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

Docket No. 105-9-19 Vtec

Town of Pawlet **v.** **Daniel Banyai, *Respondent***	

Decision on Post-Judgment Motion for Contempt and Fines

The matter before the Court began on September 2019 as a municipal enforcement action. That underlying matter has since been decided and affirmed. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, Decision on Merits slip op. at 5–11 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021); *aff'd* Town of Pawlet v. Banyai, 2022 VT 4. Presently before the Court are two motions filed by the Town of Pawlet ("Town"): (1) the Town's renewed post-judgment civil contempt motion to enforce the judgment order issued on March 5, 2021, and affirmed by the Vermont Supreme Court January 14, 2022, Mot. for Civil Contempt (filed Feb. 10, 2022) [hereinafter Mot. for Contempt], and (2) the Town's Motion to Set Fines pursuant 24 V.S.A. § 4451, Mot. Set Fines at 1 (filed Feb. 10, 2022).

The Town filed its initial contempt motion on April 21, 2021, and renewed its request on February 10, 2022, after the Vermont Supreme Court affirmed the underlying Decision and Judgment Order. Mot. for Civil Contempt (filed Apr. 21, 2021); see Mot. for Contempt; see Town of Pawlet v. Banyai, 2022 VT 4. In its Renewed Motion for Contempt, the Town asks that the Court find that Daniel Banyai ("Respondent") has not only failed to comply with the Court's Judgment Order, but also taken steps to delay and frustrate the Town's efforts to bring 541 Briar Hill Road in Pawlet ("the Property") into compliance with the Town of Pawlet Uniform Zoning Bylaws ("Bylaws"), and willfully violate the Court's orders. See Mot. for Contempt at 1, 4. The Town asks this Court, pursuant 24 V.S.A. § 4451, to impose fines of $100 per day from December

16, 2020 until March 4, 2021, and $200 per day from March 5, 2021 until all violations are cured, with such fines constituting a lien upon the Property. Mot. to Set Fines at 2 (filed Feb. 10, 2022).

While Respondent did not initially respond to the Town's motion for contempt and fines, in his Post-Hearing Brief, Respondent argued that he is not in contempt because he has substantially complied with the Court's Order. Resp't's Trial Brief at 1 (filed Nov. 3, 2022). Specifically, Respondent argues that (1) the Notice of Violation ("NOV") does not apply to several of the buildings on his property; (2) the school is now on a trailer and therefore not subject to "the jurisdiction of the Town of Pawlet Zoning Unified Bylaws"; and (3) the shooting ranges are not contemplated by the NOV. Id.

In these proceedings, Attorney Merrill Bent represents the Town, and Attorney Robert Kaplan represents Respondent. The Court held a hearing on April 18, 2022, via WebEx and completed the hearing on November 4, 2022, at which time it conducted the hearing in person at the Rutland District and Family Courthouse. [1]

Findings of Fact

This is a simple, post-judgment contempt action. The Court has already made findings of fact and conclusions of law, which the Supreme Court affirmed. Those findings and conclusions, as relevant, are incorporated herein. See Pawlet, No. 105-9-19 Vtec at 5–11 (Mar. 5, 2021); see also Pawlet, 2022 VT 4.

The issue presently before the Court is also simple: whether Respondent has complied with the March 5, 2021 Order. This matter is not a third bite at the apple or otherwise an opportunity to collaterally attack the NOV or this Court's March 5, 2021 Decision and Judgment Order. See Pawlet, 2022 VT 4, ¶ 40. In fact, the Supreme Court unequivocally informed Respondent that "he cannot rely . . . on his general assertion that the improvements on and uses of his property are not subject to municipal zoning." Id. As such, the Court's findings as they

[1] Despite closing the hearing on November 4, 2022, the Town and Respondent stipulated to the addition to the record of the zoning bylaws relevant to these proceedings. Ex. ZZ (filed Dec. 20, 2022). Additionally, during the hearing, the Town and Respondent agreed on the record to submit a stipulated demonstrative exhibit clarifying which exhibits corresponded with which labeled features on the Site Map. See Stipulated Explanatory List of Structures and Improvements (filed Jan. 13, 2023) [hereinafter "Stipulated List"]. The Court admits and considers these exhibits.

relate to such collateral attacks and assertions are limited to the purpose of considering whether Respondent's on-going noncompliance was willful or a genuine misunderstanding. The relevant findings are as follows:

1. Respondent owns the property identified as 541 Briar Hill Road in Pawlet ("the Property").

2. The Town of Pawlet adopted the Town of Pawlet Unified Zoning Bylaws on January 3, 2017 ("Bylaws"), which contain the operative bylaws that apply to the Property. See Ex. ZZ (filed Dec. 20, 2022).

3. On August 29, 2019, the Town issued the Notice of Alleged Zoning Violation ("NOV") to Respondent asserting that he was in violation of its duly adopted Bylaws. The NOV informed Respondent that he was violating Article VIII, Section 2 of the Bylaws, which provides that "[n]o building construction or land development may commence and no land or structure may be devoted to a new or changed use within the municipality without a zoning permit duly issued . . . ." Resp't's Ex. A at 1 [hereinafter "NOV"]. The NOV specified that Respondent had "erected *multiple* structures in violation of this provision, *and* [was] operating a training facility/shooting school in violation of this provision." Id. (emphasis added). The NOV ordered that, to cure the violation, Respondent "must eliminate the unpermitted uses on the property, remove all unpermitted buildings, and not allow unpermitted uses to resume on the property." Id. The NOV specified that "[t]he only permitted use on the 541 Briar Hill Road property is a 24' by 23' garage / apartment" that the Town had previously approved. Id. (emphasis in original).

4. The NOV properly warned Respondent of his right to appeal the factual and legal conclusions contained in the NOV, and that a failure to appeal would render those factual and legal conclusions final. Id.

5. Respondent did not appeal the NOV and those factual and legal conclusions are final.

6. The Town initiated an enforcement action against Respondent on September 18, 2019. On December 16, 2020, the Court held the merits hearing regarding the enforcement of the violations contained in the final NOV. The Court entered its Decision on the Merits and Judgment Order ("March 5 Order") on March 5, 2021, 79-days following the merits hearing.

7. In the March 5 Order, the Court ordered Respondent to, *inter alia*, "hire a Vermont-licensed surveyor or engineer to complete an accurate site plan of his property, detailing all

improvements" which he was to file with this Court, and upon completion of that site plan, to "immediately begin and complete the deconstruction and removal of all buildings on his property that have not be[en] authorized by a valid zoning permit." Pawlet, No. 105-9-19 Vtec at 22 (Mar. 5, 2021). The Court also issued fines, which accrued at $100 per day for the 466-days that ran from the date after the NOV was issued (September 6, 2019) to the date of the trial (December 16, 2020).

8. Respondent appealed the Court's March 5 Order on May 3, 2021, 59-days after the Order was issued authorized by the Court's extension to file an appeal. The Vermont Supreme Court affirmed that Decision and Order on January 14, 2022, Pawlet, 2022 VT 4, ¶ 40, 315-days following the issuance of the Court's March 5 Order, and 256-days after the Court's March 5 Order was stayed pending appeal.

9. Respondent is subject to the March 5 Order, affirmed January 14, 2022.

10. Respondent did not initially comply with the Court's order that he complete an accurate site plan of his property detailing all improvements. Following the April 18, 2022 contempt hearing, the Court issued another Order ("the Interim Order") to compel Respondent's compliance with the site plan requirement, functionally reiterating the requirements initially made in the March 5 Order that Respondent complete a Site Plan depicting all improvements, as well as requiring other post-judgment discovery—i.e., complete his responses to the Town's post-judgment interrogatories, and allow the Town to complete a site inspection, as authorized by the Bylaws, Art. VIII, § 1 and this Court's Order.

11. Respondent functionally complied with those discovery orders, including the site map, though not without additional frustrations and delays.

12. As of November 4, 2022, no buildings have been removed from the Property. Mot. Hr'g at 11:26 (Nov. 4, 2022).

13. 294-days elapsed between the Supreme Court affirming this Court's March 5 Order and the November 4, 2022 Contempt hearing.

14. Spencer & Larpre, LLP Engineering and Surveying Consultants completed a site map of Respondent's Property by on-ground survey in July 2022 ("Site Map"). Town's Ex. 17 [hereinafter "Site Map"].

15. The Site Map depicts the locations of 21 improvements on the Property and includes a legend indicating what each of those improvements represent. Site Map.

16. In addition to the 21 improvements identified in the Site Map, the Site Map also pictures two separate shooting ranges, each with multiple berms. Id. While the Site Map does not numerically distinguish the two ranges, in their stipulated list the parties referred to the ranges as "Range 1" and "Range 2." See Stipulated Explanatory List of Structures and Improvements (filed Jan. 12, 2023) [hereinafter "Stipulated List"]. Following from this distinction and for clarity purposes, the Court will hereafter refer to the range in the northern corner of the Property—top left of the Site Map—as "Range 2" and the other range to the south of Range 2—bottom left of center on the Site Map—as "Range 1."

17. Both shooting ranges, along with their improvements and berms remain on the Property.

18. While Respondent testified that the Site Map accurately represents all improvements contained on the Property, there are additional improvements not included thereon.

19. There is a silo that is not represented on the Site Map, see Town's Ex. 19, an animal run-in, see Stipulated List at 2, and a structure near where the school building sits on the trailer, see Resp't's Ex. F.

20. Additionally, Respondent has moved the shipping containers around his Property, so it is possible that where they are located on the Site Map is not where they have always been or where they are currently located. Respondent moves other structures around the property as well. Compare Town's Ex. 8 (showing coop not near any other structures) with Resp't's Ex. C (showing same coop directly next to another structure).

21. Further, Respondent constructed or acquired several stair/ladder/platform structures for use in the shooting ranges. See Town's Exs. 12, 13, 15, 16. With the exception of the stair/ladder/platform structures shown in the Ranges, it is unclear where these are within the Property during the site visit, and it is possible that they may have been moved since the site inspection. Regardless of where they are, it is clear to the Court that they were built or acquired for perpetuating the unpermitted use of the Property as a firearms training facility/shooting school.

22. Finally, Respondent has indicated that he intends to erect additional structures with building kits he has, such as a gothic frame greenhouse.

23. As such, the Court finds that the Site Map was accurate as of July 2022, but that Respondent has continued to add and move structures to the Property since the map was completed. No evidence was presented that Respondent has given notice to the Town, applied for, or received permits for these additional structures or their movement on site.

24. Regardless, the Court finds that Respondent has not removed any structures off the Property pursuant to the March 5 Order, and may have continued to add structures.

25. The shooting ranges also have materials and structures associated with them, and Respondent also has continued to acquire structures that he plans to use in connection with the shooting ranges, such as large metal stairs and platforms.

26. Range 1 contains three 8' berms, the "Facade," at least one stair/ladder/platform structure, a bench, and chain-link fence with an "FDC" and "keep out" sign on it, which appears to be surrounding a hole. Site Map; see Town's Ex. 12; see Town's Ex. 16. Within the range, there are several movable targets. Town's Ex. 12.

27. The "school" building was located on the road leading out to Range 1, as well as a shipping container. Site Map; Resp't's Exs. F, G; Town's Exs. 1, 11. Respondent has placed the school on a trailer, and as such the Court is not sure where on the Property the school building is now located, but regardless of its location on the Property, it is still on the Property, and therefore continues to be in violation of the Court's various orders. As noted, Respondent sometimes moves the shipping containers, but those too remain on the Property.

28. Range 2 contains two 10' berms, an antenna, a shipping container, and at least one of the many ladder/stair/platform structures on the property. Site Map; see Town's Ex. 10. Range 2 also contains several movable targets, including a car with bullet holes, shattered windows, and a flat tire. Town's Ex. 14.

29. Finally, as noted, Respondent has several stair/ladder/platform structures which he built or acquired for use in association with the firearms training facility/shooting school. See Town's Exs. 12, 13, 15, 16.

30. The Court finds that the structures listed on the Site Map are on the Property, based on the Site Map itself, corresponding exhibits, and Respondent's confirmation that no buildings or structures have been removed from his Property. Provided here is a reference to such corresponding exhibits:

Site Map Number & Description	**Corresponding Exhibits**
1. House	N/A
2. School Building	Town's Ex. 1; Resp't's Exs. F, G
3. Barn	Resp't's Ex. B
4. Fuel Tank	Town's Ex. 2; Resp't's Ex. P
5. Grain & Corn Silos	Town's Ex. 2; Resp't's Ex. P
6. Shipping Containers	Town's Ex. 3
7. Shipping Container	Town's Ex. 4; Resp't's Ex. I
8. Run-in/Pole Barn	Town's Ex. 5; Resp't's Ex. J
9. Steps	Resp't's Ex. O
10. Water Tank[2]	Town's Ex. 2
11. Run-In	Town's Ex. 6; Resp't's Ex. D
12. Run-In	Town's Ex. 7; Resp't's Ex. L
13. Chicken Coop	Town's Ex. 8; Resp't's Ex. C
14. Run-In	Town's Ex. 9; Resp't's Ex. N
15. Run-In	Resp't's Ex. K
16. Antenna	N/A
17. Shipping Container	Town's Ex. 10
18. Gate House	N/A
19. Run-In	Resp't's Ex. M

[2] Respondent has the "water tank" labeled as "Jet A-1 Fuel" with the corresponding Material Safety Data Sheet and National Fire Protection Association Diagram displayed. Town's Ex. 2. The Court notes that the images Respondent sent to the Agricultural Water Quality Program Coordinator seeking a post hoc agricultural structure designation taken at such an angle that those structures (and their labels) are not viewable in the image sent to the Agency. See Town's Ex. 19. In the email preceding the photographs, Respondent notes only the diesel fuel tank, and makes no mention of the A-1 Jet Fuel container, referring to it instead as a "water tank." Id. The Court finds that the signs displayed by Respondent on the tank itself represent that this structure contains jet fuel, not water for the animals. As such, the Court hereinafter refers to this as a jet fuel tank.

20. Shipping Container	Town's Ex. 11
21. Facade	Town's Ex. 12

31. As discussed above, this is not an exhaustive list of the structures on the Property.

32. Further, not all the listed structures had been constructed as of the date the enforcement action commenced.[3] The Court received testimony from Respondent regarding some construction dates, as well as an email Respondent sent to the Agricultural Water Quality Program Coordinator listing the year of construction. While this Court does not find Respondent's testimony wholly credible, it was not contested. Thus, the Court finds that the following structures were built or appropriated in the following years:

Description	**Exhibit Representation**	**Year Constructed/Acquired**
Barn	Resp't's Ex. B	2016
Grain & Corn Silos	Town's Ex. 2; Town's Ex. 19; Resp't's Ex. P	"Grain" – 2019 "Corn" – 2020 "Silage" – 2022
Diesel and Jet Fuel Tanks	Town's Ex. 2; Town's Ex. 19; Resp't's Ex. P	Unknown[4]
Run-in/Pole Barn	Town's Ex. 5; Resp't's Ex. J	2021
Run-In	Town's Ex. 6; Resp't's Ex. D	2017
Run-In	Town's Ex. 7; Resp't's Ex. L	2022
Chicken Coop	Town's Ex. 8; Resp't's Ex. C	2017
Run-In	Town's Ex. 9; Resp't's Ex. N	2021
Run-In	Resp't's Ex. K	2021
Run-In	Resp't's Ex. M	2021
Run-In	Resp't's Ex. H	2021

[3] The Court uses the date of the enforcement action, as the NOV properly warns Respondent that if he repeats the violations described in the NOV, there will be no new notice period and the Town may bring immediate enforcement. See NOV at 2; 24 V.S.A. § 4451(a).

[4] Respondent does not know when these were constructed, and the email Respondent sent to the Agricultural Water Quality Program Coordinator seeking a post hoc agricultural structure designation do not provide dates for the Diesel or A-1 Jet Fuel containers. As such, the Court cannot conclude when these were constructed.

Shipping Containers Feature #6, 17, 20	Town's Ex. 3; Town's Ex. 10; Town's Ex. 11; Town's Ex. 19;	2016
Shipping Container Feature # 7	Town's Ex. 4; Resp't's Ex. I	2019

33. While Respondent has not deconstructed or removed any buildings from the Property, he has placed the "School" building on a registered trailer. See Resp't's Exs. F, G. The school building remains intact on the trailer, and on the Respondent's Property.

34. There are stairs leading up to the side of the school building as it sits on the trailer, suggesting to the Court that the building can still be accessed and used as it sits on Respondent's Property.

35. The dimensions of the school building, without the porch or stairs, are 20-feet wide by 36-feet long. See Site Map (providing dimensions in the legend). The porch remains attached to the school, suggesting that the school is longer than 36-feet. Nearly two thirds of the width of the school building appear to be teetering off the sides of the trailer, and the entire back half of the school building appears to not be supported by the trailer. See Resp't's Exs. F, G. There are several trees surrounding the school-mounted trailer, which appear to obstruct any route out of the Property with the school intact. This is, of course, assuming that the trailer could move the school, which the Court finds highly unlikely given how little of the school's surface area the trailer actually supports.

36. In total, as of the date of the Contempt hearing, 1163-days—over three years—have elapsed since the Town issued the NOV in this matter, and to date, Respondent has yet to comply with that NOV. Respondent has paid penalties for 466 of those 1163 days.

Conclusions of Law

The only issue before this Court is whether Respondent is in contempt of the March 5 Order, and if so, how to ensure future compliance.

The Town seeks a civil contempt order against Respondent. A contempt petition is a proceeding in the original action. MacDermid v. MacDermid, 116 Vt. 237, 245 (1950); Suitor v. Suitor, 137 Vt. 110, 111 (1979); "When a party violates an order made against him or her in a

cause brought to or pending before a Superior judge or a Superior Court after service of the order upon that party, contempt proceedings may be instituted against him or her before the court or any Superior judge." 12 V.S.A. § 122. This Court has the power to hold a party in contempt, and to impose appropriate sanctions, "to secure both 'the proper transaction and dispatch of business [and] the respect and obedience due to the court and necessary for the administration of justice." State v. Allen, 145 Vt. 593, 600 (1985) (quoting In re Cooper, 32 Vt. 253, 258 (1859)); see also 12 V.S.A. § 122 (empowering trial courts to hold parties that violate a court order in contempt).

Here, the Court issued the March 5 Order directing Respondent to, *inter alia*, complete an accurate site map detailing all improvements on the property, and to "immediately begin and complete the deconstruction and removal of all buildings on his property that have not be[en] authorized by a valid zoning permit" on March 5, 2021. That Order was affirmed by the Supreme Court on January 14, 2022. Even after the March 5 Order was affirmed, Respondent did not timely comply, or even begin substantive efforts towards compliance. Ultimately, however, Respondent did eventually file an accurate site map, though it was not without its own ensuing delays and hurdles.[5] However, as of November 4, 2022, no buildings have been deconstructed and removed from the Property, as required by the March 5 Order.

Further, the Court concludes that Respondent's inaction is in willful disregard to the Court's March 5 Order, and not inaction pursuant to some mistake or misunderstanding. Respondent proffered three justifications to argue that this was not in willful disregard of the Court Order and NOV, but rather mistakes of fact: (1) Respondent took steps showing substantial compliance by placing the school on a trailer; (2) Respondent believed several buildings were exempt from zoning and therefore did not require corrective actions; and (3) Respondent believed that some of the improvements were not subject to the NOV because they were not

[5] Respondent initially completed a Site Map that willfully excluded most improvements on the Property. See Interim Order at 2. As such, the Court had to suspend its hearing on the present contempt motion and issue a new interim order, compelling discovery which included much of the same requirements of the March 5 Order—i.e., a Site Plan depicting all improvements. Additionally, the Court Ordered Respondent to complete the post-judgment interrogatories and allow a site visit from the Town, which Respondent also frustrated and delayed. Id. at 3. Only when respondent complied with the discovery directives first stated in the March 5 Order was the Court able to schedule a completion of the hearing on the Town's pending contempt motion.

structures. With regards to Respondent's proffers that his inactions were not in contempt but rather innocent mistake, the Court finds them ingenuine, inadequate, and not credible.

To the extent the proffers are inadequate, "a contempt proceeding based on the violation of a court order does not open to reconsideration the legal or actual basis of the order so as to result in a retrial of the original controversy." Socony Mobil Oil Co. v. N. Oil Co., 126 Vt. 160, 164 (1966) (citing 17 Am.Jur.2d, Contempt, pp. 42, 46). It is the long-standing rule that a contempt proceeding does not present an opportunity to reconsider the legal or factual basis of the underlying order, becoming a re-trial of the original controversy. Id. Such a procedure of enforcing a court's order would "foster experimentation with disobedience." Id. (quoting Maggio v. Zeitz, 333 U.S. 56, 69 (1948)). Both the NOV and the Court's multiple orders clearly and unequivocally order Respondent to remove *all* unpermitted buildings on the Property, and the NOV clearly states the only permitted construction, development or land use is the apartment/garage. See NOV (emphasis added) (informing Respondent that he "must eliminate the unpermitted uses on the property, remove all unpermitted buildings, and not allow unpermitted uses to resume on the property" and clarifying that "[t]he only permitted use on the 541 Briar Hill Road property is a 24' by 23' garage / apartment"); see also Pawlet, No. 105-9-19 Vtec at 22 (Mar. 5, 2021) (ordering that Respondent must "immediately begin and complete the deconstruction and removal of all buildings on his property that have not be[en] authorized by a valid zoning permit."). Respondent's untimely attempts to argue that the NOV and Court Order do not apply to certain buildings is not only an impermissible "general assertion that the improvements on and uses of his property are not subject to municipal zoning"—an argument on which Respondent may not rely—Pawlet, 2022 VT 4, ¶ 40; 24 V.S.A. § 4472, but also an example of his ongoing experimentation with disobedience.

Further, even if contempt proceedings did provide another opportunity to challenge the underlying order, the Court find's Respondent's assertions of mistake of law ingenuine for several reasons. First, it has been over a year since the Vermont Supreme Court affirmed this Court's Order that Respondent "immediately begin and complete the deconstruction and removal of all buildings on his property that have not be authorized by a valid zoning permit." See Pawlett, 2022 VT 4, ¶ 40 (affirming Pawlet, 105-9-19 Vtec at 22 (Mar. 5, 2021) (providing the quoted

order)). Yet, this is the first time the Court has heard these arguments about the applicability of the NOV or Court's Order as they pertain to the unpermitted buildings on the Property. The NOV required that Respondent "remove all unpermitted buildings," and clarified that the only permitted building on the Property—i.e., the only building exempt from this removal requirement—was the 24' by 23' garage / apartment that received permit approval from Town officials. If Respondent genuinely believed that some unpermitted buildings did not need to be removed, his opportunity to challenge that expired when he failed to challenge the NOV.

Second, as to his argument that his contempt is just a misunderstanding, if Respondent's genuinely believed some buildings were not subject to the NOV and Court Order, the Court would have observed compliance in other areas—i.e., the removal of the school building, shooting ranges, façade, etc. However, as noted above, no buildings or other structures have been deconstructed or removed from the Property, including the school building. Instead, Respondent's only efforts have been to circumvent the Court's orders and delay enforcement. This is emphasized by Respondent's actions regarding the school building. Respondent knew the school building needed to be removed but took no steps to deconstruct and remove it. Rather, Respondent has undergone the more laborious process of raising the intact building, balancing the building on a trailer, and building stairs to access the school as it sits on the trailer. While Respondent testified that he did this as a step towards removing the building, his testimony conflicts with his "Trial Brief" in which he espouses the argument that he "has placed the school building on a towable, registered trailer, thereby removing it from the jurisdiction of the Town of Pawlet Zoning Unified Bylaws." See Resp't's Trial Brief at 1. All this behavior demonstrates to the Court that Respondent did not place the structure on the trailer as a step towards complying with the Court's Order, but rather, in yet another attempt to circumvent this Court's Order.

Finally, to the extent Respondent testified that it was his belief that the Court's Order did not apply to the "agricultural buildings" on the Property or to buildings with less than 100 square feet without four walls, a roof, and a foundation,[6] the Court finds those arguments similarly

[6] Respondent espouses these arguments based on the agricultural exemption, 24 V.S.A. § 4413(d)(1)(A), and the definition of structure in the Bylaws, Bylaws, Art. XVI ("definitions"). The Court does not engage with these arguments as they represent impermissible collateral attacks on the final NOV and Court orders, and further, were not issues presented to the Supreme Court on appeal. 24 V.S.A. § 4472(a); see Pawlet, 2022 VT 4, ¶ 12 ("Our

precedent is clear that § 4472 applies even when the unappealed decision or act is incorrect . . . ."). Contempt does not provide Respondent with a third bite at the apple. Socony Mobil Oil Co., 126 Vt. at 164.

Regardless, even if the Court were to engage with these collateral attacks, they were unlikely to alter the outcome. First, the Bylaw's definition of structure is much more inclusive than Respondent's narrow interpretation. The Town defines "structure" as (1) "a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks. [(2)] Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something permanently located on the ground." Bylaws, Art. XVI ("Structure"). All of the unpermitted structures on Respondent's property fall within one of these two definitions. Second, the Bylaw that the NOV asserts that Respondent violated does not apply solely to "structures" but rather provides that "[n]o building construction or land development may commence and no land or structure may be devoted to a new or changed use within the municipality without a zoning permit duly issued . . . ." Bylaws, Art VIII, § 2(1). As such, while it is possible that some of the buildings fall within the Bylaws exception of "structure," this provision is not solely regulating the structures, but also construction, land development, and uses.

Further, the Court does not have sufficient evidence from Respondent to confirm that the "agricultural exemption" would have even applied here. Not all agricultural structures are exempt under the statute, but rather only those that are used for "required agricultural practices," ("RAPs") as defined by the Secretary of Agriculture, Food and Markets. These RAPs have to meet the requirements of the RAP rules adopted pursuant 6 V.S.A. chapter 215, subchapter 2. Even those qualifying statutorily exempt RAPs can still be regulated "with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements" so long as it does not affect its intended use. 24 V.S.A. § 4413. This regulation cannot be accomplished without prior notice. Further, under the Bylaws, while not requiring a permit for accepted agricultural ("AAPs"), written notification to the Town is still required, including a sketch plan of the structure and its location on the property to be submitted to the zoning administrator *prior* to construction. Bylaws, Art. VIII, § 5(1). Here, there was no prior notification, and as such, all the farm structures were still constructed in violation of the bylaws and possibly applicable state laws, assuming that they would apply.

Finally, the Court is not convinced that all structures "used for farming" were initially build for that purpose. For example, all the shipping containers are padlocked, one of them remains in Range 2, and the other remains on the road to Range 1, and the shipping container located near the Barn and Silo features has several signs on its padlocked doors which warn against smoking within 50-feet of the container and to "beware of attack dog," as well as notifying persons that the containers are guarded "by a security camera for a reason!" Respondent testified that he stores small bales of hay in the shipping containers, which would yield inflammatory results. Respondent's Barn feature is also padlocked. A sign hangs on the front of the Barn that reads "Insured by Smith & Wesson, Security by Winchester, Funeral Arrangements by Kubota" and a warning that only one person may enter the barn at a time. While Kubota is an agricultural equipment company, Smith & Wesson and Winchester are both well-known firearm manufacturers. There is a security camera mounted to the top of the Barn feature. Finally, Respondent's older "chicken coop" and "animal run" both displayed the "Slate Ridge" sign, which features a crosshair on it. When Town agents toured the property, the chicken coop feature did not have a poultry door and had a lantern hanging above the door similar to the ones observed on the school building, but when Respondent photographed the coop for his exhibit submitted during the contempt hearing, the front door had a poultry door added, and the lantern was removed. Compare Town's Ex. 8 with Resp't's Ex. C. The "Run-In" feature marked as feature 11 on the Site Map also had a "Slate Ridge" sign mounted on it when the Town did their site visit, but not in Respondent's later exhibit. During the Town's site visit, this run housed sheep, goats, and pigs simultaneously, but there appeared to be little to no fecal matter in the small pen, and relatively little to no animal damage to the trees or ground.

The Court finds that all these observations support that these structures were likely originally used in association with the firearms training facility/shooting school but have since been repurposed to circumvent the Court's March 5 Order that they be deconstructed and removed. Again, the Court notes that these observations are not critical to the Court's conclusion that they must come down; that conclusion is arrived at for the independent reasons discussed in the body of this decision. 24 V.S.A. § 4472(a); see Pawlet, 2022 VT 4, ¶ 12; Socony Mobil Oil Co., 126 Vt. at 164.

untimely, impermissible, and ingenuine. First, as noted above, this litigation has been ongoing since September 2019 and the March 5 Order has been Final since January 14, 2022. Yet, more than a year later, Respondent's only actions with regards to the Court's March 5 Order have been actions to delay or circumvent compliance.

As such, the Court does not find Respondent's assertions of good faith efforts or mistake of law to be credible. Rather, the Court concludes that Respondent's ongoing delay, untimely arguments, and efforts with the school building to be experimentations with ongoing disobedience, further attempts to circumvent Court Orders, and willful contempt.

Considering the length of time that has elapsed, this Court's repeated orders and admonishments, Respondent's initial willful resistance to completing the Site Map prior to substantial intervention of this Court, see Interim Order at 2 (entered Apr. 21, 2022) ("Based on the testimony at the hearing, and in the absence of a more convincing explanation as to why Mr. Banyai has yet to produce a conforming site plan, the Court finds his noncompliance to be willful."), and Respondent's continuing noncompliance with the March 5 Order, including the complete failure to remove any structure from the Property, the Court holds Mr. Daniel Banyai in **CONTEMPT** of the Court's March 5, 2021 Decision and Judgment Order (affirmed by the Supreme Court on January 14, 2022).

Sanctions

The Town seeks relief in the form of fines, both retrospective and prospective, and imprisonment. Specifically, the Town asks the Court to:

1. Order imprisonment until such time that Respondent demonstrates compliance with the injunctive relief ordered in the March 5, 2021 Order;
2. Impose a $100.00 per day fine from December 16, 2020[7] until March 4, 2021 pursuant to 24 V.S.A. § 4451, with such fine constituting a lien upon the Property upon the filing of a certified copy of this Order in the Pawlet Land Records;
3. Impose a $200.00 per day fine from March 5, 2021 until all violations are cured pursuant to 24 V.S.A. § 4451, with such fines also constituting a lien upon the Property upon filing the Pawlet Land Records;

[7] The Town references December 16, 2020, in its request for fines. December 16, 2020, was the date of trial, and the Decision and Judgment Order issued March 5, 2021 only imposed fines against Respondent from the date of the NOV (September 6, 2019) to the day of the trial. See Pawlet, No. 105-9-19 Vtec at 21 (Mar. 5, 2021).

4. Reiterate that Respondent must deconstruct and remove all unpermitted buildings, originally ordered in the March 5, 2021 Decision and Judgment Order;
5. Order Respondent pay the Town's attorney's fees incurred from January 15, 2022 to November 30, 2022, as a sanction for improper delay tactics necessitating motion practice to compel compliance; and
6. Such other relief as this Court deems just and equitable.[8]

Mot. for Contempt at 8; Mot. to Set Fines at 2 (filed Feb. 10, 2022).

Sanctions in this case are warranted. Respondent has demonstrated a willfulness, perhaps even an enthusiasm, for disregarding the Town's Bylaws, this Court's Orders, and the authority of the Judiciary. This enforcement matter has been ongoing since September 9, 2019, nearly three and a half years, and the March 5 Order underlying this contempt action has been final for over a year. Pawlet, 2022 VT 4. Throughout that time, Respondent has demonstrated a willingness to openly disobey this Court's repeated orders in an attempt to obstruct discovery, disregard injunctions, and evade curing the violations of the Town's Bylaws and this Court's Order enforcing those Bylaws.

The Court recognizes the tremendous effort and the resources that the Town has devoted to seeking Respondent's compliance in the years since its September 6, 2019 NOV, as well as its ongoing efforts to resolve the violations. The Court shares the Town's frustration with the ongoing violations at the Respondent's Property.

"One of the most important and essential powers of a court is the authority to protect itself against those who disregard its dignity and authority . . . ." 17 Am. Jur. 2d Contempt § 1. This authority is appropriately administered through the Court's power to coerce compliance through contempt. 12 V.S.A. § 122; see Int'l Union of United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 831 (1994) (describing the "inherent contempt authority" as a power "necessary to the exercise of all other" judicial powers (quoting United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812))). To further aid in achieving compliance with the Court's March 5, 2021 Order, the Court now imposes coercive sanctions to encourage compliance, pursuant the authority of 12 V.S.A. §§ 122–123. Those penalties and sanctions are described in relevant subpart.

[8] The Town requested attorney's fees and such other just relief in its response to Respondent's Trial Brief, but not in its original motions.

I. Penalties Pursuant 24 V.S.A. § 4451

The Town asks that the Court impose daily fines that will accrue starting December 16, 2020 and further fines starting March 4, 2021, both pursuant 24 V.S.A. § 4451. In support of its motion, the Town references the same factual and procedural history set forth in the Motion for Contempt and asserts that Respondent's noncompliance with the Court's Order is the basis for imposing these fines. While this matter was before the Court on the Town's Motion for Contempt and Motion to Set Fines, the Town moves for the imposition of the fines pursuant to an enforcement action, 24 V.S.A. § 4451, rather than pursuant contempt, 12 V.S.A. § 122.

Ordinarily, "only compensatory fines or coercive sanctions may be imposed on a civil contemnor." State v. Pownal Tanning Co., 142 Vt. 601, 603 (1983). Section 4451, alternatively, authorizes the Court to impose fines against "[a]ny 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." 24 V.S.A. § 4451(a). Section 4451 does not require that the fines be purgeable.

The Town's request that the Court impose a $100.00 per day fine from December 16, 2020 until March 4, 2021 (79 days) pursuant to 24 V.S.A. § 4451 is neither compensatory nor coercive in nature. The request is not related to any monetary loss asserted on the part of the Town due to Respondent's failure to comply with the March 5 Order, thus not compensatory. Id. Further, the fine is not purgeable, which is a normal requirement of a coercive fine. Pownal Tanning Co., 142 Vt. at 603. Therefore, the Court declines to impose the $100 per day as a contempt sanction. 12 V.S.A. § 122.

The Town, however, did not move for the issuance of those fines pursuant to contempt, id., but rather pursuant to the municipal enforcement provision in conjunction to the contempt proceedings, 24 V.S.A. § 4451. See Mot. to Set Fines ("WHEREFORE, the Town requests that this Court[,] [p]ursuant to 24 V.S.A. § 4451, impose a $100.00 per day fine . . . ."). In State v. Pownal Tanning Co. the Supreme Court upheld a nonpurgeable fine issued by the Court during post-judgment contempt proceedings. 142 Vt. at 603–04. In that matter, the State brought a contempt action against Pownal Tanning Company for its noncompliance with the Court's environmental enforcement order issued pursuant 3 V.S.A. § 2822 and requested nonpurgeable

fines be imposed against the company. Id. In that matter, the Court issued a nonupgradeable fine pursuant 3 V.S.A. § 2822(c)(4), not 12 V.S.A. § 122. Id. Section 2822(c)(4), however, specifically empowered the Court to impose a nonpurgeable civil penalty against "[a]ny person who violates the terms of an order issued by a court under" 3 V.S.A. § 2822. Id (quoting 24 V.S.A. § 2822(c)(4)). The Supreme Court concluded that the nonpurgeable fine imposed upon Pownal Tanning Company for violating its order was sanctioned by that statutory provision, not 12 V.S.A. § 122.

The instant case involves the violation of a Court Order issued pursuant 24 V.S.A. §§ 4451–52 to enforce Pawlet's Zoning Bylaws. While § 4451 authorizes this Court to impose civil penalties of up to $200 for each offense, and "[e]ach day that a violation is continued shall constitute a separate offense," 24 V.S.A. § 4451(a), it contains no similar provision authorizing the Court to impose nonpurgeable sanctions for violations of this Court's Orders. Thus, while the Town sufficiently established that Respondent received notice of the violations, was provided an opportunity to cure those violations, and that those violations remain ongoing as of November 4, 2022, Contempt is not an opportunity to reopen the original controversy and impose those nonpurgeable enforcement fines. Socony Mobil Oil Co., 126 Vt. at 164. While nothing precludes the Town from issuing subsequent NOVs and bringing further enforcement actions, this contempt proceeding—while an action in the original proceeding—in not an opportunity to reopen the original order; it is an opportunity to coerce compliance and compensate the Town for damages. The Court therefore declines to impose nonpurgeable sanctions pursuant to 24 V.S.A. § 4451 in this contempt proceeding.

II. Fines and Other Sanctions Pursuant 12 V.S.A. §§ 122–123

As coercive sanctions, however, the Town requests that the Court order a fine of $200.00 per day from the March 5 Order until all violations are cured and reiterate that the violations will be cured upon the immediate deconstruction and removal of all unpermitted buildings and uses at the Property. Additionally, the Town has requested, as a coercive sanction, that the Court order Respondent's imprisonment until such time that Respondent demonstrates compliance with the injunctive relief ordered in the March 5, 2021 Order. Specifically, the Town seeks a civil contempt order directing that Respondent be jailed if he fails to demonstrate compliance with

the Court's order within 30 days, and that such imprisonment continue until compliance is demonstrated. Mot. for Contempt at 2. Finally, the Town seeks compensatory fines in the form of all Town's attorney's fees incurred from January 15, 2022 to November 30, 2022 as a sanction for improper delay. The Town seeks these fines and sanctions pursuant both 12 V.S.A. §§ 122 and 24 V.S.A. § 4451.

Unlike criminal contempt, where the purpose is to punish, courts use civil contempt to coerce compliance with a court order. Sheehan v. Reya, 171 Vt. 511, 512 (2000). The Court has discretion to fashion an appropriate remedy. Id. (quoting Russell v. Armitage, 166 Vt. 392, 407-08 (1997)). The remedy may include compensatory fines, imprisonment, or other coercive sanctions as circumstances deem appropriate. Mann v. Levin, 2004 VT 100, ¶ 32, 177 Vt. 261 (citing Vt. Women's Health Ctr. v. Operation Rescue, 159 Vt. 141, 151 (1992)); 12 V.S.A. § 123 (imprisonment). While prospective fines and sanctions are permissible civil contempt sanctions, they are generally disfavored in Vermont except under extraordinary circumstances. See id.; Vt. Women's Health Ctr., 159 Vt. at 151. "When a prospective fine is imposed as a coercive sanction, the fine 'must be purgeable—that is, capable of being avoided . . . through adherence to the court's order. Further, the situation must be such that it is easy to gauge the compliance or noncompliance with an order.'" Mann v. Levin, 2004 VT 100, ¶ 32, 177 Vt. 261 (quoting Vermont Women's Health Center v. Operation Rescue, 159 Vt. 141, 151 (1992)).

a. Fines

Here, the Town's request for fines accruing until all violations are cured at some point in the future is somewhat prospective in nature, as it contemplates future and ongoing violations and stops running only once the violations are cured, at some point in the future. See 24 V.S.A. § 4451(a)(3) ("Each day that a violation is continued shall constitute a separate offense."). It is not, however, purely prospective, as Respondent is presently not—and has at no time been—in compliance with the underlying Court Order. Pownal Tanning Co., 142 Vt. at 606 ("A purely prospective fine can be defined as a purgeable penalty imposed on a contemnor who is currently in compliance with the underlying court order."). Regardless, the Court finds that the circumstances here—specifically, Respondent's "continual and unrepentant disregard of the [Court's Orders]"—support the conclusion that prospective fines and sanctions are necessary

here. See Weaver v. Weaver, 2018 VT 56, ¶ 4, 207 Vt. 564 (finding "prospective fines were warranted by the 'extreme and extraordinary' circumstances of this case," specifically, the plaintiff's "continual and unrepentant disregard of the court's custody orders").

Respondent has yet to fulfil his now long-standing obligation to deconstruct and remove all unpermitted buildings and uses on his Property. He has taken no substantial (or even minor) steps demonstrating an attempt to comply. Rather, Respondent has demonstrated a willingness to take substantial steps—e.g., placing the school building precariously on a trailer and building steps up to it to continue accessing it—in an attempt to circumvent or ignore the Court's Orders and delay the Town's enforcement. The Court concludes that Respondent has demonstrated a continual, unrepentant, and willful disregard of the Court's Order, which has added over a year of litigation to resolving this matter and curing the violations. The Court concludes that this is an extraordinary circumstance, and that prospective, coercive measures are necessary to limit future delay and violations of the Court's Order.

Additionally, the Court finds the nature of the violation—failure to deconstruct and remove unpermitted buildings and uses from the Property—and the proposed cure is capable of an easy determination of compliance. Now that Respondent has finally complied with the post-judgment discovery directives, the Court has a clear understanding of all the violations that continue to exist on the Property and can set a clear and achievable compliance schedule, which can be easily ascertained by site inspection. As such the Court finds prospective fines appropriate.

Regarding the fine itself, the Court concludes that it needs to be significant to ensure action from Respondent. Further, prior enforcement fines imposed against the Respondent have done little, if anything, to dissuade his contemptuous disregard of the Court's prior orders. During the underlying enforcement action, the Court imposed a fine of $100 a day, running from the day after he was provided with the NOV, September 6, 2019, through to the day of trial, December 16, 2020. The total fine imposed amounted to $46,600.00, plus court costs of $1,003.03, but less a return of the $400.00 fee for a total fine of $46,603.03. 2021 Decision. Respondent paid the fine in full after the Town placed a lien on the Property and commenced a foreclosure action based upon that recorded Judgment Order. And yet, Respondent continued

to violate the Court's March 5 Order once he paid that significant fine. As such, the Court finds that the $100 per day fine did little to coerce compliance from Respondent.

Section 4451 of Title 24, the penalties provision applied in the underlying enforcement action, authorizes the Court to impose a fine of up to $200 a day. 24 V.S.A. § 4451(a). While not limited by this provision during a contempt action, the Court finds this a helpful metric. 12 V.S.A. § 122; cf. ANR v. Second City Prop., LLC, No. 100-7-11 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Apr. 26, 2012) (Walsh, J.) (imposing a purgeable contempt sanction of $250 a day, which would become due upon failure to comply with the schedule in the order); cf. Vermont Women's Health Center, 159 Vt. at 151 (affirming the coercive prospective fine of $10,000 for the first violation and $20,000 for all further violations). As such, the Court **IMPOSES** an ongoing fine of $200 per day running from January 14, 2022—the date this Court's March 5 Order became final—until all the violations have been cured.[9] The accumulating fine will be fully purgeable if Respondent meets the compliance schedule provided by the Court. See *infra*, subpart II.*b.* (*Purging the Fines: Compliance Schedule*).

However, should Respondent fail to timely complete all terms in the compliance schedule, upon motion of the Town, the Court will issue **a writ of mittimus for the immediate imprisonment of Respondent**. In addition, the fines will become due to and collectable by the Town with such fine constituting a lien upon the Property upon filing the Pawlet Land Records, and the Town will be permitted to enter Respondent's Property and complete the work, with Respondent being responsible for reimbursing the Town for all reasonable costs. See *infra*, subpart II.*c.–d.* (*Gauging Compliance* and *Prospective Sanctions for Prospective Noncompliance*).

b. Purging the Fines: Compliance Schedule

As noted, "[w]hen a prospective fine is imposed as a coercive sanction, the fine 'must be purgeable . . . through adherence to the court's order." Mann, 2004 VT 100, ¶ 32 (quoting Vermont Women's Health Center, 159 Vt. at 151. The Town requested that the Court require compliance within 30 days. Mot. for Contempt at 2. The Court appreciates the Town's request

[9] Through the date of this Decision, such a purgeable fine would total **$78,000.00**. This fine amount will continue to increase unless Respondent satisfies all the conditions of this Decision by the imposed deadlines. Failure to timely satisfy those conditions will make such fines immediately due and collectable.

for speedy compliance, as this enforcement action has been ongoing since September 2019 and has required significant effort from the Town. The Court, however, also appreciates the magnitude of work Respondent must complete to bring his Property into compliance with the Town's Bylaws, which may be complicated by the current winter season. Thus, the Court seeks to strike a balance in creating a compliance schedule that is both tough, but fair and capable of furthering timely compliance, such that Respondent may successfully purge the contempt fines.

Favoring permitting more time for Respondent to complete the work, the Court considered that the winter season may cause delays, as well as the difficulty of finding tradespersons in Vermont to assist in carry out the necessary work may cause Respondent some delay. These concerns, however, are somewhat counterbalanced, as the Respondent has had more than three years since the NOV became final, and nearly a year since this Court's March 5 Order became final to bring his Property into compliance. As such, the magnitude of work that remains for Respondent and the timing for this labor is much by his own hand. See also Interim Order (noting that the Town initially attempted to bring this enforcement action in April, but the contempt hearing had to be continued, due Respondent's own failures to comply with the Court's March 5 Order concerning discovery). Further supporting that Respondent is capable of meeting these more stringent deadlines: throughout this litigation, Respondent has made frequent and repeated reference to his Slate Ridge family;[10] has continued to construct new improvements on the Property at a rate that suggests to the Court he is capable of meeting these deadlines;[11] has access to ample equipment and other resources;[12] and owns a trailer that can support substantial weight.[13] As such, the Court is confident that Respondent is capable of meeting the deadlines set forth below.

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[10] See, e.g., Resp't's Answer at 1–3 (filed Nov. 6, 2019); see also, e.g., Resp't's Resp. to Town's Statement of Undisputed Material Facts at 1–3 (filed Jan 21, 2020) ("We are a group of individuals—family and friends . . . ."); Resp't's Mot. to Dismiss (filed Nov. 12, 2020); Resp't's Trial Brief at 4 (filed Jan. 13, 2021) (We have a beautiful home in which we reside in with our blended family . . . ."; Appellant's Br., No. 2021-096 at 9 (filed July 14, 2021) ("We are a group of individuals—family and friends that want nothing, but the freedoms some of us and our forefathers have fought for respected."). As such, the Court finds Respondent will be able to find help to timely complete the work.

[11] For example, in 2021, Respondent built four animal run-ins and a pole barn in one calendar year.

[12] Respondent testified that he moves the shipping containers around the Property. This supports that he has access to equipment capable of such heavy lifting and towing and the funds necessary to secure that work.

[13] Respondent currently has the school building sitting intact on this trailer.

First, within 45 days of the date of this Decision, Respondent must complete the deconstruction and removal from the Property of the School Building (see Town's Ex. 1; Resp't's Exs. F, G), the Façade (Town's Ex. 12), all shipping containers (see Town's Exs. 3, 4, 10, 11; Resp't's Ex. I), and all stair/ladder/platforms (see Town's Exs. 12, 13, 15, 16). Each of these structures had already been constructed at the time the present enforcement action was instigated, and they were built and/or acquired for the unpermitted use of the firearms training facility and school in violation of the NOV and this Court's Order. To successfully meet this first deadline, those improvements must no longer be anywhere within the boundaries of the Property by **March 25, 2023**.

Second, within 90 days of the date of this decision, Respondent must deconstruct all the berm developments in, around, near, or on Range 1 and Range 2. These had been constructed at the time the enforcement action commenced and are clearly for the use of the firearms training facility/shooting school. This Order means that all those berms must be leveled and the landscape must be returned to its natural grade[14] by **May 9, 2023**.

Finally, within 135 days of the date of this decision, Respondent must deconstruct and remove the remaining unpermitted buildings that are subject to the Court's Order.[15] For clarity, that means that Respondent must deconstruct and remove the following: the Barn (pictured in Resp't's Ex. B); the "Grain" silo (pictured in Resp't's Ex. P, Town's Exs. 2, 19); the Run-In (pictured in Town's Ex. 6, Resp't's Ex. D); and the Chicken Coop (pictured in Town's Ex. 8, Resp't's Ex. C). To the extent that Respondent argued that these buildings are exempt, the Court finds that is an

[14] For purposes of this matter, "natural grade" means "[t]he grade unaffected by construction techniques such as fill, landscaping or berming." See Fed. Emergency Mgmt. Agency, Nat'l Flood Ins. Program, Appx. L: Definitions (2019) (defining "natural grade"). If Respondent is uncertain of what degree of deconstruction of the berms will be satisfactory with the Town, Respondent shall communicate with the Town early and often, to ensure he complies in a manner that is satisfactory.

[15] The Complaint was filed September 18, 2019; thus the Court finds that this particular enforcement action only applies to those building constructions, land developments, and uses that had begun prior to that time. However, nothing in this Decision or action precludes the Town from issuing subsequent NOVs for any subsequent zoning violations for Respondent's on-going unpermitted or unnoticed constructions, uses, and developments. Further, the Court notes that the August 29, 2019 NOV properly warned Responded that if he "repeat[ed] the violation described in this letter within the next year, [he] will not be entitled to any notice period and an enforcement action may be taken immediately upon discovery of the violation," suggesting that nothing precludes the Town from filing a subsequent enforcement action for those constructions which began prior to August 29, 2020. See Resp't's Ex. A (NOV); see also 24 V.S.A. § 4451(a); see also 24 V.S.A. § 4454 (limitations period).

impermissible collateral attack on the underlying decision. See Pawlet, 2022 VT 4, ¶ 40 ("[Respondent] cannot rely on . . . his general assertion that the improvements on and uses of his property are not subject to municipal zoning."). Because there is no dispute that these improvements were on the Property when the enforcement action was initiated and that they were not permitted by a valid zoning permit or otherwise exempt in the NOV, they are subject to this enforcement action. This means that those improvements must no longer be anywhere within the boundaries of the Property by **June 23, 2023**.

If Respondent meets all of these requirements and deadlines, the cumulating fine will be purged. The Court will be satisfied that those requirements and deadlines were met when the Town and Respondent file a stipulated notice to that effect with the Court.

c. Gauging Compliance

As noted earlier, the Court finds "that it is easy to gauge the compliance or noncompliance with [this] order.'" Mann, 2004 VT 100, ¶ 32. To gauge compliance, Respondent must permit the Town to conduct three site inspections—one following within seven (7) calendar days of each deadline. As such, the Town may conduct the site inspections between **March 26–April 2, 2023** (46–53 days), **May 10–May 17, 2023** (91–98 days), and **June 24–July 1, 2023** (136–143 days) to verify that Respondent has met those deadlines. The Town Attorney may be accompanied on each site inspection by up to two Town officials and one or more members of the Rutland County Sheriff's Department. Respondent must permit the Town to conduct each site inspection by foot, ATV, or other motorized vehicle, and/or drone. Failure to timely permit any site inspection will be considered a failure to meet those requirement deadlines and will result in Respondent's imprisonment and the right to have the imposed fines purged. Any actions or inactions that otherwise delay, impede, prevent, obstruct, hinder, or limit the inspection will also be considered noncompliance that will result in Respondent's imprisonment and loss of the right to purge the imposed fines.

The accruing fines will be fully purgeable if Respondent meets the compliance schedule provided by the Court and allows the Town site inspections. See *supra*, subpart II.*b.* (*Purging the Fines: Compliance Schedule*). The Court will be satisfied that the work was completed upon the filing of a stipulated notice to that effect from the Town and Respondent.

However, should Respondent fail to timely complete all terms in the compliance schedule, or otherwise limit, hinder, impede, obstruct, delay, or prohibit the Town site inspection, the Court will impose further sanctions. Those prospective[16] sanctions are discussed below. See *infra*, subpart II.*c.–d.* (*Gauging Compliance* and *Prospective Sanctions for Prospective Noncompliance*).

d. Prospective Sanctions for Prospective Noncompliance

The Town has asked this Court to order imprisonment of Respondent until such time that Respondent demonstrates compliance with the injunctive relief ordered in the March 5 Order.

The Vermont Legislature has permitted imprisonment as a sanction for civil contempt. 12 V.S.A. § 123 ("Imprisonment as punishment for contempt, or to enforces orders, sentences, or decrees in contempt proceedings, or upon execution issued in civil process shall be in a correctional facility maintained by or for the State."). When imprisonment is imposed in civil contempt proceedings "as a means to compel the party to do some act ordered by the court for the benefit or advantage of the opposite party," the Court need not impose a definite term of imprisonment, "particularly so, when, as here, the order of commitment states how the party can purge himself and obtain his release." Ex parte Sage, 115 Vt. 516, 517 (1949). As frequently noted, "[t]his Court's prepared to impose such fines or sanctions where a respondent ignores a court order." Town of Fairfax v. Beliveau, No. 274-11-08 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. July 24, 2012) (Walsh, J.); see Sec'y, Vermont Agency of Natural Resources v. Christopher E. Denio, LLC, No. 107-9-15 Vtec, slip op. at 3 (Vt. Super. Cr. Envtl. Div. Nov. 7, 2019) (Durkin, J.) (quoting same).

However, the Court does not see it as wise to immediately impose an imprisonment sanction here, as it would be counterproductive to giving Respondent a final opportunity to cure the violations on his Property and purge the coercive fines the Court has imposed. However,

[16] While the sanctions imposed here are prospective in nature, the Court does not view them as purely prospective as Respondent is currently not in compliance with the Court's order, and these sanctions will only be imposed if he remains in violation of the now provided compliance schedule. See Pownal Tanning Co., 142 Vt. at 606 ("A purely prospective fine can be defined as a purgeable penalty imposed on a contemnor who is currently in compliance with the underlying court order."). Regardless, the Court finds that the circumstances here—specifically, Respondent's "continual and unrepentant disregard of the [Court's Orders]"—support the conclusion that prospective fines and sanctions are necessary here. See Weaver, 2018 VT 56, ¶ 4 (finding "prospective fines were warranted by the 'extreme and extraordinary' circumstances of this case," specifically, the plaintiff's "continual and unrepentant disregard of the court's custody orders").

Respondent has repeatedly, willfully, perhaps enthusiastically, continued to ignore this Court's Orders in the past, and the Court concludes that it would be unwise to proceed without imposing prospective sanctions for possible further violations. As noted above, the Court finds that the circumstances here—specifically, Respondent's "continual and unrepentant disregard of the [Court's Orders]"—support the conclusion that prospective fines and other sanctions are necessary here. See Weaver, 2018 VT 56, ¶ 4 (finding "prospective fines were warranted by the 'extreme and extraordinary' circumstances of this case," specifically, the plaintiff's "continual and unrepentant disregard of the court's custody orders"); see also Stephen King, On Writing: A Memoir of the Craft 12 (2000) ("Fool me once, shame on you. Fool me twice, shame on me. Fool me three times, shame on both of us.")). The Court has given Respondent an opportunity to purge himself of the contempt he has willfully created. Should he choose to not cure the violations pursuant to the compliance schedule, but rather "continue[] [his] experimentation in disobedience of the court order," the Court finds that it will be necessary to imprison Respondent for his ongoing disobedience. Socony Moil Oil Co., 126 Vt. at 167.

As such, upon motion of the Town indicating that Respondent has failed to meet the compliance schedule or has failed to permit the Town to inspect the property, the Court will issue a writ of mittimus for the immediate imprisonment of Daniel Banyai. The motion for writ of mittimus must include photographic evidence and a sworn affidavit affirming how the compliance schedule or site inspection was violated and dates the photographs were collected. Upon confirmation of any failure to comply, the Court will issue the writ of mittimus for the imprisonment of Daniel Banyai, ordering that Respondent immediately report to the Marble Valley Regional Correctional Facility ("MVRCF") in Rutland, or otherwise direct the Rutland County Sheriff's Office to deliver Danial Banyai to MVRCF.

Further, upon Daniel Banyai's imprisonment, to ensure compliance with the Court's Order and cure the underlying violations, the Town will be permitted to enter the Property and complete the deconstruction and removal of those structures, uses, and developments described

in the above compliance schedule.[17] Such work must be completed without reasonable delay. During Respondent's imprisonment, fines will continue to accrue at $200 per day until his agents or the Town complete the necessary work. Further, upon completion of the work described in the compliance schedule, the Town will be entitled to reasonable compensatory damages for costs of any work the Town must complete on Respondent's behalf.

During the pendency of his imprisonment, in addition to any other legal rights and remedies available to him, Respondent will "be entitled to a review of the contempt proceedings annually" until the violations are cured and his release procured. 12 V.S.A. § 123(b). Respondent's imprisonment will terminate upon the satisfactory completion of the work by the Town, his contractors, or his friends and family. The Court will be satisfied that the work was completed upon the entry of a stipulated notice from the Town and Respondent.

e. Attorney's Fees

Finally, the Town has requested that the Court order Respondent to reimburse the Town's attorney's fees incurred from January 15, 2022 to November 30, 2022, as a sanction for improper delay tactics necessitating the motion practice to compel compliance.

"Vermont follows the 'American Rule' with respect to attorneys' fees, In re Gadhue, 149 Vt. 322, 327 (1987), and generally does not award fees absent statutory authority or a contractual obligation." Vermont Women's Health Center, 159 Vt. at 416. The Supreme Court, however, has affirmed attorney's fees under certain exceptions. Id. In Gadhue, for example, the Court upheld attorney's fees under an exception to the "American Rule" applicable where an individual was forced to enter a second round of litigation to secure a clearly defined right that should have been granted without judicial intervention. See id. at 329 (involving a case where a landowner who prevailed in a zoning appeal against a neighbor was forced to seek an injunction because the neighbor built a structure in violation of the zoning decision). The Supreme Court found those circumstances presented an "exceptional case" in which fees may be awarded "'for dominating

[17] Nothing prevents Respondent, or his family and friends, from assisting the Town to ensure timely compliance and Respondent's timely release. Further, fines continue to accrue to prevent Respondent's Slate Ridge Family from interfering with the Town in carrying out this order.

reasons of justice.'" Id. at 330, 544 A.2d at 1156 (quoting Sprague v. Ticonic National Bank, 307 U.S. 161, 167 (1939)); see also Vermont Women's Health Center, 159 Vt. at 417 (same).

The Court recognizes the tremendous effort and resources that the Town has devoted in seeking Respondent's compliance in the years since the 2021 Order. However, in light of the sizeable fines and sanctions the Court has imposed in this Order, the Court does not conclude that now is the time to decide whether Attorney's fees are warranted. Rather, the Court **DEFERS** ruling on whether reimbursement of attorney's fees is warranted until such time as compliance is finally achieved or not. At such time, the Court may entertain a further motion for attorney's fees, if ongoing efforts and costs of the Town are incurred and those costs are formally presented to the Court.

Conclusion and Order

The Court holds Daniel Banyai in **CONTEMPT** of this Court and its outstanding orders and issues the following sanctions and fines to coerce compliance with the Court's Orders.

1. The Court reiterates that the injunctive relief granted to the Town in our prior orders remains in effect. See Pawlet, No. 105-9-19 Vtec at 13 (Mar. 5, 2021). Thus, the Court continues to **ORDER** that Respondent "shall not conduct or permit to be conducted any school and/or firearms training activities on the Property situated at 541 Briar Hill Road, nor host classes of any type on the Property . . . ." Id. (converting preliminary injunction into a permanent injunction).
2. Further, the Court reiterates the equitable relief from the March 5 Order that Respondent must immediately deconstruct and remove all unpermitted buildings, uses, and land developments within the boundaries of his property. Id.
3. The Court imposes fines of $200 per day starting from January 14, 2022 and running until all violations are cured, with such fines constituting a lien upon the Property upon filing the Pawlet Land Records.[18] These fines are purgeable if Respondent meets the deadlines provided below.
   i. Within 45 days, Respondent must complete the deconstruction and removal from the Property of the School Building, the Façade, the shipping containers, and all stair/ladder/platforms. This means that those improvements must no longer be anywhere within the boundaries of the Property by **March 25, 2023**.
   ii. Within 90 days, Respondent must deconstruct all the Berm developments in/around/near/on Range 1 and Range 2. This means that those berms

[18] Through the date of this Decision, such a purgeable fine would total **$78,000.00**. This fine amount will continue to increase unless Respondent satisfies all the conditions of this Decision by the imposed deadlines. Failure to timely satisfy those conditions will make such fines immediately due and collectable.

in/around/near/on Range 1 and 2 must be leveled and returned to a more natural flattened landscape by **May 9, 2023**. If Respondent is uncertain of what degree of deconstruction will be satisfactory, Respondent is directed to communicate with the Town early and often.

iii. Within 135 days, Respondent must deconstruct and remove the remaining unpermitted buildings that are subject to the Court's Order. For clarity, that means that Respondent must deconstruct and remove the following: the Barn (Resp't's Ex. B); the "Grain" silo (Resp't's Ex. P, Town's Exs. 2, 19); the Run-In (Town's Ex. 6, Resp't's Ex. D); and the Chicken Coop (Town's Ex. 8, Resp't's Ex. C). This means that those improvements must no longer be anywhere within the boundaries of the Property by **June 23, 2023**.

4. Respondent must permit the Town to conduct three site inspections—one within seven (7) calendar days following each deadline—to verify that he has met those deadlines. This means that the Town is permitted to enter and/or inspect Respondent's Property between: **March 26–April 2, 2023** (46–53 days); **May 10–May 17, 2023** (91–98 days); and **June 24–July 1, 2023** (136–143 days). The Town Attorney may be accompanied on each site inspection by up to two Town officials and one or more members of the Rutland County Sheriff's Department. Respondent must permit the Town to conduct a site inspection by foot, ATV or other motorized vehicle, and/or drone. The Town is not required to inspect the Property utilizing all those instruments, but may elect to use all or any of those techniques as warranted.

   i. If the Town finds that Respondent has met the described requirements and deadlines, the fine will be purged. The Court will be satisfied that those requirements and deadlines were met when the Town and Respondent file a stipulated notice to that effect with the Court. Upon the filing of such notice, the Court will enter an order purging Respondent of the obligations of these fines.

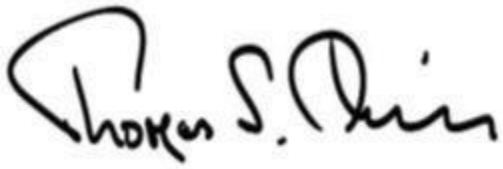
   ii. If, however, the Town finds that any one of those deadlines was not satisfied, upon the filing of photographic evidence and an accompanying sworn affidavit stating the date the evidence was collected with the Court, the Court will issue **a writ of mittimus for the imprisonment of Daniel Banyai**. Additionally, if Respondent fails to accommodate the Town's site inspections as specified here, he shall also be subject to imprisonment. The writ of mittimus will call for Daniel Banyai to immediately report to MVRCF in Rutland, or otherwise direct the Rutland County Sheriff's Office to deliver Danial Banyai to MVRCF.

   iii. Upon Daniel Banyai's imprisonment, the Town will be permitted to enter the Property and complete the deconstruction and removal of those structures, uses, and developments described above. Fines will continue to accrue at $200 per day until the Respondent's agents or the Town completes the work. The Town must complete the work without unreasonable delay. Daniel Banyai will remain imprisoned until the Town or his agents complete the work. Daniel Banyai, in addition to any other legal rights and remedies available to him, will "be entitled to a review of the contempt

proceedings annually" until the violations are cured and his release is procured. 12 V.S.A. § 123(b). Upon completion of the work described in the compliance order, Town will be entitled to recover the accumulated fines, as well as reasonable compensatory damages for any work the Town had to complete on Respondent's behalf.

5. The Court **DEFERS** ruling of Town's request for Attorney's fees until such time as compliance is achieved or further actions from the Town are required.

Electronically signed at Newfane, Vermont on Thursday, February 9, 2023, pursuant to V.R.E.F. 9(d).



Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division