

Julie Hance

From: James Carroll <jcarroll@64court.com>
Sent: Wednesday, April 26, 2023 7:43 PM
To: Julie Hance
Cc: Michele Cyr
Subject: Zoning Enforcement Process-PRIVILEGED ATTORNEY CLIENT COMMUNICATIONS
Attachments: Zoning Enforcement Chart.pdf

Julie;

As requested, I am providing a brief outline of the often-lengthy process of pursuing enforcement actions under municipal land use ordinances such as Chester's Unified Development Bylaws (last amended 10/26/22) ("CUDB"). I expect that you and the Board are already aware of the time and cost involved but it is worth revisiting the process as the Town considers, through its authorized agents, the initiation of enforcement by notice of violation of unpermitted land development in a use context.

For your information, I have attached an enforcement chart that I have used in giving CLE and VLCT seminars on zoning enforcement. It will provide you with the basic alternative options of enforcement through the judicial bureau by uniform ticket or through the Superior Court-Environmental Division by civil complaint. Both have their uses depending on the type and severity of the violations and the remedy being sought. In the situation currently under investigation, it is my expectation that the Town's interests are best served by initiating enforcement through the E Court given the limited remedies by way of fines and injunctive relief available through the Judicial Bureau.

Here is a brief outline of the process:

- 1) Enforcement under the CUDB is initiated by the ZA's issuance of a notice of violation (NOV) after investigation and based upon sufficient facts to establish by a preponderance of evidence that unpermitted land development is occurring. The landowner is provided seven days to cure the stated violation or be subject to civil fines and penalties of up to \$200 per occurrence.
- 2) The landowner can appeal the issuance of the NOV to the DRB which will then conduct a quasi-judicial hearing to determine if a violation as stated in the NOV has occurred. The DRB's decision can be appealed to the E court within 30 days of the decision.
- 3) Depending on the circumstances of the appeal, the Town will then initiate a separate enforcement action by civil complaint in the E Court seeking its chosen remedies to cure the violation and to secure a civil judgment for fines and penalties.
- 4) Depending on the status of any appeal from the DRB, both the appeal and enforcement action may then be heard simultaneously by the E court. Also, there is the possibility that the landowner, in the interim, may choose to file a permit application to cure the violation or for other approvals that will moot the violation. This application may also involve review by the DRB and appeal to the E Court.
- 5) The E Court hearing process on the enforcement action will be a civil de novo trial before the E Court. The other appeals from the DRB are likely to be heard by the E Court on the record given Chester's election of record review. In my experience, the E Court hearing process can take up to a year to get to trial depending on the needed discovery and pre-trial motions that are filed with the E Court with more time to be added for getting a decision from the E Court. The process is also likely to involve court ordered mediation before a trial date is set.
- 6) Once decision(s) are rendered, the parties have 30 days to appeal the E Court's decision(s) to the Vermont Supreme Court.
- 7) It is also important to note that any of the above proceedings have the potential of being remanded should the E Court or VSC think it necessary and that the process can also involve other interested parties who meet the statutory criteria.

- 8) Assuming a final civil judgment is obtained by the Town, and depending on the landowner's level of compliance, the Town may then also need to initiate collection and/or contempt actions to actually implement the court's decision and order.

The process can be lengthy and will be expensive, but it is also the only realistic judicial mechanism provided to enforce the CUBD. The ZA is charged with literally enforcing the CUBD once it is fairly determined that there is a sufficient factual basis to believe a violation has occurred. This can be a difficult determination to make especially in situations involving use violations and claims of nonconforming pre-existing uses. It is important that the ZA be provided with support in any initial efforts to gather information and in any subsequent efforts at bringing a property into compliance. It is equally important to support a ZA once a good faith decision to initiate enforcement has been made that is shown to be supported by sufficient evidence to establish the violation.

Although the above outlines the basic process, it is also subject to numerous variables that cannot be predicted in advance. As always, I am available to answer any specific questions you or the Selectboard might have.

Many thanks, Jim

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