granting the preliminary injunction causes [Defendant] is simply the harm of taking the required steps now rather than later, after the trial on the merits.").

C. Likelihood of Success on the Merits

The applicable standard bearing on whether a moving party has satisfied the "likelihood of success" element varies depending on the circumstances of each case. *See Ingraham*, 441 A.2d at 693 (describing the likelihood of success standard as requiring, "at most, a probability; at least, a substantial possibility"); *see also Dep't of Environ. Prot. v. Emerson*, 563 A.2d at 768 ("The *Ingraham* criteria are not to be applied woodenly or in isolation from each other; rather, the court of equity should weigh all of these factors together in determining whether injunctive relief is proper in the specific circumstances of each case.").

In this case, 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, and numerous provisions of the Town's Ordinance. [redacted] ¶ 10.

The Subject Properties and the newly constructed residence thereon also constitute an illegal junkyard under 17 M.R.S.A. § 2802 and the Ordinance, and violate numerous other provisions of the 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, and so no permits can be issued for these reasons, as well as the reasons discussed above. [redacted] ¶¶ 9-10.

The newly constructed residence on the Subject Properties constitutes a dangerous building under 17 M.R.S.A. § 2851. It is structurally unsafe; unstable; unsanitary; constitutes a

fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment and that is otherwise dangerous to life or property. [redacted] ¶¶ 9-10.

Finally, 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. Regardless, the lot does not meet the requirements for the installation of a septic system under Article 6.3 of the Ordinance. [redacted] ¶ 10.

For all of these reasons, Plaintiffs are likely to prevail on the merits in this case.

III. There Is Good Cause to Waive the Giving of Security

Pursuant to Rule 80K(d), Plaintiffs are "not required to give security as a condition upon the issuance" of a temporary restraining order.

CONCLUSION

Accordingly, for the reasons discussed herein, Plaintiffs [redacted] and the Town of [redacted] respectfully request that this Court enter a temporary restraining order against Defendants [redacted] order them and others from entering and/or occupying the newly constructed residence located on the Subject Properties, and ordering that the Town may demolish and remove the newly constructed residence on the Subject Properties, as requested in the form attached.

Dated: April 24, 2012

[redacted]
Attorney for Plaintiffs [redacted], Code Enforcement Officer, and Town of [redacted]

[redacted]
30

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

AFFIDAVIT OF [redacted]
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

[redacted], having been duly sworn, does depose and say:

1. I am the Code Enforcement Officer for the Town of [redacted] Maine ("the Town"), and I make this affidavit based on my personal knowledge.

2. I am an official and employee of the Town of [redacted] and am authorized by law to conduct inspections of properties located within the Town. Pursuant to Article III, section 3.4 of the Town's Administrative Code, my duties include the enforcement of the Town's Land Use Ordinance (the "Ordinance"), the Planning Board Regulations, the State Plumbing Code and any applicable federal and state statutes.

3. I am submitting this Affidavit in support of Plaintiffs' request for a temporary restraining order and injunctive relief.

4. The subject properties in question are owned by [redacted] and identified as [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), in [redacted] (the "Subject Properties").

5. On or about June 11, 2011, I received a complaint regarding the Subject Properties. I entered the Subject Properties and spoke with [redacted], who identified himself as the builder. 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]. During this time [redacted] took several photographs of a new residence on the Subject Properties that was in the process of being constructed. True copies of the photographs are attached hereto as Exhibits A-E.

a. 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]

b. 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.

c. 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.

d. Upon receiving Detective [redacted] report on April 10, 2012, I sought the consent of [redacted] to enter the Subject Properties and inspect the newly constructed residence pursuant to 30-A M.R.S.A. § 4452(1)(A).

e. [redacted] refused to consent to an inspection.

6. Upon Application, an Order for Administrative Inspection Warrant was issued on April 12, 2012 by this Court.

7. At approximately 11:15 a.m. on April 18, 2012 following notice to [redacted] accordance with the Application and Warrant, I conducted an inspection of the Subject Properties and the newly constructed residence located on the Subject Properties pursuant to the Administrative Inspection Warrant. I was accompanied on this inspection by [redacted] Police Officer [redacted] Detective [redacted], Lt. [redacted] and Police Chief [redacted]

8. The inspection was conducted in the following manner. Chief [redacted] and Lt. [redacted] approached the house [redacted], while I continued to the residence in question with Detective [redacted] and Officer [redacted] I approached the house and knocked on the door, stating my name and that I had an inspection warrant. After a brief wait, I received notification from Chief [redacted] that no one was in the residence, at which point I entered the newly constructed residence located on the Subject Properties.

9. The above inspection revealed the following conditions on the Subject Properties and the newly constructed residence:

No plumbing; inadequate means of egress; unsafe installation of a wood heating stove and metal chimney; unsafe stairway to second floor as it has no handrails or guardrails; no cooking or cleaning facilities; no smoke alarms; fiberglass insulation not covered; structurally, the building will not meet any codes; building has no foundation, no siding and roof is not finished; the lot/building site is hazardous due to construction waste materials. Photographs were taken with a digital camera as the inspection proceeded. True Copies of the photographs are attached hereto as Exhibit F1 – F20.

10. The inspected Subject Properties and the newly constructed residence are in violation of the following regulations and laws:

- 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
- Ordinance Articles:
    - **11.2(B)** Permit required to build dwelling. No permit applied for to build dwelling. Would not meet definition of buildable lot.
    - **11.8** Occupancy Permit required before moving in. No permits obtained and no occupancy inspections done. No Certificate of Occupancy issued.
    - **11.12(B)** Growth Permit. No Growth Permit was applied for.
    - Lot does not meet standards for a dwelling under the ordinance (Article 11.2(B)). It has no frontage on a street or private road (see definitions for lot lines). No permit can be issued.
    - **6.3 Soil Suitability**. Does not meet requirements for septic system installation.
    - **6.11** Sanitary Provisions. No septic and water onsite. Toilet seat and bucket being used as toilet facilities.
    - **2.2(B)** Junkyard. Subject Properties constitute a junkyard under the Ordinance.

11. I left a copy of the Administrative Inspection Warrant on the floor inside the building.

12. Pursuant to Rule 80K(d), Plaintiffs are "not required to give security as a condition upon the issuance" of a temporary restraining order. Me. R.Civ.P. 80K (d).

Dated:

_____
[redacted]

STATE OF MAINE
YORK, ss.

April ___, 2012

Personally appeared before me the above-named [redacted], and being duly sworn made oath that the foregoing statements by him are true, correct and based upon his personal knowledge, information and belief.

Before me,

_____
Notary Public/Attorney At Law

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

ORDER

Upon the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction of Plaintiffs [redacted] and the Town of [redacted] this Court finds as follows:

1. That Plaintiffs have established they are likely to succeed in proving their allegations that: (a) [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"), and [redacted] may be residing in the newly constructed residence on the Subject Properties; and (b) 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 in violation of 17 M.R.S.A. § 2802 and the Ordinance, dangerous building in violation of 17 M.R.S.A. § 2851, 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. 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, and so no permits can be issued for these reasons, as well as the reasons discussed above. 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 and the lot does not meet the requirements for the installation of a septic system under Article 6.3.

2. The Court further finds that, under these circumstances, 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.

3. The Court further finds that such injury outweighs any harm which the granting of the injunction would inflict on the Defendants.

4. The Court also finds that the public interest will not be adversely affected by the granting of this injunction.

5. The giving of security is not required pursuant to Me.R.Civ.P. 80K(d).

On the basis of the foregoing findings and for other reasons that may be stated on the record, this Court hereby ORDERS, ADJUDGES, and DECREES that Defendants [redacted] and their guests and invitees are hereby restrained from entering and/or occupying the newly constructed residence located on the

Subject Properties. This Court further ORDERS, ADJUDGES, and DECREES that the Town [redacted] may demolish and remove the newly constructed residence located on the Subject Properties, and the costs of said demolition and removal are to be taxed, jointly and severally, to Defendants [redacted] This Order shall remain in effect until a preliminary injunction is heard and decided or until otherwise modified by this Court.

This Order may be incorporated by reference on the docket.

DATED:

_____
Judge, Maine District Court

LETTER TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REQUESTING CERTIFICATION OF STATE RECORDS

(Date)

Director
Department of Health and Human Services
Division of Health Engineering
State House Station #10
Augusta, Maine 04333

Dear Director:

As Local Enforcement Official for the Town of _____, I am preparing a court action for violation of the State of Maine (Plumbing or Subsurface Wastewater Disposal Rules).

I am requesting a copy of section of the State of Maine (Subsurface Wastewater Disposal Rules) with an attached affidavit stating that the copy is a true copy of that section of the Rules which have been duly adopted by the Department of Health and Human Services under the provisions of 22 M.R.S.A. § 42 and have been filed in the office of the Secretary of State in accordance with statutory requirements.

Trial is scheduled for ___(Date)___.

Very truly yours,

(Code Enforcement Officer's Name)
(Address)
Town of _____
Telephone No. _____

ORDINANCE CERTIFICATION

I, _____ the duly appointed Town Clerk for the Town of _____, hereby certify pursuant to 30-A M.R.S.A. § 3006 that the attached is a true and accurate copy of the _____ of the Town of _____, Maine as relates to _____ and that portion of the Zoning Map shown outlined in yellow as relates to _____ as has/have been in effect without change from _____ to the date hereof, except as amended on _____as shown.

Dated: _____, 20___

_____

Signature

Town Clerk

(Address)

(Telephone)

LETTER REQUESTING ELECTRONIC RECORDING

Name of Town
Address

Date

Clerk
District Court
Address

Re: Inhabitants of the (Insert name of Town) v. (Insert name of alleged violator)
Docket No. _____

Dear (Name of Clerk):

On behalf of the Plaintiff in the above-captioned matter and pursuant to M. R. Civ. P. 76 (H)(a), I am writing to request that the hearing scheduled for _____, be electronically recorded.

Should you have any questions regarding the above request, please contact me.

Very truly yours,

(Insert your name)
Code Enforcement Officer
Town of _____

LETTER AUTHORIZING LOCAL OFFICIAL TO REPRESENT MUNICIPALITY IN COURT

Office of the Selectmen
Name of Town
Address

(Date)

Clerk of Court
_____District Court
Address

Dear Sir or Madam:

At a duly advertised meeting of the Town of _____ Board of Selectmen held on _____, 20__, the Selectmen, in their capacity as the municipal officers of the Town of _____ voted to authorize (Code Enforcement Officer) to represent the Town of _____ in the prosecution and settlement of land use law violations pursuant to 38 M.R.S.A. § 441, 30-A M.R.S.A. § 4452 and 30-A M.R.S.A. § 3221.

(Code Enforcement Officer) is the only appointed code enforcement officer and certified local plumbing inspector for the Town of _____ and was certified by the Executive Department, State Planning Office as being familiar with 80K court procedures. Her appointment as Code Enforcement Officer expires on _____, 20__. She was certified by the State Planning Office for familiarity with court procedures on _____, 20__.

Sincerely,

(SEAL)

_____

_____

_____

Selectmen
Town of _____

(Note: Cite 38 M.R.S.A. § 441 only for officials involved in Shoreland Zoning enforcement)

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____)
(Name of Town))
Plaintiff)
)
vs.) **ENTRY OF APPEARANCE**
)
_____)
(Name of Violator))
)
Defendant)

NOW COMES _____, CERTIFIED Code Enforcement Officer for the Town of _____ and enters his/her appearance in the above captioned matter on behalf of Plaintiff, Town of _____.

Dated: _____

_____
(Name of Code Enforcement Officer),
Certified Code Enforcement
Officer and Building Inspector
Town of _____
_____ Street
Town, State, Zip Code
Telephone Number

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____)
(Name of Town))
Plaintiff)
)
vs.)
)
_____)
(Name of Violator))
)
Defendant)

MOTION TO ALLOW DISCOVERY PURSUANT TO M.R.Civ.P.80K WITH INCORPORATED MEMORANDUM OF LAW

The Plaintiff, through its certified local code enforcement officer and plumbing inspector, moves that this Court enter an order permitting Plaintiff to conduct discovery pursuant to M.R.Civ.P.80K(g) for the following reasons:

1. Plaintiff believes that there is good cause for the granting of such a discovery order.

2. On _____, 20__ the Plaintiff's Code Enforcement Officer visited the Defendant at Defendant (Name of alleged violator)'s office at (street/road) in (Name of Town).

3. Plaintiff's Code Enforcement Officer requested that Defendant provide him with copies of receipts for materials purchased for the construction of illegal leachfield located at 184 Pond Road in (Name of Town), a copy of the soils analysis performed at the site, and a copy of the design sketch of the leachfield.

4. Defendant has refused to voluntarily provide the requested documents and continue to refuse to comply with Plaintiff's request.

5. Plaintiff needs the requested documents in order to know what volume of fill material was used to construct the leachfield, the exact location of the leachfield, and whether the size of the leachfield is appropriate for the soils in which the leachfield and septic system were constructed.

6. An order for discovery is necessary because Plaintiff cannot obtain the information described above from any other source.

Dated: _____

_____
(Name of Code Enforcement Officer)
Certified Code Enforcement Officer
Town of _____, Plaintiff

NOTICE

You are hereby notified that if you fail to file an opposition to this Motion within 21 days after the filing of this Motion you will be deemed to have waived all objections to this Motion which may be granted without further notice or hearing.

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____)
(Name of Town))
Plaintiff)
)
vs.)
)
_____)
(Name of Violator))
)
Defendant)

MOTION TO AMEND RULE 80K LAND USE AND COMPLAINT WITH INCORPORATED MEMORANDUM OF LAW

Plaintiff, by and through its certified local Code Enforcement Officer and certified Local Plumbing Inspector, moves that this Court grant an order amending the Land Use Citation and Complaint filed by Plaintiff in the above-captioned Rule 80K proceeding as follows:

1. To add a reference to § 10(26) of the (Name of Town) Shoreland Zoning Ordinance under the section of the complaint entitled "Legal Basis of Complaint: Violation of Municipal Ordinance or Regulation": § 10(26) requires a permit from the Code Enforcement Officer for filling involving more than 10 cubic yards of material. The leachfield excavation involved 25 cubic yards of fill, according to the bill sent to the property owner, Meg A Bucks (Plaintiff's Exhibit A).

2. To delete "(Name and number of street/road)" and replace it with "(New name and number of street/road)" on the "Notice to Property Owner." This is necessary to correct a typographical error.

WHEREFORE, Plaintiff prays that this Court order the requested amendments pursuant to M.R.Civ.P.80K(c)(2) which states that "motions for appropriate amendment of the Land Use Citation shall be freely granted."

Dated: _____

_____
(Name of Code Enforcement Officer),
Code Enforcement Officer
(Address)
(Town, State and Zip Code)
(Telephone number)

NOTICE

You are hereby notified that if you fail to file an opposition to this Motion within 21 days after the filing of this Motion you will be deemed to have waived all objections to this Motion which may be granted without further notice or hearing.

(NAME OF TOWN)
(Mailing Address)
(Town, State and Zip Code)

(Date)

_____, Clerk
District Court
Address

Re: Inhabitants of the (Insert Name of Town) v. (Insert Name of Alleged Violator), (Name of County) District Court Docket NO.#

Dear Ms. _____:

Please find enclosed for filing Plaintiff's "Motion to Amend Rule 80K Land Use Citation and Complaint with Incorporated Memorandum of Law" and Notice of Hearing form. I have served copies of these to the Defendant and the landowner. Pursuant to our telephone conversation, I have scheduled a hearing on this motion for (Insert date) at (Insert time).

Thank you.

Sincerely,

(Name of Code Enforcement Officer)
Certified Code Enforcement Officer
and Plumbing Inspector

cc: (Name of Alleged Violator)

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____)
(Name of Town))
Plaintiff)
)
vs.) **APPLICATION FOR ADMINISTRATIVE**
) **INSPECTION WARRANT**
) **PURSUANT TO M.R.Civ.P.80E**
_____)
(Name of Violator))
)
Defendant)

I, _____, being first duly sworn, depose and say under oath as follows:

My name is _____. The facts set forth herein are true based upon my personal knowledge.

1. This is an application pursuant to M.R.Civ.P.80E for an Administrative Inspection Warrant to enter upon and inspect certain property located in the Town of _____, _____ County, Maine. The property is shown on the Town Assessor's records as Map_____, Lot_____. According to the Assessor's records, the owner of the property is _____ Company. I am authorized under 30-A M.R.S.A. § 4452(1)(A) and under Section _____ of the Town of _____ Zoning Ordinance to enter onto property in order to inspect for compliance with the Zoning Ordinance. The purpose of the requested inspection is to determine whether _____Company is unlawfully extracting said and gravel from the property without a permit from the Town of _____ Planning Board, as required by Section _____ of the Town of _____ Zoning Ordinance.

2. The inspection being sought is not part of a general area inspection.

3. I have probable cause to believe that there is located on the premises to be inspected a gravel extraction operation being operated without the permit required by Section _____ of the Town of _____ Zoning Ordinance. The grounds for probable cause arise from my personal observations on [list dates]. On each of those dates, although I was denied access to the interior portion of the property, I parked on the public street at the driveway entrance to the property and observed activity there for at least two hours on each of those dates. During all of the times that I was parked in that location, I observed a steady flow of large dump trucks going to and from the property. The trucks would enter the property empty and leave with full loads of sand and gravel material. Most of the trucks were marked with the name _____ Company. In

addition, at those times when there was not a truck coming or going I could hear the sounds of heavy equipment coming from the interior of the property and could observe clouds of dust which, in my experience as a Code Enforcement Officer, are often associated with digging, processing and loading sand and gravel.

4. On _____, 20_____, I went to the business office of _____ Company and spoke with a Mr. _____, who identified himself as the company's President. I requested permission to inspect the property and he denied that request.

5. On _____, 20_____, [at least twenty-four hours in advance of the hearing] I gave _____ Company written notice of the time and place at which I intend to present this application to the court.

Dated: _____

_____

Code Enforcement Officer

STATE OF MAINE

County of _____, ss. [Date] , 20__

Then personally appeared before me the above-named _____, in his capacity of Code Enforcement Officer for the Town of _____, and made oath that the foregoing statements are true based on his personal knowledge.

Before me,

_____

Notary Public

Printed Name:

Commission Expires:

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____)
(Name of Town))
Plaintiff)
)
vs.)
)
_____)
(Name of Violator))
)
Defendant)

ADMINISTRATIVE INSPECTION WARRANT

Application having been made before me by _____, Local Plumbing Inspector for the Municipality of the Town of _____, that he has reason to believe that on the premises known as _____, Town of _____, County of _____, State of Maine there is located certain plumbing or work or construction regulating by the Maine State Plumbing Code and other related statutes which he is authorized by 30-A M.R.S.A. § 4221 and Section ____ of the Maine State Plumbing Code, to inspect, name, _____ and as I am satisfied that there is probable cause to believe that such plumbing, work, or construction is located on the premises so described.

YOU ARE HEREBY COMMANDED to allow inspection of said premises by _____, Local Plumbing Inspector, serving this warrant and making the inspection in the daytime, for the purposes of inspecting plumbing, work, or construction to insure compliance with the Maine State Plumbing Code and related statutes.

Dated the _____ day of _____, 20_____.

_____
District Court Judge

NOTICE OF APPLICATION FOR ADMINISTRTIVE INSPECTION WARRANT

TO:

This is to notify (Name of Alleged Violator), the owner (or occupant) of the premises known as (Address), in the Municipality of (Name of Town), County of _____, State of Maine that on the _____ day of _____, at _____ o'clock, the Local Plumbing Inspector intends to present an application for an Administrative Inspection Warrant for the inspection of the above named premises. This application shall be made before the District Court, District Number _____, Division of _____. You have the right to be present to state your opposition, if any, to the issuance of the warrant.

DATED: _____

_____

(Name of Code Enforcement Officer),
Local Plumbing Inspector
(Name of Town)
(Mailing Address)
(Town, State and Zip Code)
(Telephone Number)

This notice was delivered in hand to _____ on the _____ day of _____, 20__, at _____ o'clock a.m./p.m.

_____

(Name of Code Enforcement Officer),
Local Plumbing Inspector

STATE OF MAINE
YORK, ss.

MAINE DISTRICT COURT
BIDDEFORD
Docket No.:

In re: Application for Administrative Inspection Warrant of [redacted] and Adjacent Lot in [redacted] Maine

APPLICATION OF [redacted] CODE ENFORCEMENT OFFICER, TOWN OF [redacted], FOR ADMINISTRATIVE INSPECTION WARRANT TO INSPECT [redacted] AND ADJACENT LOT IN [redacted], MAINE

[redacted], having been duly sworn, does depose and say:

1. I am the Code Enforcement Officer for the Town of [redacted], Maine, and I make this affidavit in support of the Application for an Administrative Inspection Warrant of [redacted] identified as 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), in [redacted] (the "Subject Properties").

2. I am an official and employee of the Town of [redacted] ("the Town") and am authorized by law to conduct inspections of properties within the Town. Pursuant to Article III, section 3.4 of the Town's Administrative Code, my duties include the enforcement of the Town's Land Use Ordinance, the Planning Board Regulations, the State Plumbing Code and any applicable federal and state statutes.

3. The Subject Properties are owned by [redacted]

[redacted]

4. I am seeking this Administrative Inspection Warrant of the Subject Properties because I have probable cause to believe that there are violations of state and local law on the Subject Properties.

5. The basis for such probable cause is the following:

a. On or about June 11, 2011, I received a complaint regarding the Subject Properties. I entered the Subject Properties and spoke with [redacted] who identified himself as the builder.

b. Later that day, I entered the Subject Properties with [redacted] the Assistant to the Assessors, Town Planner and Deputy Code Enforcement Officer for the Town of Kennebunkport, and he took several photographs of a new residence on the Subject Properties that was in the process of being constructed. True copies of the photographs are attached hereto as Exhibits A-G.

c. 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]

d. On or about April 10, 2012, Detective [redacted] of the [redacted] Police Department entered the Subject Property while investigating a criminal complaint and reported to me that an individual appeared to be residing in the newly constructed residence on the Subject Properties.

e. 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 Property.

f. Upon receiving Detective [redacted] report on April 10, 2012, I sought the consent of [redacted] to enter the Subject Properties and inspect the newly constructed residence pursuant to 30-A M.R.S.A. § 4452(1)(A).

g. [redacted] refused to consent to an inspection.

6. I believe that there are a number of violations at the Subject Properties of state and local laws and regulations that I am authorized to enforce, including but not limited to:

a. The Maine Department of Human Services, Subsurface Waste Water Disposal rules and regulations require that all wastewater must be disposed of through: (1) a system that is designed, installed and used in accordance with the code; (2) a public sewer system; or (3) a licensed wastewater discharge system to "ensure public safety, health and welfare." No permits have ever been issued permitting the construction or installation of a wastewater disposal system benefitting the newly constructed residence at the Subject Properties, and it is unclear whether any system has been installed. This presents an immediate threat to the health and safety of any occupants of the newly constructed residence and anyone on or near the Subject Properties.

b. The Town has adopted the IRC (International Residential Code for One and Two Family Dwellings 2003), National Building Code and the National Fire Protection Safety Association, Life Safety Code No. 101, and I am charged by the Town with enforcing the standards and requirements of these codes in all buildings and structures located within the Town. Because no permit has been issued permitting the construction of the new residence at the Subject Properties, and no occupancy permit has

ever been issued, there reason to believe that the newly constructed residence may contain fire hazards, or other hazards dangerous to human life or the public welfare.

c. Pursuant to 30-A M.R.S.A. § 4452(1)(A), a code enforcement officer responsible for enforcing a town's zoning ordinance may "enter any property at reasonable hours . . . to inspect the property . . . for compliance with the laws or ordinances." The entry onto the property by the code enforcement officer in such circumstances shall not constitute a trespass under Maine law. *See id.*

d. Section 2352 of Title 25 provides general authority to building inspectors to enter buildings in the performance of their duties under the fire prevention laws, and Section 2360 permits municipal officers and inspectors to enter into any building within their jurisdiction to investigate whether there is an combustible material, inflammable conditions or dangerous heating fixtures, and such officers and inspectors are authorized to remove or correct unsafe conditions found as a result of such inspection. *See* 25 M.R.S.A. §§ 2352, 2360.

7. I am seeking an administrative inspection warrant pursuant to 30-A M.R.S.A. § 4452(1)(A), and pursuant to Rule 80E of the Maine Rules of Civil Procedure, to conduct an inspection of the Subject Properties and newly constructed residence thereon to determine if there are any violations of the codes, statutes, ordinances, rules and regulations discussed above.

8. I am seeking an administrative inspection warrant to be executed during normal business hours, upon 24 hours advanced notice, and within ten days of the

issuance of the administrative inspection warrant, and I have attached a proposed administrative inspection warrant here.

Dated: 4/12/2012

[redacted]
[redacted] Code Enforcement Officer
Town of [redacted]

STATE OF MAINE
YORK, ss.

April 12, 2012

Personally appeared before me the above-named [redacted], and being duly sworn made oath that the foregoing statements by him are true, correct and based upon his personal knowledge, information and belief.

[redacted]

STATE OF MAINE
YORK, ss

DISTRICT COURT
BIDDEFORD
DOCKET NO. [redacted]

TOWN OF [redacted],

Plaintiff

v.

ORDER

[redacted]

Defendants

ADMINISTRATIVE INSPECTION WARRANT
Pursuant to M.R.Civ.P. 80E

TO APPLICANT: [redacted], CODE ENFORCEMENT OFFICE, TOWN OF [redacted]

On the basis of the affidavit by [redacted] dated April 12, 2012, which affidavit is attached to this Warrant and made a part of this document to be filed in the District Court, the Court is satisfied that there is probable cause to believe that there are grounds for the issuance of an Administrative Inspection Warrant. The grounds of probable cause are:

☑ As set forth in the affidavit; and/or,

☐ _____

_____

You are therefore commanded to search the Premises described below for the purposes described below.

☑ The Court further finds, based upon the affidavit, that the requirements of M.R.Civ.P. 80E(4) and (5) have been dispensed with upon this Court's determination that probable cause exists to believe that there are located on the Premises violations of law which constitute an immediate threat to the health or safety of the public.

Premises to be inspected:

☑ As set forth in Paragraph 1 in Application for Administrative Inspection Warrant; or,

☐ _____

_____

Purposes of inspection: as set forth in the Application for Administrative Inspection Warrant.

Name of owner or occupant of Premises, if known: [redacted]

Such inspection shall be conducted during normal business hours within ten (10) days after the issuance of this Warrant. The person(s) executing the warrant shall deliver a copy of the Warrant to the owner or the occupant of the Premises or leave a copy on said Premises in a conspicuous place.

No later than ten (10) days after execution of the Warrant, the person(s) executing it shall file a return with this Court setting forth the date and time of the inspection and any violations of law found on the inspected Premises.

The Clerk is directed to make the following entry in the civil docket pursuant to M.R.Civ.P. 79(a): "This Order is incorporated into the docket by reference at the specific direction of the Court."

Date: 4/12/2012

Judge
Maine District Court

A true copy,
ATTEST Lorraine L Jones
Clerk of Courts

Affidavit of Service

On April 17, 2012 at 8:30 a.m., [redacted], [redacted] Code Enforcement Officer, served [redacted] with the Court Order for Administrative Inspection Warrant issued by the Biddeford District Court on April 12, 2012. [redacted] was in the [redacted] Town offices registering his motor vehicle at the time he was served. Lt. [redacted] of the [redacted] Police Department was present at the time the document was served.

April 17-2012
Dated

[redacted]
[redacted] Code Enforcement Officer
Town of [redacted]

STATE OF MAINE
County of York, ss.

Date: 4/17/2012

Personally appeared before me the above-named [redacted] Code Enforcement Officer for the Town of [redacted] and acknowledged the foregoing to be his free act and deed.

[redacted]

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____
(Name of Town)
Plaintiff

vs.

_____
(Name of Violator)
Defendant

MOTION FOR FINDINGS AND CONCLUSIONS OF LAW UNDER M.R.Civ.P.52 WITH INCORPORATED MEMORANDUM OF LAW

The Plaintiff, through its certified local code enforcement officer and plumbing inspector, moves that this Court find the facts specially and state separately its conclusions of law in the above-captioned Rule 80K proceeding.

The Plaintiff also moves this Court to direct the entry of the appropriate judgment if it differs from the judgment which was entered on _____.

Plaintiff prays that this Court grant the requested relief pursuant to M.R.Civ.P.52

DATED: _____

_____
(Name of Code Enforcement Officer)
Certified Code Enforcement Officer
and Plumbing Inspector
(Name of Town)
(Mailing Address)
(Town, State and Zip Code)
(Telephone Number)

NOTICE

You are herby notified that if you fail to file an opposition to this Motion within 21 days after the filing of this Motion you will be deemed to have waived all objections to this Motion which may be granted without further notice or hearing.

State of Maine
County of_____ ss

DISTRICT COURT
CIVIL DOCKET
DOCKET NO _____

_____)
(Name of Town))
Plaintiff)
)
vs.)
) **CONSENT ORDER**
_____)
(Name of Violator))
)
Defendant)

The parties have agreed to resolve the above-captioned matter by the entry of the following Stipulations and Order which has been reviewed and approved by the Court:

STIPULATIONS

1. Defendant, _____, is a resident of _____. He resides and operates a timber business located on _____ in the Town of _____.

2. The Town of _____Shoreland Zoning Ordinance (the "Ordinance") was adopted on _____.

3. Section 8(b) of the Ordinance requires a Shoreland Zoning permit from the Planning Board in order to expand a non-conforming use. Section 10 of the Ordinance requires a Shoreland Zoning permit from the Code Enforcement Officer to install a subsurface disposal system. Permits are required when these activities are conducted in the areas shown as the Limited Residential District on the Town's zoning map.

4. Section 3 of the Maine Subsurface Wastewater Rules as adopted by the Department of Health and Human Services, Division of Health Engineering requires a permit from the Plumbing Inspector to install a new subsurface wastewater system.

5. On or about _____, Defendant and his employees constructed an attached wooden deck on the south side of a residential structure owned by _____ located in the Town of _____. Reference is made to the deed from _____ to _____, dated _____ and recorded in the _____ County Registry of Deeds in Book _____, Page _____.

6. Defendant and his employees also constructed a new subsurface wastewater disposal system on this property on or about _____.

7. Defendant constructed the wastewater disposal system without the permit required by the above-described Wastewater Disposal Rules. The lot located at _____ is located in the Limited Residential District as shown on the Town's Shoreland Zoning Map. The lot is one-half acre and was recorded prior to the effective date of the Ordinance. The residence on this lot sets back 44' from the normal high water mark and was constructed prior to the effective date of the Ordinance. Section 11 of the Town's Ordinance currently requires a lot size of one acre and a setback of 75 feet. Therefore, the structure is a non-conforming use.

8. Defendant constructed the deck and the subsurface disposal system without the permits required by the Town Shoreland Zoning Ordinance.

9. The Town's Code Enforcement Officer provided proper notice of these violations to Defendant and the landowner _____. (Notice of the violations included a right to appeal to the Town's Board of Appeals).

10. No appeal of the Code Enforcement Officers order to correct the violation was filed.

11. In the event that all aspects of the Order set forth below are complied with by Defendant, Plaintiff agrees to release and take no further enforcement action against Defendant for the aforesaid causes of action.

It is herby ORDERED as follows:

1. Defendant shall file applications with the Planning Board and the Plumbing Inspector for permits to construct the deck and subsurface wastewater disposal system and to pay the required application fee of $50.00 for the Shoreland permit and $50.00 for the disposal system. Complete application shall be filed on or before _____. The Planning Board and the Plumbing Inspector shall approve or deny the application within ten days of receipt. On or before _____, the deck and disposal system shall either be in compliance with the requirements of the Town's Shoreland Ordinance and the State's Subsurface Wastewater Disposal Rules, including acquisitions of the necessary permits or they shall be removed by Defendant;

2. Defendant shall pay the Town the sum of $_____ by _____ as a penalty for failing to apply for the necessary permits.

The Clerk is instructed to reference this Order on the docket pursuant to M.R.Civ.P.79(a)

DATED: _____, 20____

_____

Judge, District Court

STATE OF MAINE
(County), ss.

DISTRICT COURT
CIVIL ACTION
DOCKET NO. _____

(NAME OF TOWN),	)	
	)	
Plaintiff	)	
vs.	)	**NOTICE OF DISMISSAL PURSUANT TO M. R. Civ. P. 41 (a) (1)**
	)	
(NAME OF ALLEGED VIOLATOR),	)	
	)	
Defendant	)	

Plaintiff, through its duly authorized and certified local Code Enforcement Officer and plumbing inspector, pursuant to M.R. Civ. P. 41 (a) (1) hereby dismisses the above encaptioned action without prejudice.

Dated this _____ day of _____, 20___.

_____
Name of Code Enforcement Officer
Certified Code Enforcement Officer and
Plumbing Inspector
Town of _____
(Mailing Address)
(Telephone)

RULE 80K CHECKLIST

1. Name, Address and Telephone No. of Violator:

2. Name, Address and Telephone No. of Property Owner (If different than violator):

3. Deed Reference:

_____Book _____, Page_____
_____County Registry of Deeds
_____ Copy of Deed in File

4. Town Tax Map and Lot Number

____ Map _____, Lot _____
____ Copy of Tax Map in file

5. Court Filing Information:

a) Location of Court:
b) Docket No.:
c) Date of Filing Complain:
d) Date(s) of Service of Complaint Upon Violator and Property Owner:
e) Date of Filing Return of Service with Court:

6. Initial Hearing Date/Time:

7. Description of Violation/Dates Observed:

8. Violations Cited:

_____ Violation of State Law or Regulation (specify)
_____ Violation of Local Ordinance or Regulation (specify)

9. Relief Sought:

____ TRO
____ Preliminary Injunction
____ Civil Penalty
____ Removal of Violation
____ Request Electronic Hearing
____ Attorneys' Fees
____ Other _____

10. Physical Evidence/Exhibits:

____ Notice(s) of Violation
____ Ordinances, Codes
____ Plans, Sketches
____ Deed
____ Tax Map

11. List of Witnesses:

Will witnesses attend voluntarily? If not, they must be subpoenaed.

12. Request Electronic Recording

13. Post Judgment Matters:

____ Record Order at Registry

____ Request Writ of Execution for Court

____ Record Writ of Execution at registry of Deeds. Provide proper notice to Defendants.

SUMMARY OF HOW TO CONDUCT A TITLE SEARCH

To perform a title search, the "chain of title" for the property in question should be traced back at least 40 years. The first step is to determine the present owner of the property and the exact location and description through a check of the assessor's records. The title searcher then should go to the County Registry of Deeds and search the "grantor-grantee index" under the present owner's name. Starting with the most recent index and working back in time, the examiner should keep checking under the present owner's name as grantee (buyer) until he or she finds the deed and date upon which the present owner acquired title to the property. After locating that information, the title searcher should trace the name of the current owner's seller in the grantee index to determine when that person acquired it and whether his or her deed description is the same as that contained in the deed of the present owner. This process should be continued for a period going back at least 40 years prior to the date on which the current owner acquired title.

After completing that portion of the search, the title examiner then should trace the owner's name forward in the index as "grantor" (seller) from the date of his or her deed to see if the owner has transferred title to someone else. To be absolutely sure that the owner has not sold the property, the title searcher should look at every deed where that person is listed as a grantor, even if the index says that the property is located in another town. In addition to searching the grantor-grantee index, the title examiner also should check the "Interim Index" and the "Day Book" for more recent transactions.

While the examiner is searching the grantor-grantee index, he or she should make a note of all mortgages on the property and when they are discharged, if at all. Mortgages are indexed under the owner's name as grantor of the mortgage. The index should be examined for the period during which the present owner held the property. Since it is possible that the present owner purchased the property subject to the mortgage, the index should be searched back 40 years to be absolutely sure. After checking the "Interim Index" and "Day Book," the examiner should look up each mortgage which has not been discharged and note the name and address of the holder.

Throughout the search, the title examiner should take note of any liens on the property which have been recorded in the various books previously mentioned.