THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2019-CV-00495

Town of Temple

v.

John H. Jackson-Marsh and Alan Marsh

ORDER

The plaintiff, the Town of Temple (the "Town"), brought this action against the defendants, John Jackson-Marsh and Alan Marsh (collectively the "defendants"), seeking relief from alleged violations of New Hampshire's junkyard statute and Town zoning ordinances ("ZO"). The Court conducted a bench trial on this matter on February 22 and 23, 2023, including a view of the property at issue on the morning of February 22, 2023. The Court heard testimony from five witnesses. The parties submitted exhibits for the Court's consideration. The parties submitted post-trial memoranda and proposed orders.[1] After considering the evidence presented at trial and the applicable law, the Court finds and rules as follows.

Findings of Fact

The defendants own property located at 32 West Road in Temple (the "Property"). The Property is primarily located in the Rural Residential and Agricultural zoning district with a small portion located in the Village Historical Preservation zoning district. The Property includes over thirty-nine acres of land, a single family home, and a barn. The defendants purchased the Property in late 2014 and have resided there

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[1] In light of this narrative order, the Court declines to rules on the parties' proposed orders. See Magrauth v. Magrauth, 136 N.H. 757, 760 (1993) (stating superior court not required to rule on parties' requests for findings and rulings as long as decision sufficiently recites basis for decision).

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ever since.

At issue in this case is the defendants' use of the Property. The defendants maintain a collection of antique construction vehicles and equipment (the "collection"). The defendants have a genuine enthusiasm and love for their collection, and endeavor to prevent these items from being destroyed or forgotten. They are active members of the Northeast Chapter of the Historical Construction Equipment Association ("HCEA") and transport pieces of their collection around the Country to exhibit at HCEA shows and events. Prior to purchasing the Property, the defendants' collection consisted of "a couple dozen" pieces of equipment that they stored at various locations in Massachusetts. (2/23/2023 Tr. at 10:01.) In the spring of 2015, the defendants began transferring their collection to the Property with a tractor trailer and flatbed.[2] At some point after the defendants moved in, neighbors complained about a number of storage trailers located on the Property that were visible from the road. In response, the defendants cleared a significant portion of their land and moved the storage trailers to an area hidden from the view of the road.

In January 2017, the defendants received notice from the Town of violations of the Town's ZO provisions and New Hampshire's junk yard statute. (Ex. 5 at 1.) The Town informed the defendants that it had received several complaints regarding the condition of the Property and, in particular, allegations that the defendants are operating a junk yard and/or a home business without special exception approval. (Ex. 6.) The Town conducted an inspection of the Property in late 2017 and issued a subsequent notice of violation on April 6, 2018 ("April 6th Notice"). (Exs. 6, 5 at 3.) On May 8, 2018,

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[2] Operable vehicles were driven straight onto the flatbed while inoperable vehicles and equipment were transferred onto the flatbed with assistance from other pieces of equipment. (Id. 10:02.)

the Town notified the defendants that while the April 6th Notice specified that the Property "must be cleared of junk within 30 days[,]" it was "willing to suspend further action . . . if and only if [the defendants] submit[ed] a completed application to the [Town's] Zoning Board of Adjustment requesting a special exception[.]" (Ex. 5 at 3.) In response, the defendants applied for a special exception in 2018 (the "application"). (See Ex. 11.)

Throughout June and July 2018, the Town's Zoning Board of Adjustment ("ZBA") held a series of hearings, site visits, and deliberations on the application. The defendants maintained throughout the application process that their use of the property to store their collection of antique construction vehicles and equipment does not constitute a junk yard and that they do not need a special exception under the Town's ZO because they are not operating a business. Ultimately, the ZBA denied the application because it found the defendants failed to prove that their use of the Property would not negatively impact surrounding property values as visible from aerial views. (See Exs. 11, 12.) The defendants sought a rehearing of their application, labeling this request as an "appeal." (See Ex. Q; 2/23/2023 Tr. at 11:50-57.) The ZBA denied this request, finding that the defendants did not state anything new and that there was nothing the ZBA missed in its original review of the application. (See Ex. O at 2.) The defendants did not appeal this decision to the superior court. In May 2019, the defendants received another notice of land use violations from the Town for the same reasons previously noted. (See Ex. 5.)

It is undisputed that since the defendants purchased the Property in 2014, the number of construction vehicles and equipment in their collection has continued to

increase and expand, currently encompassing at least two and a half acres of land on the Property. (See 2/23/2023 Tr. at 11:00; Ex. 9.) While the placement of these items on the Property is somewhat organized, the size and breadth of the defendants' collection cannot be overstated. (See Exs. 9, 10.) During its view of the Property, the Court observed dozens of motor vehicles in various states of disuse, numerous large motor vehicle and mechanical parts, rusted construction equipment, attachments for construction equipment, nearly fifty loose tires, old ferrous and non-ferrous materials, and several large box trailers. Many of the motor vehicles on the Property are not in working order. However, some of the items on the Property seem to be in working condition despite their appearance. For example, during the view, Mr. Marsh turned on and operated a 1952 Northwest Model 25 front-shovel. (See Ex. C.) Additionally, Mr. Marsh pointed out the following antique items to the Court: a 1944 Caterpillar D7 tractor with a LeTourneau cable-operated bulldozer (Ex. D); a 1925 American Gopher crane (Ex. E); a hydraulic front-end loader based on a 1937 Corbitt Truck (Ex. F); a 1953 Lorain Model TL-25 with a rare scoop shovel attachment (Ex. G); and a 1963 American Model 975 Crawler crane with a 100 foot-long boom. These items, however, only comprise a small portion of the defendants' entire collection.

All of the materials stored on the Property belong to the defendants and are kept for their own personal use. The defendants have not obtained a license to operate a junk yard business at the Property and have never received a special exception for a junk yard or noncommercial enterprise use of the Property. Since the Town filed this action, the defendants' collection has continued to grow.

Analysis

The Town argues that the defendants' use of the Property constitutes a "junk yard" as defined by RSA 236:112, and that they are therefore required to obtain a junk yard business license pursuant to RSA 236:114. Because the defendants have not obtained a license, the Town argues that it is entitled to injunctive relief pursuant to RSA 236:128, abating the defendants' use of the Property as a junk yard. Further, the Town argues that the defendants' use of the Property requires them to obtain a special exception under the Town ZO. Because the defendants have not received a special exception, the Town argues that their use of the Property violates the Town's ZO and that, accordingly, the Town is entitled to injunctive relief and recovery of all applicable civil penalties and attorney's fees and costs, pursuant to RSA 676:17.

In response, the defendants argue that: (1) they are not operating or maintaining a junk yard as defined under RSA 236:112; and (2) their hobby is neither expressly prohibited by the ZO, nor an enterprise, and therefore does not require special exception approval from the ZBA. As the essential facts described above do not appear to be in dispute, the Court will consider each of the defendants' arguments in turn.

I. RSA 236:112, New Hampshire's Junk Yard Statute

RSA 236:112 provides, in relevant part

> I. "Junk yard" means <u>a place used for storing and keeping</u>, or storing and selling, trading, or otherwise transferring <u>old</u> or scrap copper, brass, rope, rags, batteries, paper, trash, <u>rubber debris</u>, <u>waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof</u>, iron, steel, <u>or other old scrap ferrous or nonferrous material</u>. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:
>
> . . .
>
> (a) Automotive recycling yards, meaning a motor vehicle junk yard, as identified in subparagraph (c), the primary purpose of which is to

salvage multiple motor vehicle parts and materials for recycling or reuse;

(b) Machinery junk yards, as defined in paragraph III; and

(c) Motor vehicle junk yards, meaning any place, . . . where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

(2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded secondhand material which has been a part, or intended to be a part, of any motor vehicle.

RSA 236:112, I (emphasis added). Additionally, under RSA 236:112, "motor vehicle" "means 'motor vehicle' as defined by RSA 259:60, I, namely, any self-propelled vehicle not operated exclusively upon stationary tracks, including ski area vehicles." RSA 236:112, IV. The defendants argue that the vehicles are "construction equipment" as defined in RSA 259:42, "and excepted from RSA 259:60." (Defs.' Reply Pl.'s Post-Hearing Mem. at 3.) Under RSA 259:42, "construction equipment" is defined as

> all bulldozers, rollers, scrapers, graders, spreaders, pavers, bituminous mixers, retreading machines, compressors, power shovels, excavators, backhoes, wagons, concrete mixers, generators, message boards, wood chippers, bucket loaders, snow loaders, rooters, scarifiers, and construction tractors, and such other items of equipment which in the opinion of the director shall be classified as construction equipment.

On the other hand, "motor vehicle" is defined as "any self-propelled vehicle not operated exclusively on stationary tracks, including ski area vehicles." RSA 259:60. Contrary to the defendants' assertion, nothing in RSA 259:60 states that construction equipment cannot also qualify as a motor vehicle. Further, RSA 236:112 does not exempt construction equipment from its definition of motor vehicles. In fact, the broad definition of motor vehicle clearly encompasses any construction equipment that is self-propelled and not operated exclusively on stationary tracks. In other words, the two

characterizations are not mutually exclusive. Moreover, Mr. Marsh testified that there are five or more vehicles on the Property that operate on normal wheels, and that of the other pieces of construction equipment, none operate on stationary tracks. (2/23/2023 Tr. at 10:49.) Thus, based on the evidence at trial and a plain reading of the relevant statutes, the Court finds the defendants' argument unpersuasive.

Next, the Court turns its analysis to whether the defendants' Property constitutes a junk yard within the meaning of RSA 236:112. It is undisputed that the defendants store on their Property a quantity equal in bulk to two or more motor vehicles which are not operable, and thus, cannot function for their original use. (See 2/22/2023 Tr. at 3:38; 2/23/2023 Tr. at 10:45, 10:49, 10:51); see also RSA 236:112, I(c). Mr. Marsh testified that "there are a number of pieces [on the Property] that are going to require relatively major mechanical repairs in order to be operable." (2/23/2023 Tr. at 10:03-04.) At least fifty percent of the vehicles on the Property would need, at a minimum, a battery to operate. (2/22/2023 Tr. at 3:36.) However, the defendants do not possess the necessary batteries to make all of the vehicles operable. A number of vehicles have shredded and not useable tires mounted to the wheels.[3] (2/23/2023 Tr. at 10:56– 57.)

Further, Mr. Marsh testified that while all of the construction equipment attachments are capable of being attached and functioning for their intended use, (id. at 10:14–15), he cannot "say that every attachment [on the Property] goes to a machine that [the defendants] own." (2/22/2023 Tr. at 3:31.) Because these attachments cannot be affixed to the motor vehicle that they are meant for, it necessarily follows that they are merely "intended to be a part of [a] motor vehicle," not presently a part of a motor

[3] There are also roughly fifty loose tires on the Property stored next to the barn that the defendants assert are spare tires for machines and trucks. (2/22/2023 Tr. at 3:34; 2/23/2023 Tr. at 10:18.)

vehicle. RSA 236:112, I(c)(2). Mr. Marsh further testified that there are "a few tons" of source material iron on the Property. (2/22/2023 Tr. at 3:35.) Based on the foregoing, the Court finds that motor vehicles and used parts of motor vehicles are stored on the Property in a quantity equal in bulk to two or more motor vehicles and, therefore, constitute a junk yard as defined by RSA 236:112.

The defendants argue that these motor vehicles are not "junk" because many of them could be restored to operability with the help of various types of mechanical work such as "replacing spark plugs, belts, [or] fluids, up to re-building an engine." (2/23/2023 Tr. at 10:55.) However, RSA 236:112 does not contemplate a vehicle's potential for future operability. Rather, it clearly encompasses within its definition of motor vehicle junk yards, vehicles "which are no longer . . . in condition for legal use according to their original purpose," and secondhand material "which has been a part, or intended to be a part, of any motor vehicle." RSA 236:112, I (emphasis added). The Court must assess the present status and operability of the motor vehicles and parts, not speculate about their potential future operability after repairs are made.

Alternatively, the defendants contend that many, if not all, of these motor vehicles are antiques and, thus, fall within the "noncommercial antique motor vehicle restoration activities" exception ("antique exception") to RSA 236:112. Specifically, pursuant to RSA 236:111-a, III, RSA 236:112 shall not apply to noncommercial antique motor vehicle restoration activities involving antique motor vehicles over twenty-five years old, provided that:

> (a) All antique motor vehicles kept on the premises are owned by the property owner or lessee; and
> (b) All antique motor vehicles and parts of antique motor vehicles are kept out of view of the public abutters by means of storage inside a

permanent structure or by suitable fencing which complies with the fencing requirements of RSA 236:123, or by trees or shrubbery sufficient to block visual access year round; and

(c) Any combination of antique motor vehicles or parts of antique motor vehicles that are not stored inside a permanent structure shall otherwise comply with the requirements of this section and shall not exceed a total amount of 5 vehicles. For purposes of this section, the sum of all parts of antique motor vehicles that equal in bulk to one antique motor vehicle shall be counted as one antique motor vehicles; and

(d) All mechanical repairs and modifications are performed out of the view of the public and abutters; and

(e) Not more than one unregistered and uninspected motor vehicle that is not over 25 years old shall be kept on the premises; and

(f) The use of the premises is in compliance with all municipal land use ordinances and regulations.

RSA 236:111-a, III (emphasis added).

At least five of the defendants' vehicles are over twenty-five years old. (See Exs. C, D, E, F, G.) The Court credits Mr. Marsh's detailed testimony describing the provenance and history of these vehicles. (2/23/2023 Tr. at 10:20–25.) The defendants' collection also seems to be kept out of view of the public abutters by means of trees and shrubbery, aside from the 100 foot-long boom on the 1963 American Model 975 Crawler crane which can be lowered. (Id. at 10:11–13.) However, the combination of antique motor vehicles and parts of antique motor vehicles not stored inside a permanent structure on the Property *vastly* exceeds a total amount of five antique motor vehicles. Even excepting five motor vehicles under the antique exception, the remaining motor vehicles and parts thereof in excess of the amount allowed by the antique exception would fall within the general provisions of RSA 236:112 governing motor vehicle junk yards.

To the extent the defendants contend that their use of the Property does not constitute a junk yard because they are not operating a place of business, the New

Hampshire Supreme Court has held that based on the "evident purposes of the statute together with the broad statutory definition of junk yard," a junk yard need not be a place of business under RSA 236:112. Town of Lincoln v. Chenard, 174 N.H. 762, 767 (2022). The supreme court analyzed whether a junk yard must have some element of commerce as follows:

> As defined in the subdivision, a junk yard includes "a place" used for "storing and keeping" or "storing and selling" or "otherwise transferring" the items enumerated in the statute. RSA 236:112, I. Thus, under the plain and ordinary meaning of the words used, a person can "stor[e] and keep[]" the items listed at "a place" and thereby be considered to "maintain" a junk yard for which he must obtain a license under RSA 236:114, regardless of whether the items are also stored and sold.

Id. Furthermore, the use of the word "business" in this statutory subdivision does not necessarily mean that commerce is conducted. The supreme court articulated that

> Another definition of "business" is "action which occupies time and demands attention and effort." Construing the evident purposes of the statute together with the broad statutory definition of junk yard, we determine that the word "business" in RSA 236:111 encompasses junk yards not operated as a commercial business.

Id. (internal citation omitted). Accordingly, the fact that the defendants are only storing their collection on the Property for personal use does not mean that the use of the Property cannot fall within RSA 236:112.

The Court understands that the defendants are attempting to prevent these items from being "junked" in the pejorative sense of the word. However, applying the relevant statutory framework to the facts of the case, the Court finds that the defendants' use of the Property falls within the statutory definition of a junk yard in RSA 236:112. Accordingly, the Court must consider whether the defendants have violated the applicable junk yard statute.

RSA 236:114 provides that "[a] person shall not operate, establish, or maintain a junk yard or machinery junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of the junk yard." It is undisputed that the defendants have not received a license to operate a junk yard on the Property. As such, the Court finds that the defendants are operating or maintaining a junk yard in violation of RSA 236:114. Operation of a junk yard without the required license and approval constitutes a nuisance. See RSA 236:119 ("Any junk yard or machinery junk yard located or maintained in violation of the provisions of this subdivision is hereby declared a nuisance . . . ."). Therefore, consistent with RSA 236:119, the Court finds the defendants' use of the Property is a nuisance.

II. Town's ZO

The defendants first argue that the ZO is not permissive, meaning a use need not be identified or expressly permitted by the ZO to be lawful. The defendants categorize their use as a "hobby" and argue that because the ZO does not contain the word "hobby" or reference similar activity, a hobby "is not, and cannot be, prohibited by the Town." (Defs.' Post-Hearing Mem. at 5.) For its part, the Town maintains that the ZO is permissive in nature with respect to noncommercial enterprises.

A permissive ordinance is "intended to prevent uses except those expressly permitted or incidental to uses so permitted." Town of Carroll v. Rines, 164 N.H. 523, 526 (2013) (quotations omitted). The Town ZO contains numerous provisions articulating what residential uses of property are permitted, (see Ex. 1 Article V, Districts and Uses), as well as what are referred to as Home Business I, Home Business II, Home Business III, and Farming and Related Rural Pursuits. In addition, Article VI,

section 13, of the ZO provides that "[t]rade, enterprises, facilities, whether commercial, non commercial and/or industrial use of land or buildings . . . not specifically authorized under other sections of this ordinance, may be permitted by special exception[.]" (See Ex. 1, Art. VI, § 13 (emphasis added).) It necessarily follows that if a trade, enterprise, or facility, whether commercial or noncommercial, is not expressly permitted under a section of the ZO, it is allowed only upon special exception.

Alternatively, the defendants argue that their hobby of collecting antique construction equipment is not a noncommercial enterprise because "the word enterprise connotes some business or entrepreneurial activity, and no reliable source identifies enterprise as a synonym for hobby." (Defs.' Post-Hearing Memo at 8.) In response, the Town argues that the defendants "wish to morph the use of the word 'hobby' into a dispositive category for the purposes of the ZO and relevant statutory provisions" and that the defendants' "motivation for doing something with their property is not cited anywhere as a determinative element of the use." (Pl.'s Reply Def. Post-Hearing Mem. at 2.) The ZO does not define "noncommercial" or "enterprise," but states that "all words other than those defined specifically [in the ZO] shall have the meanings implied by their context in [the ZO] or their ordinarily accepted meanings." (Ex. 1 at 1.) Thus, the Court must interpret the meaning of a "noncommercial enterprise."

Noncommercial is defined as "not occupied with or engaged in commerce." Noncommercial, Merriam-Webster dictionary, https://www.merriam-webster.com/dictionary/noncommercial (visited May 24, 2023). "Enterprise" is defined as "[a]n organization or venture, esp. for business purposes," Enterprise, Black's Law dictionary (11th ed. 2019), "[a]n undertaking, especially one of some scope,

complication, and risk" as well as "a business organization," Enterprise, American Heritage dictionary (4th ed. 2000), and also "a project or undertaking that is especially difficult, complicated, or risky," Enterprise, Merriam-Webster dictionary, https://www.merriam-webster.com/dictionary/enterprise (visited May 24, 2023). Thus, the Court understands the reasonable interpretation of "noncommercial enterprise" under the ZO to be an undertaking or project of scope that entails some level of difficulty, complexity, or risk, not necessitating a business or commercial element.

Applying these definitions to the present case, the Court finds that the defendants' hobby-use of the property constitutes a noncommercial enterprise. While the activity of collecting antique construction vehicles and equipment may not ordinarily be considered a noncommercial enterprise, the sheer scale and scope of the defendants' operation is sufficient in this case to qualify the use as a noncommercial enterprise. Their hobby admittedly requires "quite a bit of time" and "demands quite a bit of . . . effort." (2/22/2023 Tr. at 3:33.) The acreage on the Property covered by the defendants' collection is expansive, occupying significantly more acreage than the home itself. (See Ex. 9.) The process of repairing these motor vehicles and machines, as well as loading them onto flatbed truck with the use of a crane if necessary to transport them to HCEA shows and exhibitions across the country, may be fairly described as difficult, complicated, and risky. Thus, while the defendants are not operating an establishment or place of business at the Property, but instead storing these vehicles and machines as a hobby and for personal use, such activity in this case qualifies as a noncommercial enterprise.

Because the defendants' use constitutes a noncommercial enterprise under the

ZO, the defendants are required to obtain special exception approval from the ZBA. It is undisputed that the defendants do not have the necessary approvals. Therefore, their use of the Property violates the ZO. Having found that the defendants' hobby-use of the Property in its current scale violates the ZO, the Court need not determine whether a junk yard use, which is factually indistinguishable from the defendants' hobby-use, is prohibited by the ZO as the Town seeks the exact same relief for this claim.

III. Relief

The Town requests injunctive relief pursuant to RSA 676:15 and RSA 236:128 to stop the defendants from operating a junk yard in violation of RSA 236:114 and operating a noncommercial enterprise on the property in violation of the Town's ZO. RSA 676:15 provides:

> in case any . . . land is . . . used in violation . . . of any local ordinance, code, or regulation adopted under this title, . . . the building inspector or other official with authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title . . . may . . . in addition to other remedies provided by law, institute injunction . . . to prevent, enjoin, abate, or remove such unlawful [use][.]"

Additionally, RSA 236:128 authorizes local governing bodies to enforce provisions of the state statutes regulating the existence, operation, and use of junk yards, by seeking, *inter alia*, injunctive relief. As stated previously, the Court finds that the defendants are operating or maintaining a junk yard in violation of RSA 236:114 and the use of the Property is therefore a nuisance. The Court also finds that the defendants' use of the Property constitutes a noncommercial enterprise without a special exception in violation of the Town's ZO. The Court understands that the defendants are deeply passionate about their hobby of collecting construction vehicles and equipment, however, such passion does not relieve them of the obligation to conduct their hobby within the

parameters outlined by statute and the ZO. Consistent with these findings and due to the sheer scale of the defendants' violative use, as well as the likelihood that such use will only continue to expand, the Court finds that injunctive relief to abate the land use violations is an appropriate remedy under these circumstances. Thus, the Court makes the following orders:

(1) The defendants shall bring the Property into compliance with state law and the Town's ZO by either removing all materials which constitute a junk yard pursuant to RSA 236:112 and their noncommercial enterprise use, or

(2) Apply for the necessary land use approvals including the required special exception, site plan approval, and license, within 30 days of the date of this order. If the defendants do not obtain such approvals and license, then the defendants shall bring the Property into compliance as described in paragraph (1) above.

If the defendants fail to comply with these terms, the Town may, consistent with the authority granted by RSA 236:128, III, impose a civil penalty of up to $50 per day for every day that the nuisance and/or violation continues, until such time as it is abated to the Town's satisfaction.

In addition to injunctive relief, the Town also seeks the imposition of civil fines and penalties pursuant to RSA 676:17, I. RSA 676:17, I, allows the Court to award a $275 penalty for the violation of a zoning ordinance plus additional penalties of $275 for each day that the violation continues after the landowner receives written notice of the violation. See City of Rochester v. Corpening, 153 N.H. 571, 575 (2006). The Town asserts that the $275 per day penalties began to run on May 16, 2019, the date of

service of the most recent notice violation, up until April 3, 2022. It therefore seeks the imposition of $389,950 in civil fines and penalties. (Pl.'s Proposed Order, Prayer for Relief C.) The Court finds that there is no equitable purpose to impose statutory fines on the defendants. The main goal of the Town's present action is to remedy the condition of the Property and current land use violations. This order will accomplish those goals. Additionally, to impose such steep fines on the defendants will likely make it more financially difficult for them to bring the Property into conformity with the land use requirements, consistent with the terms of this order. Therefore, the Court declines to impose statutory fines on the defendants. See 153 N.H. at 575 ("RSA 676:17, I(b) grants the trial court the authority to determine whether or not to impose a penalty and the amount of the penalty should it choose to impose one.").

Additionally, the Town seeks reasonable costs and attorney's fees incurred in bringing and pursuing this litigation pursuant to RSA 676:17, II. RSA 676:17, II, provides, in relevant part:

> In any legal action brought by a municipality to enforce, by way of injunctive relief . . . or otherwise, any local ordinance, code or regulation adopted under this title, . . . the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be the prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses . . . .

(Emphasis added).

Because the Town is the prevailing party in this action to enforce a local ordinance, the Court finds that they are therefore entitled to recover costs and reasonable attorney's fees. The Town shall submit a full accounting of its attorney's

fees and costs within 60 (sixty) days of the clerk's notice of this order.[4]

So ordered.

Date: June 2, 2023

Hon. Charles S. Temple,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 06/02/2023

[4] In its proposed order, the Town indicates that it is seeking a post-judgment attachment on the Property for any civil penalties assessed as well as approved attorney's fees and costs. (See Pl.'s Proposed Order Prayer for Relief (e).) The Town did not request such relief in its initial complaint, or by any motion prior to or during trial. As such, the Court declines to impose a post-judgment attachment on the Property for the Town's reasonable costs and attorney's fees. However, the Town is not prohibited from filing a motion for post-judgment attachment after the amount of attorney's fees and costs are determined by the Court.