VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 21-ENV-00101

Town of Richford v. Brunelle & Mashteare

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 1)
Filer: Brian P. Monaghan
Filed Date: June 27, 2022

The motion is GRANTED.

In this action, the Town of Richford (Town) has brought an enforcement action against Vanessa Brunelle and Teresa Mashteare (together, Respondents) for alleged zoning violations ongoing at their property located at 69 East Slide Road, Richford, Vermont (Property). The present action follows a Seven-Day Warning letter the Town issued to Respondents on or about May 3, 2021 (Seven-Day Warning). The Seven-Day Warning, which was never challenged or appealed, informed Respondents that they were in violation of the Richford Zoning Bylaws (Bylaws) § 4.9(A) because of excessive trash, junk, and unregistered vehicles stored in their yard at the Property. On October 11, 2021, the Town initiated this action by filing its Complaint. Respondent Mashteare entered her appearance and filed an answer to the Complaint on November 16, 2021 but has since not participated in these proceedings. Respondent Brunelle never entered an appearance or filed an answer, despite signing a V.R.C.P Rule 4 Waiver of Summons on November 12, 2021.

The Town presently moves for summary judgment, arguing that the undisputed material facts demonstrate that the Town is entitled to judgment as a matter of law, and penalties and equitable remedies. Neither Respondent filed a response to the motion nor disputed any of the

material facts. Attorney Monaghan represents the Town. Respondent Mashteare is self-represented. Respondent Brunelle has failed to appear in this matter.

UNDISPUTED MATERIAL FACTS

On June 27, 2022, the Town filed a Statement of Undisputed Material Facts (SUMF) in support of its Motion. Supporting its SUMF, the Town filed eight exhibits, three of which are affidavits. The Respondents did not file a response disputing any of the facts set forth by the Town, as was their obligation. As such, the Court adopts the assertions contained in the SUMF, the affidavits, and the exhibits so long as they were admissible. V.R.C.P. 56(c), (e). The Court sets out the following facts for the sole purpose of deciding the pending motion. See Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) ("It is not the function of the trial court to find facts on a motion for summary judgment").

1. The Town is a Vermont municipal corporation with its principal office in Richford, Vermont.

2. Respondents Vanessa Brunelle and Teresa Mashteare own property located at 69 East Slide Road, Richford, Vermont.

3. At all relevant times, the Town has had in effect the Richford Zoning Bylaws (Bylaws). The Bylaws were adopted on March 2, 2010, went into effect on July 1, 2010, and were last amended on October 7, 2019.

4. On or about May 3, 2021, the Town issued the Seven-Day Warning to Respondents. See Town's Ex. 3.

5. Respondents received the Seven-Day Warning by certified mail on June 22, 2021. See Town's Ex. 4 (showing signed receipt).

6. The Seven-Day Warning informed Respondents that they were in violation of the Bylaws due to conditions at the Property. Specifically, the Seven-Day Warning informed Respondents that:

> The violation[] exists as follows: there is excessive trash, junk, unregistered vehicles stored in your yard. The Town of Richford Bylaws state: junk may be stored if the following conditions apply: The junk does not take up more than 200 square feet of area and does not include more than 3 junk motor vehicles; the junk is not

> located within setbacks; and the junk is effectively screened from view of a public highway and adjacent properties during all seasons of the year. Your property does not meet these requirements.

Town's Ex. 3 at 1 (quoting Bylaws § 4.9(a)).

7. The Seven-Day Warning stated that Respondents had seven (7) days to cure the violations set forth in the warning and noted failure to cure could result in fines of not more than Two Hundred Dollars ($200.00) per day. Id. 1–2 ("Any person who violates these regulations shall be fined not more than $200 per lot or parcel for each offense. Each day that a violation is continued shall constitute a separate offense.").

8. The Seven-Day Warning also informed Respondents that, if they disagreed with the contents of the warning, they had fifteen (15) days to appeal warning to the Richford Development Review Board (DRB). Id. at 2.

9. The Seven-Day Warning was not appealed, and the violations were not cured.

10. After Respondents were served the Complaint in this matter, Respondents removed some items from the Property, but not enough to sufficiently bring the property into compliance with the Bylaws. See Town's Ex. 5, ¶ 4 [hereinafter Libby Aff.].

11. Ms. Mashteare called Town's counsel on December 6, 2021, and spoke with Attorney Brian Monaghan. See Town's Ex. 7, ¶ 5 [hereinafter Att'y Monaghan Aff.]. Ms. Mashteare began to list the items in her yard and how she planned to remove certain items. Id. ¶¶ 6–7. Ms. Mashteare has since ceased communications with Town's attorney.

12. As of June 27, 2022, the Property remains in violation of the Bylaws. Town's Ex. 5, ¶ 5.

13. The Town has spent over $4,000.00 in attorney fees and expenses in this matter. See Town's Ex. 8.

14. The Town has previously addressed violations at the Property in the matter Town of Richford v. Teresa Mashteare (Docket No. 46-3-19 Vtec). See Town's Ex. 6 (Richford v. Mashteare, No. 46-3-19 Vtec, J. Order at 1–2 (Vt. Super. Ct. Envtl. Div. Dec. 11, 2019)).

15. That case concluded with this Court issuing a Judgment Order acknowledging that the offending debris and junk had been sufficiently removed from the Property and the zoning violations rectified prior to trial.

16. The Judgment Order awarded the Town a penalty of $7.00 per day, for a total of $2,513.00. Id.

DISCUSSION

"Summary judgment is appropriate only where the moving party establishes that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law." Samplid Enters., Inc. v. First Vermont Bank, 165 Vt. 22, 25 (1996); V.R.C.P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."). Under V.R.C.P. Rule 56, the moving party must show an absence of dispute of material fact. Couture v. Trainer, 2017 VT 73, ¶ 9 (citing V.R.C.P. 56(a)). Once the moving party has made that showing, the burden shifts to the non-moving party to demonstrate a dispute of material fact. Mello v. Cohen, 168 Vt. 639, 639–40 (1998) (mem.). For the purposes of the motion, the Court "will accept as true the allegations made in opposition to . . . summary judgment, so long as they are supported by affidavits or other evidentiary material." Robertson v. Mylan Labs., Inc., 2005 VT 15, ¶ 15, 176 Vt. 356. The party opposing a motion for summary judgment "cannot simply rely on mere allegations in the pleadings to rebut credible documentary evidence or affidavits . . . but must respond with specific facts that would justify submitting [their] claims to the factfinder." Id. (citing Gore v. Green Mtn. Lakes, Inc., 140 Vt. 262, 266 (1981); V.R.C.P. 56(e). While the Court is only required to consider the materials cited in the statements of fact, the Court may consider other materials in the record. V.R.C.P. 56(c)(5). The evidence, on either side, must be admissible. See V.R.C.P. 56(c)(2), (4); Gross v. Turner, 2018 VT 80, ¶ 8.

I. The Notice of Violation

In its motion, the Town proffers that the Seven-Day Warning is a § 4451(a)(2) NOV, and that it is not subject to appeal and therefore final and binding. The undisputed material facts, however, demonstrate that the Seven-Day Warning is procedurally deficient as a statutory notice of violation, and therefore is not subject to finality.[1]

[1] Compare 24 V.S.A. § 4451(a)(1) (providing the "seven-day warning" requirements) with 24 V.S.A. § 4451(a)(2) (providing the "notice of violation" requirements). See 24 V.S.A. § 4472(d) (finality).

The penalties provision for municipal enforcement actions provides that "no action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail." 24 V.S.A. § 4451(a). This "seven-day warning notice" must "state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days." 24 VS.A. § 4451(a)(1). The statute provides additional requirements for Notices of Violation issued under the Municipal and Regional Planning and Development chapter. 24 V.S.A. § 4451(a)(2). The Statute requires NOVs to state:

> (A) the bylaw or municipal land use permit condition alleged to have been violated;
>
> (B) the facts giving rise to the alleged violation;
>
> (C) to whom appeal may be taken and the period of time for taking an appeal; and
>
> (D) that failure to file an appeal within that period will render the notice of violation the final decision on the violation addressed in the notice.

24 V.S.A. § 4451(a)(1)(A)–(D) (providing the "Notice of Violation" requirements). If not appealed, the § 4451(a)(2) Notice of Violation becomes final on all parties and this Court. 24 V.S.A. § 4472. Under those circumstances, the parties may not collaterally challenge the allegations contained therein, and the Court is bound the allegations contained in the notice.

Here, the Town issued the Seven-Day Warning—a warning—to Respondents on May 3, 2021. Town's Ex. 3. That warning was delivered to Respondents, and received, at their home in Richford on June 22, 2021. Id.; Town's Ex. 4. The warning informed the Respondents they had seven days to cure the violation, noting that an enforcement action could be brought at the end of the seven days if the Respondents failed to cure. The warning also notified Respondents that they could appeal the warning to the Town Development Review Board to contest the contents of the warning. As such the Respondents were properly warned of the violation and provided an opportunity to cure. 24 V.S.A. § 4451(a)(1).

The Court cannot, however, conclude that the undisputed material facts demonstrate that the Seven-Day Warning is final. Here, while the warning sufficiently provides the facts

giving rise to the violation, the provision of the Bylaws violated, and the deadline and procedure for taking an appeal, the notice fails to warn Respondents that a failure to appeal would render the warning final, as required by 24 V.S.A. § 4451(a)(2). See Town's Ex. 3. At best, the warning informs Respondents that they only have two options—(1) cure the violation within seven days, or (2) appeal the warning—and that a failure to take either action would result in enforcement. See id. As such, the Court concludes the warning is insufficient to be considered final pursuant 24 V.S.A. § 4472. The Town cannot rely solely on finality of the warning to prevail on summary judgment but must present evidence supporting the allegations contained therein. Cf. In re Benoit Conversion Application, Nos. 143-7-08 Vtec, 148-8-04 Vtec, 126-7-04 Vtec, slip op. at 15 (Vt. Super. Envtl. Div. Oct. 14, 2021) (noting that municipalities that issue inadequate NOVs "do so at their own peril"). Further, had the Respondents raised any collateral attacks to the allegations contained in the warning, the Court would have considered them properly before the Court.

II. The On-Going Violation of the Town's Bylaws

The Town, however, has demonstrated that the undisputed material facts support that the Respondents' Property was and remains in violation of the Bylaws.

Municipalities may bring an enforcement action against "[a]ny person who violates any bylaw after it has been adopted under this chapter . . . ." 24 V.S.A. § 4451(a). As discussed above, however, "[n]o action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail." 24 V.S.A. § 4451(a)(1) (discussing the "seven-day warning" requirements). After the seven days' warning notice has run, for purposes of the penalties provision, each day that a violation continues constitutes a separate offense. 24 V.S.A. § 4451(a)(3). Thus, the Town needs to establish that the Respondents: (1) are violating a duly adopted Bylaw that applies to their property, (2) were sent a seven-day warning by certified mail, and (3) were still not in compliance with that Bylaw after those seven days had run.

Here, it is undisputed that Respondents own the Property. It is also undisputed that at all relevant times, the Town has had in effect the Bylaws. See Bylaws (adopted March 2, 2010,

effective July 1, 2010, and last amended October 7, 2019). Among other things, those duly adopted bylaws limit the storage of junk as follows:

> **Storage of Junk.** Junk motor vehicles and junk (as defined in Article 7) may be stored on property only in a licensed junkyard under Title 24, Chapter 61, §2241 and 2242 V.S.A permitted by these regulations under (B) below **or** if the following conditions apply:
>
> - The junk does not take up more than 200 square feet of area and does not include more than 3 junk motor vehicles;
> - The junk is not located within setbacks; and
> - The junk is effectively screened from view of a public highway and adjacent properties during all seasons of the year (see Section 4.9(B)(2)(d)).

Bylaws § 4.9(A).

To be effectively screened from view pursuant § 4.9(B)(2)(d), the Bylaws require that the junk area "be screened year-round from view of public rights-of-way, and from adjoining residential properties. Landscaping and/or fencing may be required by the Board as deemed necessary to provide adequate screening. No waste, scrap, parts or materials shall be stacked, piled or stored higher than the fence or screen." Id. § 4.9(B)(2)(d). The Bylaws define "junk" as "[o]ld or scrap copper, brass, iron, steel and other old or scrap or nonferrous material, including but not limited to old and discarded tires, household appliances, furniture, rope, rags, batteries, glass, rubber debris, waste, trash or any discarded dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof." Bylaws § 7.2 ("Junk). "Junk motor vehicles" are defined as any "discarded, dismantled, wrecked, scrapped or ruined motor vehicle which is unregistered and non-inspected. This definition does not include farm vehicles." Id.

The Town issued a seven-day warning to Respondents on May 3, 2021, but did not deliver that seven-day warning to Respondents at their home in Richford until June 22, 2021. Town's Ex. 3; Town's Ex. 4. The warning provided the Respondents seven days to cure the violation, noting that an enforcement action could be brought at the end of the seven days if the Respondents failed to cure, and the violation is repeated within the next twelve months. Town's Ex. 3 at 1–2. The Town brought the present enforcement action against Respondents

on October 11, 2021, within twelve months of June 29, 2021. See generally Compl. (filed Oct. 11, 2021). At the time the Complaint was served, the Property was still not in compliance with the Bylaws due to excessive trash, junk, and unregistered vehicles stored in the yard. Town's Ex. 5, ¶ 4. Further, the undisputed material facts demonstrate that, on or about June 27, 2022, the date of the Town's initial motion filing, the Property remained in violation of the Bylaws. Id. ¶ 5. In support of its motion, the Town provides an affidavit by the Zoning Administrator. Id. Three images accompany the Zoning Administrator's affidavit, showing excessive junk, as that term is defined by the Bylaws, in the yard, as well as several vehicles. Id. It is undisputed that at least some of these vehicles are not registered. Id. ¶ 5. All this junk and those junk motor vehicles are in the open, and not screened from view. Id.

As such, the Court concludes that the Town has demonstrated that the undisputed material facts entitle it to judgment as a matter of law. The Respondents own the Property, and that Property is in violation of the Town's duly adopted Bylaws. The Town provided Respondents with seven-day warning of that violation and opportunity to cure the violation. The violation continued beyond the seven-day warning and continued until at least June 27, 2022. Thus, the Court **GRANTS** summary judgment to the Town.

III. Penalties and Remedies

In its Complaint and Motion for Summary Judgment, the Town requests that the Court impose both equitable and legal relief. Specifically, the Town has requested (1) legal penalties of $30 per day pursuant 24 V.S.A. § 4451; (2) equitable relief pursuant 24 V.S.A. § 4452 in the form of an order requiring Respondents remove all junk and junk motor vehicles within two months and permanently enjoining Respondents from continuing or resuming the violations; and (3) any additional and further relief this Court deems equitable and just.[2]

a. Penalties pursuant 24 V.S.A. § 4451

The Town requests a penalty of $30.00 per day, asserting that this is appropriate and may deter Respondents from future zoning violations.

[2] While not specifically requested, the Town brought forward evidence regarding attorney fees accrued in connection with enforcing its Bylaws.

The Court is authorized to impose a fine of up to $200 for each day that a violation remains ongoing. 24 V.S.A. § 4451(a)(3). This 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 41, ¶ 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;
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> (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; and
>
> (8) the length of time the violation has existed.

10 V.S.A. § 8010(b)(1)–(8).

With regards to the first factor, there is no evidence before the Court regarding "the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation." 10 V.S.A. § 8010(b)(1). The Court concludes this factor favors limiting the fine. Cf. Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22 (requiring that the Court resolve statutory ambiguity in favor of the property owner).

As to the second factor, the Court concludes that there appears to be some delay on the part of the Town in pursuing enforcement here. 10 V.S.A. § 8010(b)(2) ("[T]he presence of mitigating circumstances, including unreasonable delay by the [Town] in seeking enforcement."). As noted, the Town issued the violation warning on May 3, 2021, but did not deliver that warning until June 22, 2021. Then, while the Town could have filed its subsequent enforcement action as early as June 29, 2021, it did not file the present action until October 11,

2021. The Court finds that this delay may have had the effect of increasing overall fines and delaying resolution, as the complaint was filed with winter approaching, when compliance may be difficult to achieve. The Court finds this factor favors limiting the imposition of fines. Id.

As to the remaining factors, however, the Court finds the undisputed material facts support imposing a fine. To the extent that the Court considers whether the Respondents knew or should have known they were in violation of the Bylaws, the undisputed material facts demonstrate that Respondents knew that the violation existed. 10 V.S.A. § 8010(b)(3). First, it is undisputed that Respondents received the seven-day warning, informing them that their use of the Property for junk and junk motor vehicle storage was in violation of the Bylaws. Respondent Mashteare signed the receipt of the seven-day warning notice that informed them of this violation, and Respondent Brunelle signed a Rule 4 wavier of service when the Town filed this action. Additionally, after the enforcement action was filed, it is undisputed that Mr. Mashteare called Town's counsel on December 6, 2021, and spoke with Attorney Brian Monaghan, listing all the items in her yard, how she planned to remove them, and her timeline for removal. Att'y Monaghan Aff. ¶¶ 5–7.

Further, the present enforcement action is not the first time Respondents have had an enforcement action brought against them for this violation. There is no dispute that Respondents have a record of noncompliance at this Property. See Town's Ex. 6 (Richford v. Mashteare, No. 46-3-19 Vtec, J. Order at 1–2 (Vt. Super. Ct. Envtl. Div. Dec. 11, 2019)).[3] In that prior enforcement matter, the Court found "Mashteare and Brunelle, as owners of the property located at 69 East Richford Slide Road, located in the Town of Richford Rural Residential Zoning District, were storing junk and maintaining a junkyard on their property without the necessary permit, all in violation of the Town of Richford Zoning Regulations." Id. (citing Bylaws § 4.9(A)). While that matter concluded December 11, 2019, the Court noted that at trial there was some evidence suggesting "that additional junk or other debris was thereafter brought onto the property . . . ." Mashteare, No. 46-3-19 Vtec at 2 (Dec. 11, 2019). Regardless, the Court issuing a Judgment Order acknowledging that the offending debris and junk had been sufficiently

[3] During these prior proceedings, the claims were dismissed as to Respondent Brunelle because she was incarcerated at the time.

removed from the Property prior to trial, and while it was possible that the junk had begun to reaccumulate, the Uniform Environmental Enforcement Act supported issuing a fine of only $7.00 per day, totaling $2,513, due to Respondent Mashteare's efforts in restoring the property. Id. This fact demonstrates to the Court not only that Respondents knew that storing junk at the Property without a permit was a violation of the Bylaws, but also that there is a record of noncompliance. 10 V.S.A. § 8010(b)(3)–(4).

With regards to the deterrent effect of the fine, the undisputed material facts support that a $7.00 per day fine is insufficient to deter this violation from reoccurring. 10 V.S.A. § 8010(b)(6). As noted, this violation has happened before, and despite the Court imposing a $7.00 per day fine, totally $2,513, the violations reoccurred not long after the prior enforcement action concluded. Mashteare, No. 46-3-19 Vtec at 2 (Dec. 11, 2019). The Town noted that a relatively insignificant fine may have little to no deterrent effect, as the cost of moving the junk and vehicles to a storage facility would likely be significantly higher than $7.00 per day. While the Court does not have any evidence of the costs and availability of such storage in the Richford area, the fact that $7.00 per day had little deterrent effect is undisputed. As such, the Court concludes the undisputed material fact support imposing a larger daily fine.

As to the actual cost of enforcement, the Town's attorney fees in this matter are not insignificant. 10 V.S.A. § 8010(b)(7). It is undisputed that the Town has spent over $4,000 in attorney fees and court expenses in pursuing compliance in this matter. Those efforts have been met with inaction and silence. This factor supports imposing a more significant fine.

Finally, as noted above, this violation has been occurring for a rather extended period. 10 V.S.A. § 8010(b)(8). The present matter was initiated in October 2021, and to date, the Respondents have made little to no effort to rectify the violation or otherwise engage with the enforcement process. Further, the Court does not find it insignificant that this is the second time the Town has needed to enforce this bylaw provision against these Respondents at the Property. As discussed in detail above, the problem has been reoccurring since as early 2019. Mashteare, No. 46-3-19 Vtec at 2 (Dec. 11, 2019). While the Court only considers the present matter for the purpose of imposing fines, this undisputed fact demonstrates to the Court not

only that Respondents knew the violation existed and have a record of noncompliance, 10 V.S.A. § 8010(b)(3)–(4), but also that this violation has been occurring for a significant period even beyond the present action, 10 V.S.A. § 8010(b)(8) (tending to demonstrate that violation has been occurring on-and-off since 2019); cf. V.R.E. 404 (using the prior enforcement action as evidence of Respondents taking advantage of an opportunity, as well as violating the Bylaws with intent, plan, and knowledge).

As noted above, here, the penalty period could have begun to run as early as June 29, 2021, seven days after Respondents received the notice of violation. As of June 27, 2022, the date the Town's motion for summary judgment was filed, the maximum penalty that could be imposed upon Respondents is $72,600.00, $200 per day for 363 days. That amount could increase with each passing day. 24 V.S.A. § 4451(a)(3). A fine of $30 per day for this period of time would total $10,890. As a mitigation factor, however, the Court finds it significant that the Town did not bring this enforcement action until October 11, 2021, nearly 4-months after the warning was served on Respondents and with winter months and shorter days possibly delaying resolution.

Thus, the Court concludes the factors support imposing a fine for Respondents' on-going violations of the Town's Bylaws. The Court **IMPOSES** a fine of $20.00 per day, but only running from October 11, 2021, to June 27, 2022, 259 days, for a total fine of $5,180.00, with such fines constituting a lien upon the property.

b. Remedies pursuant 24 V.S.A. § 4452

In addition to the civil penalties, the Town requests equitable remedies as well. Specifically, the Town asks that the Court (1) order Respondents to remove all junk and junk motor vehicles within two months, and (2) permanently enjoin Respondents from continuing or resuming this violation in the future.

If any land is used in violation of any duly adopted bylaw, the Legislature mandated that the municipality bring "any appropriate action, injunction or other proceeding to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation." 24 V.S.A. § 4452.

The Court concludes that the undisputed material facts demonstrate that two months is a workable timeline for compliance. While the junk and junk motor vehicles located in view of the public is not insignificant, it is not so significant that Respondents working together could not get the Property into compliance on this schedule. As such, Respondents are **ORDERED** to correct and abate the violations of § 4.9(A) of the Bylaws within two (2) months of the date of this Order. Respondents can correct or abate the violation by either removing the junk and junk motor vehicles from the Property or ensuring that the relevant provisions of the Bylaws concerning the storage of junk apply to their property.[4]

The Court, however, declines to impose a permanent injunction on Respondents preventing future violations of this nature. When considering whether to issue an injunction, the Court must focus on two areas of inquiry. Town of Sherburne v. Carpenter, 155 Vt. 126, 131 (1990). First, the Court considers "whether the violation of the zoning ordinance is substantial." Id. This inquiry must weigh public injury against the lost use of private property in the typical case. Id. The Court in Carpenter noted this inquiry may sometime be difficult, as there comes a point where the violation is so insubstantial that it would be unjust and inequitable to require the removal of an offending use through a mandatory injunction. Id. at 131. The second area is whether the landowner's violation is innocent or, alternatively, involves conscious wrongdoing. Id. at 132.

The Court declines to impose the requested relief relative to future potential zoning violations. First, the Court found this request inadequately briefed by the Town. See generally Town's Mot. Summ. J. (requesting the relief, but not offering the applicable legal standard or arguing how the facts apply to that standard). Second, the Court notes that the Respondents are already under a legal obligation to comply with the Town's Bylaws, and the Town's remedy

[4] Bylaws § 4.9(A) allows the storage of Junk and Junk Motor Vehicles on a property, so long as the junk (1) is less than 200 square feet, including no more than 3 junk motor vehicles; (2) is not located within setbacks; and (3) is effectively screened from view of a public highway and adjacent properties during all seasons of the year. The Bylaws explain that the junk is effectively screed from view if it cannot be seen from any public rights-of-way or neighbors year-round, noting that this may require landscaping and/or fencing approved by the Board that is higher than the junk. Bylaws § 4.9(B)(2)(d).

for future violations is further enforcement. The Court declines to impose a duplicative obligation to comply with the Bylaws here.

CONCLUSION

For the forgoing reasons, the Town of Richford's motion for summary judgment against Respondents is **GRANTED**. Respondents Teresa Mashteare and Vanessa Brunelle are ordered to correct and abate the violations of § 4.9(A) of the Bylaws within two (2) months of the date of this order; on or by April 23, 2023. Additionally, the Court imposes a fine of $20.00 per day, running from October 11, 2021, to June 27, 2022, (259 days) for a total fine of $5,180.00, with such fines constituting a lien upon the property. This concludes this matter before the court. A Judgment Order accompanies this Decision.

Electronically signed February 21, 2023 pursuant to V.R.E.F. 9(D).

Thomas G. Walsh, Judge
Superior Court, Environmental Division