

STATE OF VERMONT

SUPERIOR COURT  
ENVIRONMENTAL DIVISION

Docket No. 9-1-16 Vtec

TOWN OF SHELBURNE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VERMONT RAILWAY, INC., )  
 )  
 Defendant. )

**NOTICE OF FILING NOTICE OF REMOVAL**  
(28 U.S.C. § 1446(d))

TO: Claudine C. Safar, Esq.  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401

Attorney for the Plaintiff in the above-captioned matter:

Please take notice that Defendant in the above-captioned action, Vermont Railway, Inc., has filed a Notice of Removal in the United States District Court for the District of Vermont on January 27, 2016, seeking the removal of the above-captioned action from the Vermont Superior Court, Environmental Division, to federal court. A copy of the petition for removal is attached hereto (with exhibits).

Dated at Burlington, Vermont this 27<sup>th</sup> day of January, 2016.

VERMONT RAILWAY, INC.



---

Eric A. Poehlmann  
DOWNS RACHLIN MARTIN PLLC  
Attorneys for Defendant  
199 Main Street, P.O. Box 190  
Burlington, Vermont 05402  
(802) 863-2375

cc: Clerk, United States District Court  
for the District of Vermont

16465471.1



6. Specifically, Count I of the Complaint alleges that the ICCTA applies to a portion of a proposed rail project to be constructed by Vermont Railway, Inc. but that the ICCTA “does not apply to the entire portion of the instant project.” Complaint ¶24.

7. Count I of the Complaint affirmatively seeks a determination from the Court as to the proper delineation of federal preemption under the ICCTA.

8. This claim is thus a “civil action[] arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. §1331, and gives rise to federal question jurisdiction.

9. The remaining claims in the Complaint similarly relate to the proper scope of preemption under the ICCTA and are thus derivative of the Complaint’s fundamental claim (contained in Count I) seeking a ruling on the scope of federal law.

10. Consequently, this Court has original jurisdiction over the action pursuant to 28 U.S.C. §1331.

Dated at Burlington, Vermont this 27<sup>th</sup> day of January, 2016.

DOWNS RACHLIN MARTIN PLLC



---

Marc B. Heath  
Eric A. Poehlmann  
Attorneys for Plaintiff  
P.O. Box 190,199 Main Street  
Burlington, Vermont 05402  
Telephone: (802) 863-2375  
Fax: (802) 862-7512



January 27, 2016

Edward G. Adrian (Of Counsel)  
Anthea Dexter-Cooper\*  
Steven R. Ducham  
Amy E. Escott  
Brian P. Monaghan  
Claudine C. Safar\*

Assistant to the Honorable  
and  
also licensed in New York

Eric Poehmann  
Downs Rachlin Martin  
PO Box 190  
Burlington, VT 05402-0190

RE: Town of Shelburne v Vermont Railway

Dear Eric:

Enclosed please find a Summons and two Acceptances of Service in the above captioned matter. Also enclosed is a self addressed stamped envelope for you to return the signed Acceptance of Service to us.

Also enclosed are copies of the following documents:

- Complaint;
- Motion for Preliminary Injunction;
- Motion to Amend Complaint;
- Amended Complaint; and
- Initial Notification letter from the Environmental Court.

Thank you for your attention to this matter. Please contact me should you have any questions.

Sincerely,

Monaghan Safar Ducham PLLC

  
Claudine C. Safar Esq.  
Anthea Dexter-Cooper, Esq.

Enclosures

cc. client

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 9-1-16 Vtec

TOWN OF SHELBURNE )  
Plaintiff, )  
 )  
v. )  
 )  
VERMONT RAILWAY, INC. )  
Defendant. )

**SUMMONS**

TO THE ABOVE NAMED DEFENDANT: VERMONT RAILWAY, INC.

- 1. YOU ARE BEING SUED:** Town of Shelburne ("Plaintiff") has started a lawsuit against you. Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights.
- 2. YOU MUST REPLY WITHIN 20\* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Court a **written response** called an Answer within 20\* days of the date on which you received this Summons. The Answer must be sent to:

Jennifer Teske, Court Operations Manager  
Vermont Environmental Court  
32 Cherry Street  
2nd Floor, Suite 303  
Burlington, VT 05401

You must also send a copy of your Answer to Plaintiff's attorney:

Claudine C. Safar, Esq.,  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401

- 3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe that Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
- 4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20\* days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdyt.com

the Court may decide against you and award Plaintiff everything asked for in the Complaint.

**5. YOU MUST MAKE ANY CLAIMS AGAINST PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against Plaintiff. Your claims against Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

**6. LEGAL ASSISTANCE.** You may wish to get help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

DATED at Burlington, Vermont, this 27<sup>th</sup> day of January, 2016.

TOWN OF SHELBURNE

By: 

Claudine C. Safar, Esq.  
Anthea Dexter-Cooper, Esq.  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
(802) 660-4735  
[csafar@msdvt.com](mailto:csafar@msdvt.com)  
[adextercopper@msdvt.com](mailto:adextercopper@msdvt.com)  
Attorney for Plaintiff

\*Served on \_\_\_\_\_

By: \_\_\_\_\_



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdvt.com](http://www.msdvt.com)

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 9-1-16 Vtec

TOWN OF SHELBURNE )  
Plaintiff, )  
 )  
v. )  
 )  
VERMONT RAILWAY, INC. )  
Defendant. )

ACCEPTANCE OF SERVICE

TO: Claudine C. Safar, Esq.  
Anthea Dexter-Cooper, Esq.  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, Vermont 05401

I, Eric A Poehlmann, Esq., hereby accept service of a Summons and Complaint on behalf of Vermont Railway, Inc. in the above-captioned matter. I agree that such acceptance of service shall be binding upon Vermont Railway, Inc. as if a copy of the same were delivered to it by a duly authorized officer, and I waive any and all other manner of service whatsoever.

I have also received two copies of this Acceptance of Service form and a means by which I can sign and return this form to you without cost to me.

I agree to save the cost of service in this action by not requiring that I be served with judicial process in the manner required by Rule 4 of the Vermont Rules of Civil Procedure.

Date: \_\_\_\_\_

Eric A. Poehlmann, Esq.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdt.com

**DUTY TO AVOID UNNECESSARY COSTS**  
**OF SERVICE OF SUBPOENA**

Rule 4 of the Vermont Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of a subpoena. If you and the plaintiff are both located in the United States and you do not sign and return this form waiving service as requested by the plaintiff, you will be required to bear the cost of such service unless you can show good cause for not doing so.

Your belief that the subpoena is unfounded or that the action has been brought in the wrong place or in a court that lacks jurisdiction of the action or your person or property is not good cause for a failure to waive service. If you do waive service, you retain all defenses and objections (except those relating to the summons or its service), and you may later object to the jurisdiction of the court or to the place where the action has been brought.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

**Vermont Superior Court  
Environmental Division  
Environmental Division  
32 Cherry Street, 2nd Floor, Suite 303  
Burlington, VT 05401**



**(802) 951-1740  
www.vermontjudiciary.org**

**Docket Number: 9-1-16 Vtec**

**Town of Shelburne v Vermont Railway, Inc.**

### **Initial Notification**

January 26, 2016

The above-referenced zoning enforcement action was filed at the Environmental Division on January 25, 2016. Proof of service on Defendant has not been filed. Environmental Division docket number 9-1-16 Vtec has been assigned to this enforcement action. Please use the Environmental Division docket number and the above case name when filing any documents or asking any questions concerning this case. All documents should be filed with the Environmental Division at:

Superior Court  
Environmental Division  
32 Cherry Street, 2nd Floor, Suite 303  
Burlington, VT 05401  
(802) 951-1740

Also, if you have not provided the Court with a telephone number where you can be reached during working hours for the purpose of telephone conferences, please do so as soon as possible.

The Vermont Rules for Environmental Court Proceedings apply to this case. See V.R.E.C.P. 3. Under those rules, a defendant must serve an answer to the complaint on the plaintiff within 20 days of service of the summons and complaint, as explained in the summons. If waiver of service is filed, see V.R.C.P. 4(1)(4).

If an answer is filed, the case will proceed to a pre-trial conference or to a trial on the complaint. The trial will be set to be held in or near the county in which the property is located. The trial may be set immediately, especially if any urgent relief such as a preliminary injunction is requested by the plaintiff.

If no answer is filed, the plaintiff may move for a default judgment, the case may be decided without a hearing and without further notice to the defendant.

A person filing any documents (including letters) with the Environmental Division must also send a copy of that document to each of the other parties. Faxing or e-mailing a copy of a document is not sufficient to meet deadlines for filing documents with the Environmental Division. Faxed or e-mailed copies may be authorized by the Court in certain circumstances, but the Environmental Division will

not accept a faxed or e-mailed document unless the sender has first telephoned the Court and obtained permission to do so and/or unless the judge has authorized faxing or e-mailing in a court order.

If an answer is filed, the Clerk of the Environmental Division will schedule a conference in person or by telephone with the judge.

Electronically signed on January 26, 2016 at 09:07 AM pursuant to V.R.E.F. 7(d).



---

Diane C. Chamberlin  
Assistant Clerk



mere ownership of a business enterprise by a railroad does not exempt that enterprise from all state or local regulation. The federal law preempts only state and local regulation related to the rail transportation aspects of the business . . .”). Further, the party seeking to overcome this presumption—here, Defendant—“bears a heavy burden.” In re Vt. Ry., 171 Vt. at 500 (citing De Buono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806, 814 (1997)). Even if the case is resolved on a preemption argument, the Court can make that ruling. *See, e.g., id.* at 497 (“The [environmental] court determined that the majority of the permitting conditions imposed on a facility . . . are not preempted by federal legislation. . . . We . . . affirm the decision of the environmental court.”).

In ruling on a motion for a preliminary injunction, a key concern is whether the movant will suffer irreparable harm. The Vermont Supreme Court has stated, in dicta, that courts must consider the following when ruling on a motion for preliminary injunction: “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.” In re J.G., 160 Vt. 250, 255 n.2 (1993). The Second Circuit has relied on a different framework, which involves a showing of “(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits make them fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting preliminary relief.” Cacchillo v. Insmad, Inc., 638 F.3d 401, 405–06 (2d Cir. 2011).

Defendant has not been completely forthcoming with its plans for the property in question, so the Town’s Complaint is based on what it has observed and been told in passing and at meetings. The Town has already observed several activities, such as tree-



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdyt.com](http://www.msdyt.com)

cutting and excavation, *see* Complaint ¶ 13, that are already changing the state of the property in a permanent and irremediable way such that there is a significant threat of irreparable harm to the Town and its residents if Defendant is allowed to continue with this unbridled construction. Some of the clearing and excavating is even suspected to be within an easement held by the Town. *See id.*, ¶ 39. Full-grown trees cannot be put back in the ground, and large-scale excavation of the kind currently in progress cannot be reversed.

The Town also has reason to believe that the completed project will alter the traffic patterns of the area and lead to a significant increase in peak trips per day. *See id.* ¶¶ 8–9. This raises concerns regarding the health and safety of residents of the Town and other individuals who travel through the Town and whether or not the project is a nuisance, both of which provide a basis for the Town exercising its municipal police powers. *See generally id.* ¶¶ 28–37. It is also reasonably likely—especially given the property’s location in close proximity to the LaPlatte River, and the presence of wetlands and historic artifacts—that there will be significant and irreparable impacts from construction without the proper review. *See id.* ¶¶ 4–6, 10–11.

Most importantly, Defendant is not amenable to temporarily delaying construction so as to give the Town and its residents the opportunity to engage in a dialogue as to the scope and impact of the project as envisioned by Defendant. *See id.* ¶¶ 14–15. There is a threat of irreparable harm that will forever change the municipal landscape of the Town and the public at large has an interest in the outcome of this litigation.

Further, it is likely that the Town will succeed on the merits and some level of review will be required. While the Interstate Commerce Commission Termination Act



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdivt.com](http://www.msdivt.com)

(ICCTA) or other federal railroad acts may preempt some state and local ordinances, there is a strong likelihood that the Town will be allowed, as a matter of law, review over the aspects of the project dealing with health/safety, and those portions of the project which are not related to "transportation by rail carriers." See 49 U.S.C. § 10501. Any consideration of the preemption argument will require more facts than what is presently available to the Town. See Vill. of Ridgfield Park v. N.Y. Susquehanna & W. Ry. 750 A.2d 57, 63 (N.J. 2000).

WHEREFORE, the Town respectfully requests that the Court schedule a hearing on this motion at the earliest possible convenience.

Dated at Burlington, Vermont this 25<sup>th</sup> day of January, 2016.

TOWN OF SHELBURNE

By   
Claudine C. Safar, Esq. (lead counsel)  
Anthea Dexter-Cooper, Esq. (co-counsel)  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
Attorneys for Town of Shelburne  
csafar@msdvt.com  
adextercooper@msdvt.com

cc: Client  
Vermont Railway, Inc.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdvt.com

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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdt.com

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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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.<sup>1</sup>

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

---

<sup>1</sup> 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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdt.com

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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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.



156 Battery Street  
Burlington VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

*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



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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: *Anthea Dexter-Cooper*  
Claudine C. Safar, Esq. (lead counsel)  
Anthea Dexter-Cooper, Esq. (co-counsel)  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
Attorneys for Town of Shelburne  
csafar@msdvt.com  
adextercooper@msdvt.com

cc: Client  
Vermont Railway, Inc.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdvt.com

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 9-1-16 Vtec

TOWN OF SHELBURNE )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VERMONT RAILWAY, INC. )  
 Defendant. )

**AMENDED 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 Lane, Burlington, Vermont, 05401.
2. Railway is the owner of a parcel of land located at 2087 Shelburne Road, Shelburne, Vermont, (hereinafter also the "Property")<sup>1</sup> 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.

<sup>1</sup> The Property is also identified under the Town of Shelburne's map-block-and-lot numbering system as parcel 6-1-13. It has a Span number of 582-183-11857.



156 Battery Street  
Burlington, VT 05401  
T 802 560 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdt.com

6. The Property is known to be both culturally and ecologically sensitive.
7. Railway met with the Town of Shelburne Select Board on or about January 5, 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, fuel containment areas, 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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4736  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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.<sup>2</sup>

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 a second 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

---

<sup>2</sup> 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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdt.com

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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdrv.com](http://www.msdrv.com)

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 items likely to be 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.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdl.com](http://www.msdl.com)

*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 areas.

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



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdt.com](http://www.msdt.com)

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

Dated at Burlington, Vermont this 26th day of January, 2016.

TOWN OF SHELBURNE

By:   
Claudine C. Safar, Esq. (lead counsel)  
Anthea Dexter-Cooper, Esq. (co-counsel)  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
Attorneys for Town of Shelburne  
csafar@msdvt.com  
adextercooper@msdvt.com

cc: Client  
Vermont Railway, Inc.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

www.msdvt.com



Dated at Burlington, Vermont this 26th day of January, 2016.

TOWN OF SHELBURNE

By: *Anthea Dexter-Cooper*  
Claudine C. Safar, Esq. (lead counsel)  
Anthea Dexter-Cooper, Esq. (co-counsel)  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
Attorneys for Town of Shelburne  
csafar@msdvt.com  
adextercooper@msdvt.com

cc: Client  
Vermont Railway, Inc.



156 Battery Street  
Burlington, VT 05401  
T 802 660 4735  
F 802 419 3662

92 Fairfield Street  
St. Albans, VT 05478  
T 802 524 0080  
F 802 524 4665

[www.msdvt.com](http://www.msdvt.com)



STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 2-1-16 Vtec

TOWN OF SHELBURNE )  
Plaintiff, )  
 )  
v. )  
 )  
VERMONT RAILWAY, INC., )  
Defendant. )

MSD 1/26/16 12:53 PM  
Deleted:

MSD 1/22/16 12:53 PM  
Deleted:

**AMENDED 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 Lane, Burlington, Vermont, 05401.

MSD 1/28/16 12:53 PM  
Deleted: Land

2. Railway is the owner of a parcel of land located at 2087 Shelburne Road, Shelburne, Vermont, (hereinafter also the "Property")<sup>1</sup> 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.

<sup>1</sup> The Property is also identified under the Town of Shelburne's map-block-and-lot numbering system as parcel 6-1-13. It has a Span number of 582-183-11857.

6. The Property is known to be both culturally and ecologically sensitive.
7. Railway met with the Town of Shelburne Select Board on or about January 5, 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, fuel containment areas, 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.

MSD 1/20/16 12:53 PM  
Deleted: 8

MSD 1/28/16 12:53 PM  
Deleted: landings for  
MSD 1/28/16 12:53 PM  
Deleted: tanks

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.<sup>2</sup>

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 a second 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

<sup>2</sup> 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.

MSD 1/28/16 12:55 PM

Deleted: an

MSD 1/28/16 12:53 PM

Formatted: Font: Times New Roman, 10 pt

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

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.

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 items likely to be 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.

MSD 1/26/16 12:53 PM

Deleted: the

MSD 1/26/16 12:53 PM

Deleted: being

### 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.

*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 areas.

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

MBD 1/28/16 12:53 PM

Deleted: area

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

Dated at Burlington, Vermont this 26th day of January, 2016.

TOWN OF SHELBURNE

MSD-1/26/16 12:53 PM

Deleted: 25th

By: \_\_\_\_\_  
Claudine C. Safar, Esq. (lead counsel)  
Anthea Dexter-Cooper, Esq. (co-counsel)  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401  
Attorneys for Town of Shelburne  
csafar@msdvt.com  
adextercooper@msdvt.com

cc: Client  
Vermont Railway, Inc.