that compensates the Government for all its costs inevitably involves an element of rough justice.” Id. (citation omitted). Here, the Town's costs of enforcement exceed what would constitute a reasonable penalty under the circumstances and would likely have a negative effect on Respondents’ ability to achieve full compliance given their limited resources and anticipated costs. A higher penalty amount also has a greater likelihood of leading to post-judgment issues (and further expense) for both parties.

²⁰ At the close of trial, the Town moved for a default judgment against Joshua Rowland, who failed to answer or appear. In this case, where the Respondents are jointly and severally liable, and where we have found liability against Brenda on the merits, the risk of inconsistent judgments is reduced. However, since Brenda may still potentially seek relief from this Court’s judgment on appeal, we grant the Town’s motion against Joshua on an interlocutory basis only. Until such time as our judgment becomes final, any default by Joshua shall be treated as not final and in the nature of a decree pro confesso, which merely takes away his standing in court and right to be heard on many questions absent an order of court. See Kopper v. Dyer, 59 Vt. 477, 9 A. 4, *10 (1887). In such circumstances, the final judgment on the merits determines the rights of the defaulting party the same as if no decree pro confesso had been entered. Roberts v. W.H. Hughes Co., 86 Vt. 76, 83 A. 807, *820 (1912).

reiterated, that “[i]f the zoning violation is substantial and involves conscious wrongdoing, the . . . [municipality] is entitled to an injunction, including a mandatory injunction . . . as a matter of course.” See Fenwick v. City of Burlington, 167 Vt. 425, 435 (1997) (citation omitted).

The evidence in this case indicates that Respondents presently have four vehicles on the Property (two registered and operable, but uninspected, and two unregistered, inoperable and uninspected) that meet the definition of a “junk motor vehicle” because they have been unregistered and/or uninspected for a period exceeding thirty (30) days. If the two vehicles that are presently operable and registered are inspected, they will no longer constitute junk motor vehicles. In addition, the Regulations exempt from the definition of junk motor vehicle one on-premise utility vehicle, a term that is not defined in the Regulations and regarding which the Court received no testimony at trial. It is not uncommon in rural Vermont, however, for a landowner to have a vehicle that is used solely on their property—and not on public highways—for various jobs and that is neither registered nor inspected (e.g., a truck that is used only for hauling firewood on site). This is consistent with the Court’s understanding of “on-premise utility vehicle.”²¹

Therefore, within 60 days of the date of this decision, Respondents shall have the two operable, registered, but uninspected vehicles, inspected at a Vermont inspection station. If they both pass inspection, they may remain on the Property. If one or both does not pass inspection, then Respondents may decide whether to designate one of those vehicles as an on-premise utility vehicle. Any vehicle that does not pass inspection and that is not designated as an on-premise utility vehicle, shall constitute a junk motor vehicle and shall be properly disposed of by sale, donation or scrapping. Within that same 60-day period, Respondents shall properly dispose of the inoperable, unregistered and uninspected vehicles by sale, donation or scrapping. However, if both operable vehicles pass inspection, Respondents may designate one of the inoperable, unregistered and uninspected vehicles as an on-site utility vehicle, which may remain on the Property provided it is not parked in the front setback outside of the driveway area.²²

Regarding the outdoor storage, § 3.13(C) of the Regulations prohibits both: 1) outdoor storage of scrap or waste materials originating on the premises and 2) general outdoor storage in excess of 30 days except as authorized by the Zoning Administrator and/or the Development Review Board

²¹ We note that while the exemption for an “on-premise utility vehicle” appears to originate in 24 V.S.A., Chapter 61, Subchapter 10 (Salvage Yards) it is also not defined there. See 10 V.S.A. § 2241(6) (definition of “junk motor vehicle”).

²² To be clear, no vehicles shall be parked in the front setback area outside of an approved driveway.

(DRB).²³ Here, the Town characterized the materials and equipment stored outside on the Property as “garbage, junk, and debris” and Respondents, by their failure to appeal the NOV, are precluded by 24 V.S.A. § 4472 from challenging that characterization.²⁴ However, even if the Town’s characterization of the mowers, snowblowers, weed eaters, tires and other equipment as junk was incorrect (and assuming for discussion purposes that preclusion did not apply), Respondents are well beyond the time authorized by the Regulations to undertake general outdoor storage (which we conclude is clearly occurring on the Property) and they have not otherwise obtained necessary permits authorizing such storage activity.

Given the above, we conclude that the outdoor storage violation was both substantial (i.e., Respondents have used the Property in excess of two years for the outdoor storage of equipment and materials, however characterized (and a significant portion does appear to be scrap or waste), that outdoor storage continues, and it involved conscious wrongdoing (i.e., Respondents knew from approximately May of 2024 that the Town, at least, considered the outdoor storage of the mowers, snowblowers, tires, etc., to be a violation). Therefore, the Town is entitled to injunctive relief, including a mandatory injunction relative to the outdoor storage.

However, in recognition of Respondents’ financial and health circumstances, the Court imposes the following injunctive relief—Respondents shall remove from the Property all mowers, snowblowers, weed eaters and other equipment that are presently stored outside before January 1, 2027. Similarly, Respondents shall remove from the Property all tires, scrap and waste material by that same date. The two classic Cub Cadet garden tractors shall be exempt from this removal requirement and may remain on the Property and displayed as yard art. The removal requirement does not mean that Respondents must dispose of all of the mowers and equipment—they simply cannot be stored outside on the Property, absent zoning authorization from the Town, after December 31, 2026. If Respondents are able to move the mowers, equipment and tires to a place of

²³ Section 5.3(B)(6) of the Regulations, applicable to review by the DRB, provides that “[t]he outdoor storage or display of goods, supplies, vehicles, equipment, machinery or other materials is prohibited unless specifically approved by the Board and/or is specifically permitted within particular districts.” No such storage has been approved by the DRB here, nor is it specifically authorized in the RC district. We further note that the regulatory provisions applicable to Home Occupations (§ 4.13) also prohibit “outdoor storage of equipment or materials which are uncharacteristic of a residential use.” No home occupation application was submitted here, but the language of the Regulations would appear to require an assessment of whether the level of outdoor storage is characteristic of residential use. We make no ruling on that issue.

²⁴ The Town’s characterization of the material on the Property as “junk” is not unreasonable given the definition of “junk yard” which includes “any place of outdoor storage or deposit of dilapidated, damaged or scrapped material of any kind.” While the term junk is not defined, we conclude that the Property does presently contain dilapidated, damaged and scrapped material, irrespective of Zachary’s intent to potentially repair and sell some items. A junk yard is not an allowed use in the RC district.

indoor storage, such as a barn or garage (on or off-site), nothing in this decision shall preclude them from doing so (subject to any applicable permitting requirements). To be clear, however, all mowers, snowblowers, weed eaters, tires and other materials (e.g., machine parts, mower decks, scrap or waste materials related to the mowers, snowblowers, etc.), with the exception of the Cub Cadet garden tractors, shall be removed from the Property by year's end and either disposed of or stored inside.

Regarding use of the camper as a dwelling unit, the Town's evidence did not support a positive finding that the camper continues to be used for dwelling purposes. Therefore, although a technical violation occurred due to Respondents' failure to appeal the NOV, no injunctive relief is warranted in connection with the camper, which has now been registered.

We deny the Town's request for authorization, should Respondents fail to comply with this Court's order, to act to bring the Property into compliance with the Regulations and impose the resulting expense on Respondents at this time. If Respondents fail to comply with the order provided herein, the Town may commence contempt proceedings and may seek such relief at that time.

Conclusion

This concludes the matter before the Court. A Judgment Order accompanies this Decision.

Electronically signed on August 7, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division