

15. Restoration of right to possess firearms. Exclusive jurisdiction to conduct de novo review of a determination by the Commissioner of Public Safety pursuant to Title 15, section 393, subsection 4-A.

[2007, c. 670, §3 (NEW) .]

SECTION HISTORY

1965, c. 236, (AMD). 1969, c. 587, (AMD). 1971, c. 38, (AMD). 1971, c. 117, §1 (AMD). 1971, c. 175, (AMD). 1971, c. 544, §6 (AMD). 1975, c. 54, §1 (AMD). 1975, c. 430, §§2,3 (AMD). 1975, c. 552, §1 (AMD). 1975, c. 770, §11 (AMD). 1977, c. 401, §1 (AMD). 1979, c. 127, §11 (AMD). 1979, c. 540, §§4,5 (AMD). 1979, c. 663, §7 (AMD). 1979, c. 700, §1 (AMD). 1981, c. 470, §A4 (AMD). 1981, c. 585, §1 (AMD). 1981, c. 645, §1 (AMD). 1983, c. 29, §1 (AMD). 1983, c. 275, (AMD). 1983, c. 447, §1 (RPR). 1983, c. 583, §1 (AMD). 1983, c. 796, §1 (RPR). 1985, c. 162, §1 (AMD). 1985, c. 293, §§1,2 (AMD). 1985, c. 563, §1 (AMD). 1985, c. 746, §2 (AMD). 1987, c. 192, §1 (AMD). 1987, c. 419, §1 (AMD). 1987, c. 737, §§C2,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C1,C8,C10 (AMD). 1989, c. 287, §§1,2 (AMD). 1989, c. 311, §§1,2 (AMD). 1989, c. 392, §§1,2 (AMD). 1989, c. 415, §1 (AMD). 1989, c. 573, §1 (AMD). 1989, c. 878, §§A6,7 (AMD). 1989, c. 919, §§1,2,18 (AMD). 1991, c. 377, §1 (AMD). 1993, c. 349, §3 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 65, §A2 (AMD). 1995, c. 694, §§D2,3 (AMD). 1995, c. 694, §E2 (AFF). 1999, c. 547, §§A1,B5,6 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 731, §ZZZ4 (AMD). 1999, c. 731, §ZZZ42 (AFF). 1999, c. 778, §1 (AMD). RR 2001, c. 2, §A2 (COR). 2001, c. 229, §1 (AMD). 2001, c. 471, §A1 (AMD). 2001, c. 471, §A2 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 65, §C1 (AMD). 2005, c. 240, §§1-3 (AMD). 2007, c. 670, §§1-3 (AMD). 2009, c. 112, Pt. B, §§1, 2 (AMD). 2011, c. 80, §§1-3 (AMD). 2011, c. 120, §1 (AMD). 2011, c. 542, Pt. A, §1 (AMD). 2011, c. 614, §1 (AMD). 2011, c. 682, §38 (REV).

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FORMS, INSTRUCTIONS & SAMPLES

NOTICE OF VIOLATION

Code Enforcement Officer
TOWN OF _____,
_____, Maine

(date)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: NOTICE of Violations and ORDER to Correct Violations of the Zoning Ordinance
Property Located at _____, _____, Maine
Assessor's Map _____, Lot _____
DATE OF ISSUANCE: _____

Dear _____:

Pursuant to Section _____ of the Zoning Ordinance of the Town of _____, Maine ("Zoning Ordinance"), you are hereby notified of the following violations of the Zoning Ordinance on the above-referenced property:

1. _____

2. _____

Page 2 of 2

You are hereby ORDERED to take the following actions to correct those violations:

1. _____

2. _____

Unless these violations are corrected by the dates indicated above, I will refer this matter to the municipal officers for possible commencement of legal action in the Maine District Court or the Maine Superior Court. If the Town is the prevailing party in enforcement litigation, you may be liable for the Town's attorney fees and costs plus civil penalties. Fines of up to \$2,500.00 per violation per day may be imposed.

If you wish to dispute anything in this Notice and Order, you may appeal to the _____ Board of Appeals pursuant to Section _____ of the Zoning Ordinance. Such appeal must be filed in the office of the Code Enforcement Officer at the _____ Town Hall on forms provided by the Town, together with the appropriate filing fee, within thirty (30) days after the date of issuance of this Notice and Order. Failure to appeal within thirty (30) days may deprive you of your ability to contest the contents of this Notice and Order in any subsequent proceedings. However, filing an appeal to the Board of Appeals does not relieve you of your responsibility to correct the violations or of your liability for civil penalties.

If you have any questions about what you need to do to comply with this Order, please contact me immediately,

Sincerely,

Code Enforcement Officer

State of Maine
County of _____ ss

DISTRICT COURT
CIVIL ACTION
DOCKET NO. _____

(Name of Town))
Plaintiff)
vs.)

(Name of Violator))
Defendant)

**LAND USE CITATION
AND COMPLAINT
Pursuant to M.R.Civ.P. 80K**

THE PLAINTIFF ALLEGES:

1. Violation:

Date of Violation, or When First Observed by Complaining Official
Month _____ Day _____ Year _____ Time _____ AM/PM
Location of Violation _____
City/Town _____

2. Description of Violation:

3. Legal Basis of Complaint:

_____ Violation of State Law:
Title _____, Section _____ OR State Agency Rule # _____
Adopted by the Department of _____

_____ Violation of Municipal Ordinance or Regulation:
Title _____, Section _____, Page _____, Summary of law,
Ordinance, or regulation allegedly violated

Penalty Provision : Section _____ Page _____
Penalty Amount: _____

4. Relief Sought From Court:

- _____ Temporary Restraining Order (Attach Affidavit)
- _____ Preliminary Injunction
- _____ Permanent Injunction
- _____ Civil Penalty
- _____ Removal of Violation
- _____ Other

Dated: _____

[Insert Name of Code Enforcement Officer]
Certified Code Enforcement Officer,
[Insert Name of Town]
[Insert Mailing Address]
[Insert Town, State and Zip Code]
[Insert Telephone Number]

Citation

You are hereby summoned to appear in Maine District Court at the location, date and time indicated below to answer to the above Complaint.

In the event of your failure to appear and state your defense on the court date specified a judgment by the default may be rendered against you. You are advised to call the District Court to verify the date and time of your appearance.

- Address of Court:
- Telephone Number of Court:
- Date and Time of Hearing:

Signature of Complainant

State of Maine
County of _____, ss

DISTRICT COURT
CIVIL ACTION
DOCKET NO. _____

Dept. of Environmental Protection)
)
) Plaintiff)
)
 vs.)
)
)
 _____)
 (Name of Violator))
)
) Defendant)

LAND USE CITATION & COMPLAINT
Pursuant to M.R.Civ.P. 80K

THE PLAINTIFF ALLEGES:

1. Violation:

Date of Violation, or When First Observed by Complaining Official
Month _____ Day _____ Year _____ Time _____ AM/PM
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Title _____, Section _____ OR State Agency Rule # _____
Adopted by the Department of _____

_____ Violation of Municipal Ordinance or Regulation:
Title _____, Section _____, Page _____, Summary of law,
Ordinance, or regulation allegedly violated

_____ **A-6-DEP** _____

Penalty Provision : Section _____ Page _____
Penalty Amount: _____

4. Relief Sought From Court:

- _____ Temporary Restraining Order (Attach Affidavit)
- _____ Preliminary Injunction
- _____ Permanent Injunction
- _____ Civil Penalty
- _____ Removal of Violation
- _____ Other

Dated: _____

[Insert Name of DEP Employee]
Certified DEP Employee,
[Insert Mailing Address]
[Insert Town, State and Zip Code]
[Insert Telephone Number]

Citation

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In the event of your failure to appear and state your defense on the court date specified a judgment by the default may be rendered against you. You are advised to call the District Court to verify the date and time of your appearance.

- Address of Court:
- Telephone Number of Court:
- Date and Time of Hearing:

Signature of Complainant

State of Maine
County of _____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO. _____

(Name of Town))
Plaintiff)
vs.)

(Name of Violator))
Defendant)

RETURN OF SERVICE

On the _____ day of _____, 20__ I made service of the
_____ upon the _____,
(Document served) (Defendant/Property Owner) (Name)
at _____
(Address of Place of Service)

_____ By delivering a copy in hand.

_____ By leaving copies at the individual's dwelling house or usual place
of abode with a person of suitable age or discretion who resided
therein; and whose name is _____

_____ By delivering a copy to an agent authorized to receive service of
process, and whose name is _____; at

_____ By (describe other manner of service):

DATED: _____

Signature of Person Making Service

Title

State of Maine
County of _____, ss

DISTRICT COURT
CIVIL ACTION
DOCKET NO. _____

Dept. of Environmental Protection)
)
 Plaintiff)
)
 vs.)
)
 _____)
 (Name of Violator))
)
 Defendant)

RETURN OF SERVICE

On the _____ day of _____, 20__ I made service of the
_____ upon the _____,
(Document served) (Defendant/Property Owner) (Name)
at _____
(Address of Place of Service)

- _____ By delivering a copy in hand.
- _____ By leaving copies at the individual's dwelling house or usual place of abode with a person of suitable age or discretion who resided therein; and whose name is _____
- _____ By delivering a copy to an agent authorized to receive service of process, and whose name is _____; at _____
- _____ By (describe other manner of service):

DATED: _____

Signature of Person Making Service

Title

State of Maine
County of _____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

(Name of Town))
Plaintiff)
vs.)

(Name of Violator))
Defendant)

ORDER

Attorney for alleged violator _____

Authorized Representative/Attorney of Complainant _____

Admit/Deny _____

Finding _____

Other disposition: Dismissed _____ Transferred _____

Appealed _____ Continued _____

Hearing Date _____ Amount of Civil Penalty _____

Amount Paid _____

Correction or Abatement Ordered _____ Deadline _____

Failed to Appear _____ Warrant Issued _____

DATED: _____

Judge, District Court

STATE OF MAINE
YORK, ss.

MAINE DISTRICT COURT
BIDDEFORD
Docket No.:

TOWN OF [REDACTED])
)
and)
)
[REDACTED] as code enforcement)
officer of the Town of [REDACTED])
)
Plaintiffs)
)
v.)
)
[REDACTED])
)
)
Defendants/Alleged Violators)

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

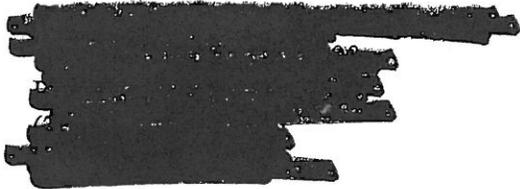
Plaintiffs [REDACTED] and the Town of [REDACTED] (the "Town") move pursuant to Rules 65 and 80K of the Maine Rules of Civil Procedure for a temporary restraining order and preliminary injunction restraining Defendants [REDACTED] [REDACTED] and their guests and invitees, from entering and/or occupying the newly constructed residence located on [REDACTED] Assessor's Tax Map 14, Block 002, Lot 3 (house lot) and/or the adjacent property identified as Tax Map 14, Block 002, Lot 06 (which is an undeveloped lot), [REDACTED] (the "Subject Properties") and ordering that the Town may demolish and remove the newly constructed residence on the Subject Properties, which is in violation of Subsurface Wastewater Disposal Rules issued by the Maine Department of Health and Human Services (144A Code of Me. Rules 241, Section 119 in the International Residential Code for One and Two Family Dwellings 2003, the National Fire Protection Safety Association,

Life Safety Code 101, adopted as the fire safety code by the Town, and numerous provisions of the Town's Land Use Ordinance (the "Ordinance"), as well as 17 M.R.S.A. § 2802, 17 M.R.S.A. § 2851 and 30-A M.R.S.A § 4452.

Dated: April 24, 2012



Attorney for Plaintiffs , Code
Enforcement Officer, and
Town of 



STATE OF MAINE
YORK, ss.

MAINE DISTRICT COURT
BIDDEFORD
Docket No.:

TOWN OF [REDACTED])
)
 and)
)
 [REDACTED], as code enforcement)
 officer of the Town of [REDACTED],)
)
 Plaintiffs)
)
 v.)
)
 [REDACTED])
 [REDACTED])
)
 Defendants/Alleged Violators)

PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

Plaintiffs [REDACTED] and the Town of [REDACTED] (the "Town") bring this action for land use violation pursuant to Rules 65 and 80K of the Maine Rules of Civil Procedure and seek an order restraining Defendants [REDACTED] from entering and/or occupying the newly constructed residence located on [REDACTED] [REDACTED] Assessor's Tax Map 14, Block 002, Lot 3 (house lot) and/or the adjacent property identified as Tax Map 14, Block 002, Lot 06 (which is an undeveloped lot), [REDACTED] (the "Subject Properties") and ordering that the Town may demolish and remove the newly constructed residence on the Subject Properties, which is in violation of Subsurface Wastewater Disposal Rules issued by the Maine Department of Health and Human Services (144A Code of Me. Rules 241, Section 119 in the International Residential Code for One and Two Family Dwellings 2003, the National Fire Protection Safety Association, Life Safety Code 101, adopted as the fire safety code by the Town, and numerous provisions of the Town's Land Use Ordinance (the "Ordinance"), as well as 17 M.R.S.A. § 2802, 17 M.R.S.A. § 2851 and 30-A M.R.S.A § 4452. In support thereof, Plaintiffs further state as follows.

MEMORANDUM

FACTS

The facts underlying this case are set forth in full in the Land Use Citation and Complaint dated April 24, 2012 and Affidavit of [REDACTED] Code Enforcement Officer of the Town of [REDACTED]

[REDACTED] They are as follows:

[REDACTED] own property located [REDACTED] Assessor's Tax Map 14, Block 002, Lot 3 (house lot), and adjacent property identified as Tax Map 14, Block 002, Lot 06 (which is an undeveloped lot), [REDACTED] (the "Subject Properties"). [REDACTED] ¶ 4, Exhibit A. On June 11, 2011 in response to a complaint, [REDACTED] entered the Subject Properties and spoke with [REDACTED] who identified himself as the builder of a new residence on the Subject Properties that was in the process of being constructed. Later that day, I entered the Subject Properties along with [REDACTED], the Assistant to the Assessors, Town Planner and Deputy Code Enforcement Officer for the Town of [REDACTED] and [REDACTED] took several photographs of the new residence on the Subject Properties. [REDACTED] ¶ 5, Exhibits A-E.

No building permit has ever been issued by me or the Town of [REDACTED] permitting the construction of a new residence on the Subject Properties [REDACTED].

[REDACTED] ¶ 5a. On or about April 10, 2012, Detective [REDACTED] of the [REDACTED] Police Department entered the Subject Properties while investigating a criminal complaint and reported that to me that an individual appeared to be residing in the newly constructed residence on the Subject Properties. [REDACTED] ¶ 5b. No certificate of occupancy has ever been issued by me or the Town of [REDACTED] permitting the occupancy of a new residence on the Subject Properties. [REDACTED] ¶ 5c.

Upon receiving Detective [REDACTED] report on April 10, 2012, I sought the consent of [REDACTED]

[REDACTED] to enter the Subject Properties and inspect the newly constructed residence pursuant to

30-A M.R.S.A. § 4452(1)(A). [REDACTED] § 5d. [REDACTED] refused to consent to an inspection.

[REDACTED] § 5e. Upon Application, an Order for Administrative Inspection Warrant was issued on April 12, 2012 by this Court. [REDACTED] § 6.

On April 18, 2012 following notice to [REDACTED] inspected the Subject Properties and the newly constructed residence located on the Subject Properties pursuant to the Administrative Inspection Warrant. [REDACTED] §§ 6-8. The inspection revealed, among other problems, that there was no plumbing benefitting the newly constructed residence on the Subject Properties, no cooking or cleaning facilities and inadequate means of egress; the installation of a wood heating stove and metal chimney was unsafe, and no smoke alarms had been installed; the stairway to second floor has no handrails or guardrails and is, therefore, unsafe, and the fiberglass insulation in the newly constructed residence is not covered; structurally, the newly constructed residence will not meet any codes – it has no foundation, no siding, and the roof is not finished; the lot/building site is hazardous due to construction waste materials all around the Subject Properties. [REDACTED] § 9, Exhibits F1 – F20.

The Subject Properties and the newly constructed residence are in violation of the Subsurface Wastewater Disposal Rules issued by the Maine Department of Health and Human Services (144A Code of Me. Rules 241), Section 119 in the International Residential Code for One and Two Family Dwellings 2003 and the National Fire Protection Safety Association, Life Safety Code 101, adopted as the fire safety code by the Town. In addition, the Subject Properties and the newly constructed residence constitutes an illegal junkyard and violate numerous provisions of the Town's Ordinance, including but not limited to Articles 11.2, 11.8 and 11.12, which require the issuance of building, occupancy and growth permits. Regardless, the lot in question does not meet the standards for a dwelling under Article 11.2(B) and has no frontage on a street or private road (see definitions for lot lines), and so no permits can be issued for these reasons, as well as the reasons discussed above. [REDACTED] § 10.

No subsurface waste water disposal system has been installed benefitting the newly constructed residence on the Subject Properties, which violates Article 6.11 of the Ordinance. Instead, a toilet seat on top of a bucket is being used. Regardless, the lot does not meet the requirements for the installation of a septic system under Article 6.3. *See id.*

Plaintiffs brought this action in order to protect health and safety of any occupants of the newly constructed residence and anyone on or near the Subject Property. As set forth below, all of the factors bearing on the issue weigh in favor of granting Plaintiffs the requested relief.

ARGUMENT

I. The Standards to be Applied in Obtaining a Temporary Restraining Order

Pursuant to Me.R.Civ.P. 80K(a)(1)(C), Plaintiffs may seek a temporary restraining order against [REDACTED] if they have “reasonable grounds to believe that a violation of any provision of law . . . is being committed and that immediate and irreparable injury, loss or damage will result before the alleged violator can be heard personally or by counsel in opposition to the order.” In order to issue a temporary restraining order and grant injunctive relief, the Court must find that the following:

- (1) that plaintiff will suffer irreparable injury if the injunction is not granted;
- (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant;
- (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and
- (4) that the public interest will not be adversely affected by granting the injunction.

Ingraham v. University of Maine at Orono, 441 A.2d 691, 11593 (Me. 1982).

II. Plaintiffs have Met the Applicable Standards

A. Immediate and Irreparable Harm to the Plaintiffs and Public

As discussed in the Land Use Citation and Complaint dated April 24, 2012 and Affidavit of [REDACTED], Plaintiffs represent the public interest and are required to protect the health, safety and well-being of the residents of [REDACTED] and the general public from serious and irreparable harm. *See Dep't of Environ. Prot. v. Emerson*, 563 A.2d 762, 770 (Me. 1989). By constructing a building on the Subject Properties without the necessary permits, by failing to install plumbing facilities, cooking and cleaning facilities and a subsurface waste water disposal system benefitting the newly constructed residence, by constructing a structurally unsafe building and installing an unsafe wood heating stove and metal chimney, by leaving hazardous construction waste materials all around the Subject Properties, and for all of the reasons discussed herein, [REDACTED] are violating State and local law, and Plaintiffs are unable to adequately protect the health, safety and well-being of the public as a result of these violations. Thus, Plaintiffs and the public will suffer serious and irreparable harm unless the Court immediately enters an order enjoining [REDACTED] and anyone else from entering and/or occupying the newly constructed residence located on the Subject Properties.

B. Lack of Harm to the Defendant

In contrast to Plaintiffs, there is no harm that will result to [REDACTED] if the requested injunction is granted. They had no right to construct the building without the proper permits, and the building is in violation of numerous provisions of State and local law as discussed above. [REDACTED] will, therefore, not be harmed by the Court granting Plaintiffs their requested injunctive relief. *See Dep't of Environ. Prot. v. Emerson*, 563 A.2d at 770 ("The harm to [Defendant] is not the burden and cost of compliance with applicable law. The harm that