

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____ Vtec

TOWN OF SHELBURNE)
Plaintiff,)

v.)

VERMONT RAILWAY, INC.)
Defendant.)

COMPLAINT

NOW COMES the TOWN OF SHELBURNE and complains against the Defendant, VERMONT RAILWAY, INC. as follows:

The Parties

1. Vermont Railway, Inc. (hereinafter also "Railway") is a Vermont Corporation registered with the Vermont Secretary of State, having a principal place of business at One Railway Land, Burlington, Vermont, 05401.
2. Railway is the owner of a parcel of land located at 2087 Shelburne Road, Shelburne, Vermont, (hereinafter also the "Property") acquired on December 28, 2015 from Northern Vermont Financial Corporation (NVFC).
3. The Town of Shelburne (hereinafter also the "Town") is a municipal corporation located in Shelburne, Vermont.

Facts

4. The Property is in close proximity to the LaPlatte River and contains wetlands.
5. The Property contains known Native American artifacts.
6. The Property is known to be both culturally and ecologically sensitive.



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7. Railway met with the Town of Shelburne Select Board on or about January 8, 2016 to present an informal description of the project, whereby they presented the Town with a preliminary plan set. These plans included the construction of a railroad spur, two 47,000 square foot salt sheds, landings for fuel tanks, a parking lot and accessory buildings.

8. Upon information and belief, bulk salt and fuel delivery and transportation will occur from this site and will be operated by Barrett Trucking Co., Inc., (hereinafter "Barrett") a Vermont corporation having a principal place of business located at 16 Austin Drive, Burlington, Vermont, 05401.

9. The number of truck and vehicle trip ends has not been definitively provided to the Town. The nature of the relationship between Barrett and the Defendant has also not been disclosed.

10. There could be significant impacts from construction related to stormwater, wildlife, ecology and the preservation of historic sites.

11. Without proper review, the impacts of development on the Property could be severe and irreparable.

12. Railway has never submitted any applications for permitting review to the Town, upon information and belief, on the grounds that they contend their development of the site is not subject to municipal permitting due to federal preemption by the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. § 10101 *et seq.*

13. On or about January 11, 2016, the Railway commenced tree clearing and site preparation for a project located on the Property.



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14. On or about January 20, 2016, the Town of Shelburne issued a Notice of Violation to Vermont Railways System for violation of the Town of Shelburne Zoning Bylaws, specifically Sections 2010.1, 1160 and 1900 for commencing land development without a permit and for failing to obtain site plan approval relative to the change of use of the Property.¹

15. Upon information and belief, the Railway has not ceased land development.

16. On or about January 26, 1971, the Railway conveyed to the Town, by way of a Warranty Deed recorded at the Town of Shelburne Town Clerk's Office on February 11, 1971, at Volume 46 Page 32-33, a parcel of land of approximately 23 acres along the LaPlatte River for the purposes of a greenbelt.

17. This 1971 deed also contained a fifteen (15) foot right of way across contiguous land of the Railway to access the 23 acre parcel. The location of that right of way was to be decided upon by the Railway and the Town.

18. On or about February 9, 1995, the Northern Vermont Financial Corporation (successor in title to the Railway) conveyed to the Town an easement for the purposes of a recreation path (hereinafter "Rec Easement"). A corrective easement was issued on April 26, 1995, and recorded at the Shelburne Town Clerk's office at Volume 183, Pages 367-370 on May 2, 1995.

19. The Rec Easement contained language that the Grantor would not place any "structures, landscaping or other improvements within said easement and right-of-way which shall prevent or interfere with the within Grantee's ability to use said easement and right-of-way. . . . In the event Grantor's planned use would interfere or cause an unsafe

¹ This NOV was sent to Vermont Railways System, upon information and belief, a former trade name of Vermont Railway, Inc. The NOV was reissued to Vermont Railway Inc. on January 25, 2016.



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condition with respect to Grantee's use, the Grantor and Grantee shall work together to move, adjust, and change the easement or construction to mitigate the problem to a mutually acceptable level. Expense of such mitigation shall be borne solely by the Grantor."

Jurisdiction

20. The Environmental Court has jurisdiction over this action pursuant V.R.E.C.P. 3(6), 3(10).

V.R.E.C.P. 3(6) grants jurisdiction for "[a]ctions by municipal administrative officers to prevent, restrain, correct, or abate violations of bylaws enacted under 24 V.S.A., Chapter 117, as provided in 24 V.S.A. §4452."

V.R.E.C.P. 3(10) grants jurisdiction for "[a]ny other original action concerning a subject matter within the jurisdiction of the Environment Court in which the relief sought is not available under other provisions of these rules or by action pursuant to paragraphs (1) to (9) of this rule."

21. This matter concerns an action by the Town and its Zoning Enforcement Officer to prevent and abate a violation of the Town's bylaws and to exercise its municipal police powers.

22. There is a presumption that state and local regulation of health and safety matters constitutionally coexist with federal regulation. *See In re Vt. Ry.*, 171 Vt. 496, 499-500 (2000).

23. There is a strong likelihood that the project as planned will alter traffic patterns in the Town and create significant environmental and safety concerns (due to the nature of



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the items being stored on site and the proximity to the LaPlatte River) the regulation of which is integral to the health and safety of the Town's residents.

24. The Interstate Commerce Commission Termination Act (ICCTA) only governs "transportation by rail carriers," *see* 49 U.S.C. § 10501, and does not apply to the entire portion of the instant project.

COUNT I. Declaratory Judgment re ICCTA Preemption

25. Plaintiff repeats and realleges the allegations contained in paragraphs 1-24 above.

26. Plaintiffs are entitled to declaratory relief pursuant to 12 V.S.A. §4711 that the entirety of Defendant's project is not preempted by the ICCTA.

27. Defendant's land development on the Property is, in part, subject to permitting review and construction of the project without permitting review is in violation of the Town of Shelburne's regulations for which the Town is entitled to injunctive relief and damages as requested below.

COUNT II. Declaratory Judgment re Exercise of Municipal Police Powers

28. Plaintiff repeats and realleges the allegations contained in paragraphs 1-27 above.

29. Municipalities in Vermont are granted police powers pursuant to 24 V.S.A., Chapter 61.

30. Municipalities are tasked with certain of these police powers, in part, "[f]or the purposes of promoting the public health, safety, welfare, and convenience . . ." 24 V.S.A. § 2291.



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31. Specifically, 24 V.S.A § 2291(4), (5) allow the Town to regulate issues concerning traffic.

32. The Vermont Supreme Court has stated that issues concerning traffic routing, number of trucks entering and exiting a facility, the hours within which trucking can occur, parking and curbing designs are all within the “province of municipalities by virtue of the state’s delegation of its traditional police powers” as they “do not interfere with *railway* operations.” In re Vt. Ry., 171 Vt. at 504 (emphasis in original).

33. Defendant has not disclosed full project details to Plaintiff but, due to the nature of the items being stored on site and the proximity to the LaPlatte River, there is the possibility that the health and safety of residents of the Town will be impacted in ways unrelated to traffic.

COUNT III. Nuisance

34. Plaintiff repeats and realleges the allegations contained in paragraphs 1-33 above.

35. Within the grant of police powers, municipalities are specifically authorized to “prefer complaint for relief by injunction for the abatement of public nuisances.” 24 V.S.A. § 2121.

36. Municipalities are also authorized to “define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.” 24 V.S.A. § 2291(14).

37. Defendant’s project, to the best of Plaintiff’s understanding based upon the plans that have been shared with the Town, constitutes a public nuisance and should be abated.



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COUNT IV. Unlawful Interference With Easement Rights

38. Plaintiff repeats and realleges the allegations contained in paragraphs 1-37 above.

39. Defendant's tree clearing, grading and planned land development project has and will continue to interfere with the Plaintiff's easement rights as conveyed in the 1971 and 1995 deeds described in paragraphs 16-19 above by locating certain portions of the project within the Plaintiff's easement area.

40. Plaintiff's use of the easement will be severely interfered with by Defendant's proposed truck traffic, noise and congestion of the area.

41. Defendant has not disclosed full project details to the Plaintiff nor tried to work with Plaintiff to remedy or resolve the interference with the Plaintiff's easement rights.

42. Accordingly, Defendants have unlawfully interfered with Plaintiff's easement rights as described in the 1971 and 1995 easement deeds to the Town.

43. Plaintiff is entitled to an order that Defendant ceases interfering with its easement rights contained in the 1971 and 1995 easement deeds.

WHEREFORE, the Town respectfully requests that the Court:

- A. Find for Plaintiff on the above Counts;
- B. Temporarily and permanently enjoin Defendant from engaging in construction activities on the property without submitting to municipal review without permit approval from Plaintiff;
- C. Permanently enjoin Defendant from engaging in tree clearing, grading and land development in such a way that interferes with Plaintiff's easement rights; and



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D. Grant any further and additional relief that the Court deems equitable and just.

Dated at Burlington, Vermont this 25th day of January, 2016.

TOWN OF SHELBURNE

By: 
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