

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 22-CV-1894

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TOWN OF CALAIS, VERMONT,  
Plaintiff,

v.

ELISABETH SHEDD,  
Defendant.

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RULING ON THE MERITS

Plaintiff Town of Calais asks this Court to permanently enjoin Defendant Elisabeth Shedd from keeping horses or other livestock at her property on Collar Hill Road in Calais, Vermont, or elsewhere within the Town. The Town contends that such relief is necessary and appropriate on account of the Defendant’s violation of its “Ordinance to Regulate Livestock Running at Large,” which declares such conduct to be a public nuisance. The Defendant asks the Court to order the Town to return her horses to her now because she is presently able to comply with the ordinance. The Defendant contends that she has an adequate winter paddock for her horses at her property on Collar Hill Road in Calais, and that she has adequate pasturage for her horses during the rest of the year at another property that she owns on Old Quarry Road in neighboring Woodbury, Vermont.

On May 26, 2022, at the commencement of this action, the Court issued an *ex parte* temporary restraining order allowing the Town to impound four horses, owned by the Defendant, which had been running at large within the Town. On June 14, 2022, the parties filed a Stipulated Motion for Preliminary Injunction, in which they stipulated that “allowing Defendant’s four horses to run at large in the Town poses an immediate and irreparable risk of injury, loss, or damage to the horses, private property, and the public health safety and welfare, including ... a substantial risk of loss of life” (Id., at 2). The Court granted the stipulated motion on June 15<sup>th</sup> and issued the agreed-upon injunction. The stipulated preliminary injunction authorizing the Town to “continue to ... impound/stable and maintain ... Defendant’s four horses so that they are no longer running at large in the Town” (Id.). The injunction further provided that “Defendant shall not acquire or possess any new livestock during the pendency of this matter” (Id., at 3).

On November 3, 2022, the Court held a hearing on the merits in this matter. The Town was represented by Joseph S. McLean, Esq. The Defendant was represented by Harley G. Brown, III, Esq. Following the hearing, the Court gave the parties an opportunity to file post-hearing memoranda; Plaintiff filed its on November 18, 2022, Defendant filed hers on December 14, 2022. Based upon the credible evidence, the Court makes the following findings, conclusions and orders.

### Factual Findings

Plaintiff Town of Calais is a Vermont municipality located in Washington County, Vermont. Defendant Elisabeth Shedd resides at 491 Collar Hill Road in Calais, Vermont. Defendant owns four horses that she keeps at her property on Collar Hill Road, except during the warmer seasons when she sometimes keeps her horses at another property owned by her or her father off Old Quarry Road in Woodbury, Vermont.

The Defendant grew up around horses, and she has studied animal husbandry and herbal medicine. She has resided at 491 Collar Hill Road in Calais for approximately seven years, and for most of those years she has kept horses on her property. The property consists of approximately 11 acres of land, two barns and two shelters for animals; judging from photographs taken of the property from Collar Hill Road, the buildings appear to be in poor condition.<sup>1</sup> The property is almost entirely covered with trees, and there is no pasture on the property for the horses, which means that the horses must be fed hay when they are on the Calais property. There is a small containment area for the horses, surrounded by a rudimentary fence, which the Defendant constructed using saplings and small trees bound together with rope or twine tied to fence posts. Defendant's fencing is substandard and only marginally effective in containing horses.

Defendant's Collar Hill Road property is "off grid," meaning that it has no electricity other than a generator, no septic system, and little plumbing. The only sources of water are from an artesian well, which froze one winter, a perennial stream, which freezes every winter and which dried up for the first time this past summer, and a "aqueduct" through a wetland, which provides only intermittent water.

On dozens of occasions in the past, the Defendant's horses have escaped from her property and been found wandering unattended on various highways and

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<sup>1</sup> The Town asked the Court to conduct a site visit of the property, but the Court declined to do so because: "The Defendant has not consented to having a site visit take place on her property at 491 Collar Hill Road in Calais, and the Court sees little to be gained by attempting to conduct a site visit from the public right-of-way. The Court has admitted into evidence photographs of the Defendant's property taken from the right-of-way. The Court will decide the case based upon the testimony and exhibits that were admitted into evidence at the hearing on the merits." Entry Regarding Motion, November 18, 2022.

neighboring properties. Defendant's horses have been discovered running at large in Calais during the daytime, during the nighttime, and during every season of the year. Each time the horses have escaped from the Defendant's property, neighbors complained to the Town constable/animal control officer. In 2021 alone, the Town constable/animal control officer received 53 email complaints about the Defendant's horses running at large, and telephone calls to him about the horses averaged two per week.

Susan Cheyenne, who resides on Collar Hill Road just three doors down from the Defendant, has seen the Defendant's horses roaming through her yard and running on public highways some 50 times in the past. Forrest Gilruth, who resides on Worchester Road about half a mile away from the Defendant's property, has seen the Defendant's horses running through his yard and wandering in the middle of Worchester Road so many times since 2017 that he is concerned not only for the traveling public but also for the safety of his two young children on his own property due to the regularity of the horses getting loose, the unpredictability of it's happening, and the length of time that it has been going on without change. Cynthia Gardner-Morse lives on County Road in Calais, some 3.1 miles away from the Defendant's property, yet she has seen Defendant's horses galloping up County Road, a 50-mile-per-hour highway, and roaming onto her property so often that she no longer allows her three-year-old granddaughter to come brush her own horses for fear that Defendant's horses might return and hurt her granddaughter.

Despite repeated requests from neighbors and Town officials, the Defendant has never installed fencing adequate to prevent the horses from escaping from her property. One reason for this is because the Defendant wants her horses to be able to escape if they sense danger. At the hearing on the merits, the Defendant explained that she lives in a wildlife corridor, where there are coyotes, bears and hunters. She added: "I want them [her horses] to be able to run to the Ashram in times of danger. We have times of danger a lot.... When they see a hunter, they bolt and that's what I want them to do."

Because the Defendant's fencing is substandard, the horses frequently escape from her property by accident. This happens most often during the warm season, when the horses break out in order to find water or pasturage elsewhere, especially during times when the Defendant has been hospitalized for mental health issues. However, there have also been numerous occasions with the Defendant intentionally opened the gate and let her horses out. The Defendant has frequently admitted to complaining neighbors and Town officials that the horses had escaped from her property because she intentionally let them out. The Defendant told selectboard member John Brabant that she has two-way conversations with her horses, and when they tell her they need to be free and not penned in, she opens the gate and lets them out. She also told Brabant that she had let the horses out on

several occasions so they could freely graze on grass in the neighborhood. The Defendant told Cynthia Gardner-Morse that her horses like to be free and ought to be. She told the Town constable/animal control officer that horses should be free to wander as nature intended. And the Defendant testified at the hearing on the merits, “I allow them to get out if they feel the need to get out.”

The Defendant also frequently walks her four horses on the Town’s gravel roads, leading one horse with a halter or rope, and allowing the other three horses to follow untethered. At the hearing on the merits, the Defendant explained that she likes to take the horses hiking and foraging on roads and trails. She testified, “I’ve trained them to the road to make sure they are safe. I herd them. I can know and predict what can go wrong with the horses.” However, another witness, Cynthia Gardner-Morse, testified credibly that the Defendant’s horses are not trained to follow voice commands, that when loose they are unresponsive, and that they wander all over the road when the Defendant walks them untethered on the road.

Having horses loose on a public road is a significant public safety hazard because of the serious risk they pose to drivers. Horses are large and difficult to see on the road at night. Even in the daytime, a driver may not see a horse until too late due to a curve or a hill in the roadway. An unattended horse can also pose a danger to neighbors, particularly children, who could be kicked, bitten or trampled by an unexpected horse on the loose in the yard. Indeed, one of the Defendant’s horses, her bay mare named Ellie May, is known to kick humans and other horses. Horses can also cause property damage, and they can carry diseases contagious to other livestock on neighboring properties.

Despite receiving dozens of complaints from neighbors and visits from Town officials over the years, the Defendant failed to take reasonable steps to secure her paddock and confine her horses on her own property. Therefore, in July of 2021, the selectboard of the Town of Calais adopted an “Ordinance to Regulate Livestock Running at Large.” The ordinance went into effect on September 10, 2021. Despite the ordinance, the Defendant continued to allow her horses to run at large.

On the morning of March 1, 2022, the Town constable/animal control officer received a complaint that the Defendant’s horses were loose on Route 14 in Calais. That afternoon he received another complaint that the horses were still loose and were now on West County Road in Calais. It was late in the afternoon before the officer was able to gather up the horses in a snowstorm and return them to shelter. Several days later, the officer visited the Defendant at her property to discuss the safe handling of her horses. A few days after the visit, the Defendant sent an email to selectboard member Brabant instructing him not to trespass on her property. A

couple of weeks after that, Anne Lynn, who resides on Worcester Road in Calais, reported to the officer that the Defendant's horses were loose again.

On May 11, 2022, the Town constable/animal control officer received a call from the Woodbury Town offices stating that horses believed to belong to the Defendant had been seen loose on Route 14 and that several residents had been unable to catch them. From May 12<sup>th</sup> through May 15<sup>th</sup> the officer received additional complaints from Anne Lynn, Susan Cheyenne, Susan Spaulding, and Brian Stern complaining that the Defendant's horses were loose and running through their properties. It was several days before the constable/animal control officer was able to capture the Defendant's horses. The Defendant later told Wilson Hughes that she had let the horses loose to graze because she did not have any hay to feed them.

The Town impounded the Defendant's horses and then commenced this enforcement action. The Defendant's horses have continued to be impounded by the Town during the pendency of this action, pursuant to the parties' stipulated preliminary injunction order. The Town has incurred several thousands of dollars in expense to board the Defendant's horses and provide them with needed feed and veterinary care.

### Legal Conclusions

By statute, towns in Vermont have been granted certain regulatory powers, including the following:

For the purpose of promoting the public health, safety, welfare, and convenience, a town ... shall have the following powers: ... (14) [t]o define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require ... [and] (15) [t]o provide for penalties for violation of any ordinance or rule adopted under the authority of this section....

24 V.S.A. §2291(14) and (15).

Pursuant to that statutory authority, the Town of Calais adopted an "Ordinance to Regulate Livestock Running at Large" (Exhibit 10). The ordinance became effective on September 10, 2021 (Id. at 3). The ordinance states:

The Selectboard of the Town of Calais finds that Livestock Running at Large cause damage to private property and present a significant danger to motorists and the general public traveling on Town and State highways. Livestock Running at Large may also transmit communicable diseases to Livestock that is properly fenced and

contained. Accordingly, the Calais Selectboard finds Livestock Running at Large in the Town of Calais to be a public nuisance.

The purpose of this Ordinance is to abate and remove this public nuisance by establishing reasonable regulations for impoundment of Livestock Running at Large and to thereby protect the health, safety, and welfare of the public and the quiet enjoyment of Calais residents' homes and property.... This Ordinance shall constitute a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

Id., ¶ 1 at 1.

The Ordinance contains the following prohibition:

The Owner of Livestock shall not allow, permit, or suffer such Livestock to Run at Large in the Town of Calais. This prohibition shall not include situations where the owner of the livestock has taken reasonable measures to contain the animal.

(Id. ¶ 3 at 1). Under the ordinance, the term “Livestock” is defined to include “any ... horse, stallion, colt, gelding, [or] mare,” the term “Owner” is defined to mean “any person who owns Livestock or has actual or constructive possession of Livestock,” and the term “Running at Large” is defined to mean “off property owned or leased by the Owner and not under the control of the Owner or agent of the Owner.” (Id. ¶2 at 1).

Declaring livestock running at large to be a public nuisance is a reasonable exercise of the Town's regulatory powers and falls squarely within the scope of its statutory authority. The Vermont Supreme Court has long recognized the danger of horses running at large. *See, for example, Wright v. Shedd*, 122 Vt. 475, 478 (1962) (“Long before the advent of motor vehicles, this Court recognized the danger from the presence of animals, unattended and unrestrained on a public highway.”). Similarly, since at least 1797, it has been a punishable offense in Vermont for an owner to allow his or her horses to run at large. 1797 V.S. ch. XXVII § 10 (“[I]f the owner or keeper of an stone horse or stallion ... shall wilfully or negligently suffer such stone horse or stallion to run at large, ... such owner or keeper, shall forfeit and pay a sum....”). It is still the case today. 20 V.S.A. §§ 3345 and 3349(a). The Defendant does not dispute the reasonableness or legality of the Town's ordinance.

The Defendant clearly violated the ordinance by allowing her horses to run at large in March of 2022 and again in May of 2022. She had failed to take any reasonable measures to confine her horses to her own property but had instead allowed them to escape and run at large throughout the Town. The Defendant's violations of the ordinance were substantial and the result of a conscious decision on her part to maintain fencing that had repeatedly proven to be substandard and

inadequate for containing her horses. Indeed, based upon what the Defendant told Wilson Hughes following the incident in May of 2022, it appears that that violation was intentional.

Under the ordinance, the Town animal control officer or constable “may immediately impound, at an impoundment facility designated by the Selectboard, any Livestock found Running at Large in the Town of Calais” (Ordinance ¶ 4(A) at 1). Within 24 hours after impounding the livestock, the officer or constable “shall give written notice to the Owner, informing the Owner of the violation of this Ordinance and the remedial Action necessary to release the Livestock from impoundment” (Id. ¶ 4(B) at 2). The remedial action must “be completed by the Owner within forty-eight (48) hours of the notice” (Id. ¶ 4(C) at 2). The ordinance goes on to provide:

Impounded Livestock shall be released to the Owner only upon satisfactory completion of the Remedial Action and payment of all Impoundment Expenses owed to the town. The Enforcement Officer shall be authorized to enter the Owner’s property to inspect fences, gates, pens, corrals, paddocks, sties, or other structures to determine if the Remedial Action has been completed.

Id., ¶ 4(D) at 2).

Lastly, “[i]f ... the Owner fails to complete the Remedial Action, or the Owner fails to pay all Impoundment Expenses due to the town, the Livestock may, at the discretion of the Selectboard, be sold, transferred to a humane society or rescue organization, or humanely destroyed” (Id., ¶ 4(F) at 2). In addition, “the Selectboard may commence a civil action in Superior Court to obtain injunctive or other appropriate relief and may pursue any other remedy authorized by law” (Id., ¶ 5(C) at 2). *See, also*, 24 V.S.A. §2121 (“The selectboard of a town ... may prefer complaint for relief by injunction for the abatement of public nuisances. The Superior Court shall have jurisdiction of such actions.”).

Upon proving the violation of an ordinance, a town is entitled to an injunction to enforce compliance with the ordinance without having to demonstrate either irreparable harm or the unavailability of an adequate remedy at law. Town of Sherburne v Carpenter, 155 Vt. 126, 129 (1990) (“Generally, where a statute authorizes a municipality or public agency to seek an injunction in order to enforce compliance with a local ordinance or state statute, and is silent as to the injury caused, the municipality is not required to show irreparable harm or the unavailability of an adequate remedy at law before obtaining an injunction; rather, all that must be shown is a violation of the ordinance.” (citation omitted)). Furthermore, where the violation of the ordinance is substantial, it is not necessary for the court to balance the equities between the parties before issuing an

injunction. *Id.*, 155 Vt. at 131 (“We emphasize that once the court finds that a violation is substantial further balancing of injury and cost is generally inappropriate.”). Similarly, “a conscious decision to go forward, in the face of a direction not to from the regulatory body, outweighs factors pointing against the issuance of a mandatory injunction.” *Id.* at 132.

The Town is clearly entitled to an injunction to enforce compliance with its Ordinance. The Defendant’s horses’ running at large violates the Ordinance and constitutes a public nuisance that should be abated by injunctive relief. The question is what that injunctive relief should look like. At the hearing on the merits, the Town asked the Court to permanently enjoin the Defendant from ever again keeping horses or other livestock on her property in Calais. The Town argued that this outcome was justified by the Defendant’s persistent failure to control her horses over a lengthy period of time, despite numerous requests by neighbors and Town officials that she do so, her history of psychiatric issues, and her neglect of her horse’s needs for adequate food, water and safe containment.

At the hearing on the merits, the Defendant asked the Court to return her horses to her now because she is presently able to comply with the ordinance. The Defendant testified that, if her horses are returned to her, she will keep them at her property in Woodbury, Vermont during the warm seasons and will keep them in Calais only during the winters. She argued that she can appropriately maintain and contain her horses in Calais during the winter months because she has improved her fencing there since May of 2022 and can improve it further if necessary, she has made arrangements to have adequate amounts of hay available for the horses during the winter, her mental health issues have improved since her last hospitalization, and she has a network of friends who can help her maintain and contain her horses if she ever has to be hospitalized again.

The Town’s former constable/animal control officer, Wilson Hughes, supported the Defendant’s request at the hearing. He testified that, in his opinion, the Defendant should be given “one more chance” because she loves her horses, when healthy she takes good care of them, the fencing at her property in Calais can be improved sufficiently to contain the horses, and she has a network of friends who are prepared to step in if she is hospitalized again. The Town replies that the Defendant has been given many “one last chances” over the past several years, but she has repeatedly refused to make the improvements and changes needed to contain her horses, and there is no reason to believe that she will do so now.

The Court will permanently enjoin the Defendant from allowing, permitting or suffering her horses to run at large in the Town of Calais in violation of the Town’s Ordinance to Regulate Livestock Running At Large. This will include permanently enjoining the Defendant from taking her horses for walks on or along



any roads within the Town, unless the horses are all tethered or otherwise under the Defendant's physical control (voice control is not sufficient).

The Court will not, however, permanently enjoin the Defendant from ever keeping horses or other livestock on her property in Calais again. Such an outcome would be beyond the scope of the Ordinance itself, which contains no provision authorizing a permanent forfeiture of the right to keep livestock within the Town. Under the Ordinance, in response to a violation the Town may: impound the offender's livestock; give the offender written notice of the "remedial action" needed to get the livestock back; refuse to return the impounded livestock until the offender has completed the remedial action and reimbursed the town its "impoundment expenses"; inspect the offender's fences, paddocks and other structures to assure that the required remedial action has been properly completed; and sell the offender's livestock if the remedial action has not been taken within a reasonable amount of time. These steps are sufficient to abate the nuisance and assure compliance with the Ordinance.

The Court also will not order the immediate return of Defendant's horses to her, notwithstanding her testimony that she is presently able to comply with the ordinance, and notwithstanding the former constable/animal control officer's testimony in support of her request. Under the Ordinance, it is up to the Town, not the Defendant or the Court, to decide what remedial action must be taken before an offender may get his or her livestock back. The Defendant is entitled to receive a written notice from the Town spelling out what remedial action the Town will require her to complete before she can get her horses back. She will need to complete that work, and reimburse the Town for its impoundment expenses, before she can demand her horses back.

The Town may require the Defendant to take such remedial action as is necessary to reasonably assure that her horses do not escape from her property. This includes requiring the Defendant to construct and maintain such fencing and other structures as may be needed to confine the horses. The Town may also require the Defendant to make suitable arrangements to have enough feed, hay and water on hand for her horses because, in the absence of sufficient food and water, the horses will do whatever they can to escape and try to find it elsewhere. Similarly, the Town may require the Defendant to make suitable arrangements for others to take care of her horses for her if she needs to be hospitalized in the future or is otherwise unable to care for them herself for any reason. The Town may not, however, require the Defendant to take any particular action with respect to veterinary care for her horses before allowing her to get her horses back; veterinary care, though very important, is beyond the scope of the Ordinance. Similarly, the Town may not require the Defendant to establish, fund and maintain an escrow account from which funds may be disbursed to cover costs incurred by the Town in

the future if the Defendant should violate the Ordinance again; there is nothing in the Ordinance requiring an offender to provide the Town with such a fund as a condition of getting his or her livestock back.

Lastly, the Town may require the Defendant to reimburse it for the boarding, feed and veterinary costs that the Town has incurred (and will continue to incur until the Defendant completes the required remedial action), as a condition to getting her horses back. The Town may not, however, require the Defendant to also pay for the Town's horse-related constable services. Under the Ordinance, the Town is entitled to reimbursement of its "impoundment expenses" only. "Impoundment expenses" include boarding costs and veterinary expenses incurred on account of the impoundment of the Defendant's horses; they do not include the cost of constable services.

Order

For all the foregoing reasons, the Town of Calais' request for a permanent injunction is *granted in part and denied in part*. The Court will issue a permanent injunction in accordance with the conclusions set forth above.

SO ORDERED this 19<sup>th</sup> day of December, 2022.



Robert A. Mello  
Superior Judge