

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT
Docket No. 218-2024-CV-01157

Ruth Patterson and
Gerald Cox
295 Piscassic Road
Newfields, NH 03856

Mark and Lynn Girard
298 Piscassic Road
Newfields, NH 03856

Scott Wachsmuth
306 Piscassic Road
Newfields, NH 03856

v.

Town of Newfields
65 Main Street
Newfields, NH 03856

Jeremiah Vernon
Nicole Vernon
Vernon Family Farm, LLC
Vernon Kitchen, LLC
301 Piscassic Road
Newfields, NH 03856

**VERIFIED PETITION FOR INJUNCTION,
DAMAGES, AND WRIT OF MANDAMUS**

Plaintiffs, Ruth Patterson, Gerald Cox, Mark and Lynn Girard, and Scott Wachsmuth, complain against the Defendants, The Town of Newfields, et al., Jeremiah and Nicole Vernon, and the entities, Vernon Family Farm, LLC, and Vernon Kitchen, LLC, and in support thereof aver as follows:

INTRODUCTION

1. This Petition seeks to enforce the land use ordinance and regulations of the Town of Newfields (sometimes herein the “Town”), the terms of the conservation easement encumbering the majority of the Vernon Property (defined below), and the conditions imposed by the Newfields Planning Board on a site plan pertaining to the Vernon Property, all in an effort to stop the noxious off-site impacts endured and suffered by the Plaintiffs from the unlawful operations of a commercial restaurant and concert venue on the Vernon Property in Newfields.

2. The Plaintiffs seek an injunction ordering the Vernon Defendants to: (1) discontinue use of the Property as a restaurant and event venue in violation of the Newfields Zoning Ordinance (“NZO”), site plan conditions, and conservation easement; (2) stop any and all activities which have the effect of producing unreasonable and obnoxious noise, and creating a nuisance that is depriving the Plaintiffs of the reasonable use and quiet enjoyment of their properties; and (3) pay damages resulting from the Vernon Defendants’ unlawful activities. This Petition also seeks an Order of Mandamus directed to the municipal Defendant compelling the Town to issue a cease and desist order to the Vernon Defendants to discontinue their unlawful and unpermitted use of their Property, to issue and collect appropriate fines against the Vernon Defendants, and to take any and all appropriate enforcement action against the Vernon Defendants for violations of land use ordinances available to a municipality under New Hampshire law. Finally, this Petition seeks to recover the legal fees and expenses incurred by the Plaintiffs in bringing this private enforcement action which is necessitated by the Town’s failure, neglect, and refusal to enforce its ordinances, conservation restrictions, and site plan conditions.

3. The Plaintiffs contend that the Vernon Defendants’ use of the Vernon Property as a restaurant and event venue was never lawfully permitted, was illegal from the beginning, and remains so to this day.

4. While the Vernons obtained site plan approval in December 2022 to conduct limited so-called “agritourism” activities, the site plan approval is subject to numerous conditions, most of which remain unfulfilled. Among the conditions are:

“2... obtain all permits for the use(s) of its property[.]

...

8. Any speakers used at events for music, entertainment or other purposes shall be directed away from surrounding properties and shall be mounted off the ground by at least 3’.

...

9. Vernon Family Farm shall install a vegetative buffer ... to the reasonable satisfaction of the current owners [of 319 Piscassic Road] and the Newfields Planning[.]

...

13. No “restaurant” use of the Property shall be made unless all required municipal and state permits and approvals have been granted for said use, including but not limited [to] relief from the Zoning Ordinance through the Newfields ZBA and Site Plan Review through the Newfields Planning Board.”

While not included as an express condition of site plan approval the Vernon Property – like all property in the Town – is subject to the noise limitations set forth in the Newfields Zoning Ordinance.

5. Until the conditions of the site plan approval are fulfilled, no agritourism uses may be lawfully conducted at the Vernon Property. The Vernons have not obtained all required permits for the use(s) of their Property. The Vernons have not secured a variance from the Newfields ZBA to operate a restaurant or event venue on their Property. And the illegal restaurant/music operations being conducted on the Property routinely produce noise more than the limits specified in the NZO.

6. The Newfields Select Board is the instrumentality of the Town with the authority and responsibility to enforce the zoning ordinance, conservation easement, and site plan conditions. The Newfields Select Board is aware that the Vernon Defendants do not hold all required permits, have not obtained ZBA approval to operate a commercial kitchen/restaurant/bar/music event venue and that the Vernons’ unlawful operations routinely exceed municipal noise limitations. Nevertheless, the Select Board has refused to act. The Plaintiffs suffer weekly from the illegal operations of, and the nuisances created by, the unlawful activities of the Vernon Defendants. The Plaintiffs are now compelled to suffer the further burden and expenses of this private enforcement action. The Town should be required to

reimburse the Plaintiffs for the expenses incurred by them, including their reasonable attorneys' fees, in performing the plain and clear duties of the Select Board.

PARTIES

7. The individuals named as Plaintiffs are all residents of the Town of Newfields. Their properties all have frontage on Piscassic Road, and they are all abutters to the Vernon Property. All the Plaintiffs' homes are within earshot of the unlawful commercial kitchen/restaurant/bar/music/event venue activities conducted on the Vernon Property. All the Plaintiffs' reasonable use and quiet enjoyment of their properties has been regularly and adversely impacted by the activities on the Vernon Property.

8. The Plaintiffs are:

- a. Ruth Patterson and Gerald Cox, 295 Piscassic Road, Newfields, NH 03856;
- b. Lynn and Mark Girard, 298 Piscassic Road, Newfields, NH 03856; and
- c. Scott Wachsmuth, 306 Piscassic Road, Newfields, NH 03856.

9. Defendant the Town of Newfields is a municipal corporation under the laws of the State of New Hampshire, with its offices at 65 Main Street, Newfields, Rockingham County, New Hampshire.

10. Defendants Jeremiah and Nicole Vernon are, based upon information and belief, a married couple residing at 301 Piscassic Road in Newfields, New Hampshire. Jeremiah and Nicole Vernon are the record title owners of the property at 301 Piscassic Road by virtue of the Warranty Deed recorded in the Rockingham County Registry of Deeds ("RCRD") in Book 5546, at Page 1569 (the "Property"). The Property is identified on the Town's tax maps as Map 211, Lot 14. According to the Town's assessing records, the Property contains approximately 32.937 acres of land, of which 30.937 acres are encumbered/protected by a conservation easement. The

terms of the conservation easement (the “CE”) are set forth in the Conservation Easement Deed recorded at the RCRD on June 9, 2004, in Book 4307, at Page 2954.

11. Defendant Vernon Family Farm, LLC, is a manager-managed New Hampshire limited liability company formed in July 2014 (“VFF”). The most recently available records accessible on the New Hampshire Secretary of State’s website lists Jeremiah and Nicole Vernon as the managers of VFF. Upon information and belief, Jeremiah and Nicole Vernon are the sole members of VFF. VFF’s registered office is located at 301 Piscassic Road, Newfields, New Hampshire.

12. Defendant Vernon Kitchen, LLC, is a manager-managed New Hampshire limited liability company formed in July 2021 (“VK”). The most recently available records accessible on the New Hampshire Secretary of State’s website lists Jeremiah Vernon and Nicole Vernon as the managers of VK. Upon information and belief, Jeremiah and Nicole Vernon are the sole members of VK. VK’s registered office is located at 301 Piscassic Road, Newfields, New Hampshire.

JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in that the parties all reside, or have their principal office, in Newfields, New Hampshire, Rockingham County. Additionally, the controversy pertains to conduct occurring within the Town of Newfields, New Hampshire.

14. The Plaintiffs have standing to bring this action because they all have been specially damaged, as that term is described by N.H. RSA 676:15. (See Barton v. H.D. Riders Motorcycle Club, Inc., 131 N.H. 60 (1988)).

ALLEGATIONS COMMON TO ALL COUNTS

15. In June 2004, the prior owner of the Property encumbered/restricted 30.937 acres of the Property with the CE, by conveying same to the Town by way of a Conservation Easement Deed. The conveyance was accepted by the Town's Select Board¹ on June 8, 2004, before the deed was recorded in the RCRD.

16. Salient provisions of the CE include:

- its **Purposes**, including “[t]he prevention of any uses of the Property that will significantly impair or interfere with the conservation values of the Property[.]”
- its **Use Limitations**, including: “The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture or forestry ... provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not degraded by onsite activities;” and
- its **defined terms**, including: “For the purposes hereof, “agriculture” and “forestry” shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other access ways for the purposes of removing forest products from the Property; and the processing or sale of products produced in the Property (such as pick-your-own fruits and vegetables and maple syrups); all as not detrimental to the purposes of this Easement.”²

17. Before the Vernons purchased the Property in 2014, Jeremiah Vernon met with the Newfields Planning Board in a “preliminary discussion” for “an understanding of what activities are allowed and not allowed on the [P]roperty.” Mr. Vernon said that he “would like to farm the land and operate a farm store/farm stand with another driveway entrance for a parking

¹ Referred to then as the Board of Selectmen.

² The CE Deed does not incorporate by reference any external definition of “agriculture,” such as that found in NH RSA 21:34-a. Moreover, the CE Deed was executed and recorded in 2004, eight years before the term “agritourism” first appeared in New Hampshire law. “In interpreting a deed, we give it the meaning intended by the parties at the time they wrote it[.]” (*Appletree Mall Assocs. v. Ravenna Inv. Assocs.*, 162 N.H. 344, 347 (2011).)

lot.³ He wants to be able to hold farm-based activities and events such as fall harvest day and to produce a number of agriculture products. This would include vegetables and livestock.” One Planning Board member speaking for the Board said that “the Planning Board would review parking and all functions of a site plan, but it would be up to Jeremiah to research what is and is not allowed on the property as far as the conservation easement is concerned.”

18. Jeremiah and Nicole Vernon purchased the Property on or around July 18, 2014.

19. Mr. Vernon appeared before the Newfields Planning Board on November 20, 2014, for additional “preliminary discussions” about the Vernons’ plans for a farm stand.

Meeting minutes reflect the discussion included topics that:

- the Vernons intended to grow shiitake mushrooms and raise poultry (summer only);
- a specified percentage of the items sold by a farm stand are required to include a statutorily prescribed minimum percentage of products of the farm where the stand is located⁴;
- Mr. Vernon represented that with the exception of the mushrooms, “all of his products are frozen when sold;”
- someone was unlawfully living on one of the outbuildings on the Property; and
- Mr. Vernon was advised that “he would have to apply for a Site Plan Review Application with the Planning Board[.]”

20. At their meeting on December 23, 2014, the Newfields Board of Selectmen voted to sign and serve Jeremiah and Nicole Vernon a Notice of Violation and Cease and Desist order for the continued unauthorized residential use and occupancy of an outbuilding on the Vernons’ Property.

³ Which Mr. Vernon said would not be located within the CE area.

⁴ N.H. RSA 21:34-a, III; a farm roadside stand is an agricultural and not commercial use “provided that at least 35% of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.”

21. On March 16, 2015, counsel for Jeremiah Vernon and VFF wrote to the Newfields Building Inspector to share her opinion that the Vernons' proposed farm stand will "not require plan review or a building permit."

22. On April 14, 2015, the Newfields Building Inspector and Chairperson of the Board of Selectmen jointly signed a letter to Jeremiah and Nicole Vernon styles as an "Administrative Decision." The administrative decision was that: (1) "site plan review and approval is required prior to commencement of the proposed farm stand use;" and (2) "a building permit is required for the farm stand construction such as you have proposed[.]"⁵

23. The Vernons did not appeal the Administrative Decision.

24. The Vernons did file an application for site plan review for their proposed farm stand on April 23, 2015, with no reservation of rights to later contest the requirement.

25. The Vernons' site plan application called for:

- use of an existing farm building as a farm roadside stand including product displays outside (on the interior, not road facing side of the building);
- daily hours of operation of 8AM – 6 PM;
- proposed gravel parking area 4750 square feet in front of the building (on the interior, not road-facing side of the building), that will include a drainage pipe to drain surface water runoff;
- estimated customer traffic of five cars per day;

with all the proposed activities and improvements occurring outside of the CE area.

⁵ The Administrative Decision cites N.H. RSA 674:32-b(b) ("any new establishment, reestablishment after disuse, or significant expansion of a farm stand, retail operation, or other use involving onsite transactions with the public, may be subject to special exception, building permit or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety.")

26. The Vernons' site plan application came before the Planning Board on May 21, 2015, but was continued to June 18, 2015, for abutter notification purposes. Following extensive testimony on June 18, the case was continued to July 16, 2015.

27. By the time the application returned for its final hearing on July 18, 2015, the proposed parking area had been expanded to 6324 square feet, large enough to accommodate ten cars.

28. After hearing additional testimony, the Planning Board voted to "approve the site plan review applied for the operation of a farm stand in an existing farm building with at least 35% of the gross sales generated by the sale of products by the farm." The approval was subject to five conditions, as follows:

1. ***The access drive shall be constructed in accordance with approved State of NH DOT permit issued 4/10/15, incorporated herein by reference.***
 - a. ***The entrance shall be completed prior to operation as well as remediation of existing drive all in accordance with the State DOT permit.***
 - b. ***NOTE: Without further public hearing, the applicant may relocate the approved driveway further west of its current location providing the DOT approved said re-location.***
2. ***The parking area shall be constructed and completed (including drainage) as shown on the plan and as described in the record prior to the opening of the farm store.***
 - a. ***Parking: Parking will be on a gravel lot measuring 6,324 sq feet; 62' x 102' with an additional area for tractor trailer deliveries measuring 100' x 12'. There shall be 10 parking spaces including a handicap space which shall be marked as such.***
 - b. ***All parking shall be limited to the area designated on the plan. The owner shall ensure that no parking occurs on the State roadway.***

3. *A review of the designated parking shall be conducted one year from the opening of the farm store to inspect compliance and function of the site with respect to on-site parking and traffic flow.*
4. *Hours of Operation shall be limited to the following: 8am-6pm, 7 days per week, year-round.*
5. *Signage: Shall meet town requirements and reviewed by the building inspector prior to installation.*

29. On June 14, 2016, the Board of Selectmen heard evidence that the Vernons were advertising on their website and Facebook their farm stand hours of operation as extending to 8PM, notwithstanding the 6PM closing time represented by the Vernons in their site plan application, which was incorporated as a condition of approval. The Board voted to send an enforcement letter.

30. In response, the Vernons filed a site plan modification application with the Planning Board seeking to extend the closing time to 10PM. At its public hearing on July 21, 2016, the Planning Board voted to amend condition #4 of the July 16, 2015, Notice of Decision, to extend the closing time to 8PM.

31. On September 7, 2021, Jeremiah Vernon applied for a “Residential [Building] Permit” to construct a 24’ x 32’ deck to support a walk-in cooler and walk-in freezer. The permit was approved by the Newfields Building Inspector on September 9, 2021.

32. On March 23, 2022, Jeremiah Vernon applied for another “Residential [Building] Permit” for “framing and roofing platforms.” Mr. Vernon included a sketch with the application to show that he was proposing to add beams and a metal roof (but no walls) over the previously approved deck; but now the deck was shown as being 24’x 40’ instead of the 24’ x 32’ applied for and permitted the previous year. The Building Inspector noted on the permit application form that no permit was required, citing NZO Article 10.3.1 which excepts from requirements of a building permit “small dairy rooms, root cellars, poultry houses, farm and storage sheds[.]”

33. The construction which took place based on these two permit applications came to the attention of the Planning Board at its meeting on July 14, 2022. The Newfields Building Inspector reported to the Planning Board that “[t]he structure that was built is quite a bit bigger than the platform and it appears that a bar was built.” Moreover, the structure is located within the required front yard setback from Piscassic Road. Further, the Planning Board heard from Selectmen’s Representative, Michael Sununu, that “the building is being used as a bar and mini restaurant. He became aware of this when a town resident asked a town officer to send out an email promoting a Library Fundraiser being held at the Vernon Family Farm.”

34. The discussion by the Planning Board at that meeting culminated with the following:

“The Planning Board needs to inform the Select Board of the ordinance violation because they enforce zoning. They should consider a cease and desist until appropriate actions have been taken.

Bill Meserve reiterated that Vernons were never approved for events.

Glenn will draft a letter of issues that fail to comply with zoning requirements.

A motion was made by Michael Sununu and seconded by Bill Meserve to instruct Glenn [Town Planner] to provide guidance on the issues raised tonight to the Planning Board and Select Board on non-compliance. All were in favor and the motion carried.”

35. At the Select Board meeting the following week (July 19, 2022), “Michael [Sununu, Select Board member representative to Planning Board] brought up an issue discussed during the recent Planning Board meeting. The Town Building Inspector informed the Planning Board that the Vernon Family Farm built a restaurant/bar on the farm’s property without going through proper building inspections. This is an issue of having a restaurant in a residential district[.]... According to the building permit, this was to be a platform to hold coolers and a lean-to roof. Instead, a restaurant and a bar were built with seating and a cooking area.”

36. At a Select Board meeting on August 9, 2022, the Vernon Family Farm was again on the agenda, and included participation by the Vernons and their attorney. The Vernons' attorney returned to an argument she had made in 2015 with respect to the farm stand – namely, that no permits are required for the agritourism events conducted by the Vernons because they are embraced within the permitted use of farming in the Residential/Agricultural zoning district: “Attorney Manzelli went on to say that permits allowing people to attend events at the farm were not required since it is part of farming and is included within the farm activities.”⁶

37. The Town rejected the Vernons' contention and required that the Vernons submit to further site plan review and building inspection. Once again, the Vernons did not appeal or challenge the Town's position that site plan review is required as a prerequisite to conducting agritourism activities.

38. An inspection of the covered deck/bar area was conducted by the Newfields Building Inspector, Larry Shaw, who reported his findings in a letter report dated September 13, 2022. He commented on nine areas:

- foundation/piers
- floor framing
- interior stairs
- walls/roof framing
- licenses
- dimensions
- plumbing
- electrical
- interior

⁶ This issue was raised and resolved by the Town's Administrative Decision of April 14, 2015. That action was prompted by the Vernons' farm stand proposal and makes no mention of agritourism activities. Still, the language of the Administrative Decision was broad enough to embrace the restaurant/bar/food service/concerts/events venue activities which had come to the Town's attention earlier in 2022. Specifically, the April 14, 2015, Administrative Decision advised the Vernons that “Newfields Site Plan Review Regulations requires site plan review before a change or expansion of a non-residential use [.]” Again, that decision was not appealed or challenged by the Vernons and should stand as the “law of the case” with respect to this issue. There is no doubt that the numerous activities conducted by the Vernons under the guise of “agritourism” constitutes the “expansion of a non-residential use” requiring site plan review. It is preposterous that the Vernons were claiming otherwise in August of 2022.

Among the nine cites, a number were in violation and a number could not be properly inspected because work had been covered over. The Building Inspector also noted Mr. Vernon's lack of cooperation in refusing to open a stainless-steel cabinet with beers taps for the inspector to look inside.

39. The Vernons' attorney provided an interim report to the Select Board by letter dated September 13, 2022. In that letter, Attorney Manzelli confirmed that she had met with the Town Planner and agreed with him that "the Farm would apply for site plan review for agritourism activities." Attorney Manzelli also acknowledged in that letter that the Vernons were already actively conducting agritourism activities without an approved site plan therefor.⁷

40. On September 28, 2022, VFF applied for site plan review. On the Planning Board Application form, VFF completed the blank calling for "Type of business proposed:" with "Agritourism."

41. The Planning Board held a public hearing on the application on October 13, 2022, and a site walk on November 1. At the continued public hearing on December 8, 2022, the Planning Board voted to approve the site plan, subject to 17 conditions including the following:

"2... obtain all permits for the use(s) of its Property[.]

...

8. Any speakers used at events for music, entertainment or other purposes shall be directed away from surrounding properties and shall be mounted off the ground by at least 3'.

...

9. Vernon Family Farm shall install a vegetative buffer ... to the reasonable satisfaction of the current owners [of 319 Piscassic Road] and the Newfields Planning[.]

...

⁷ The Town could have and should have shut down agritourism activities occurring without the benefit of site plan review as soon as the Town became aware of this. The Plaintiffs speculate that the Town was misled by the creeping incrementalism of the Vernons conduct over the years and by confusion, to the point of paralysis, over how to define and regulate "agritourism," No matter; the Vernons acquired no rights to continue to conduct such activities without site plan review merely by virtue of the Town's failure to enforce. [Add cite.]

13. No “restaurant” use of the Property shall be made unless all required municipal and state permits and approvals have been granted for said use, including but not limited [to] relief from the Zoning Ordinance through the Newfields ZBA and Site Plan Review through the Newfields Planning Board.”

42. At the first Planning Board meeting of the new year, on January 12, 2023, the Board discussed its recent decision to conditionally approve VFF’s site plan for agritourism. During that discussion, longtime Planning Board member John Hayden suggested: “Someone needs to contact VFF stating that they cannot... start having additional events without completing the conditions of approval first.”

43. Most of the conditions of approval remain unfulfilled as of the date of this Petition (at least eight full months into 2024). Despite that fact, the Vernon Defendants conducted approximately 38 concerts and 61 other events where food and alcohol were sold to paying customers in 2023, and another 29 concerts (so far) in 2024.

44. The Vernons’ site plan to conduct agritourism events is subject to numerous conditions. Unless and until the site plan conditions are fulfilled, the Vernons have no lawful right or authority to engage in, conduct, or host agritourism events at the Property.

45. Upon information and belief, the Town is aware that the Vernons have engaged in, conducted, and hosted numerous agritourism at the Property while many of the conditions of site plan approval remain unfulfilled.

46. Despite such knowledge, the Town has failed, refused, and neglected to take any enforcement action against the Vernon Defendants.

47. The unlawful and unauthorized agritourism operations occurring at the Property overburdens the Property, poses public safety issues from the volume of traffic attracted to the Property on the single, narrow, winding, shoulder-less, hilly Class II highway, with numerous

blind driveways (Piscassic Road) that provides the only access to the Property. The public safety concerns are exacerbated by the fact that the Vernons serve alcohol at their events.

48. Most of the events require a Newfields police detail, which parks on the Girards' property causing safety concerns from limiting visibility upon entering/exiting the Girards' property. Traffic safety cones also present additional obstacles. The police car strobe lights shine directly into the Girards' main living area.

49. Plaintiff Wachsmuth's property is directly across the street from the single driveway entrance to the Vernons' event venue. When visitors to Vernon Farm leave the Property after dark, the headlights from every single vehicle exiting easterly - sometimes more than 50 – sweep across the front of the Wachsmuth home, invading the privacy and disturbing the peace and tranquility of those within.

50. At virtually all of these events when amplified music is played, the sounds produced on the Vernons' Property routinely exceeds the 60 dB day/50 dB night property line threshold set by the NZO.

51. Upon information and belief, the Town has caused the sound levels to be measured at the edges of the Property during one or more events and has found the levels to exceed the limits set by the NZO. The minutes of the Newfields' Select Board meeting on May 28, 2024, report Board Chair Michael Sununu stating the following: ***“Michael said that the monitoring took place at the Patterson and Girard property.... Clearly they [the Vernons] were in violation of the noise ordinance. The Town did not take any action last year, but if required the town will take action. If necessary, they will have a professional come to test and if so, there violations which will mean fines and cease and desist if it continues.”*** In the four months since this meeting, there have been 16 additional events about which the Plaintiffs have

complained, but the town has taken no further action to measure and police the noise from the unlawful agritourism activities conducted on the Vernon Property.

52. The levels of noise experienced at the Plaintiffs' properties have negatively impacted the lives of the Plaintiffs, their families, friends, and guests. As a result of the commercial kitchen/outdoor restaurant/bar and live amplified music event venue operating in this otherwise quiet, rural, residential neighborhood, the Plaintiffs have to: take precautions to prevent event attendees from trespassing onto the Plaintiffs' properties; curtail maintaining their yards; stop arranging outdoor activities which would compete with and be drowned out by the unreasonable noise; wear earplugs in order to sleep at night because of the unreasonable noise; give up outdoor activities because of unreasonable noise; reduce occasions of hosting family and friends because of the unreasonable noise; reorganize family schedules so they will be away from their homes when the noise and concerts can be expected; and children have become afraid to play outside because of the loud noise, high traffic volumes, police presence, and crowds. The unlawful events at the Vernon Property also create complications for Plaintiffs and members of their households who work from home.

53. The adverse impacts in daily living suffered by the Plaintiffs also tend to adversely affect the values of their properties.

54. Despite the evidence collected by and submitted to the Town, the Town has failed, refused, and neglected to take any action to enforce the noise limitations on the Vernon Defendants.

55. In conjunction with their growing unauthorized and unpermitted commercial kitchen/restaurant/bar/event venue operations, the Vernons have expanded the footprint of the

uses to include a driveway and parking lot on a portion of the Property protected and restricted by the CE.

56. The Town conducts an annual inspection of the Property to determine whether the terms of the CE are being honored/followed. In recent years, the town has engaged an outside Conservation Consultant, Sara Callaghan, to conduct the inspections on behalf of the Town.

57. In a Conservation Easement Monitoring Report dated December 5, 2022 (following a field inspection on October 19, 2022), Ms. Callaghan observed that VFF “hosts community events at the Farm on a weekly basis on Thursday and Friday evenings during the summer. The parking for these events occurs on the easement [area].” In the same report, Ms. Callaghan noted that “[b]are soil and reduced vegetative growth are visible” within portions of the Property, including the parking area. In a more recent memo to the Newfields Conservation Committee dated April 1, 2024, Ms. Callaghan noted that “vehicle parking can lead to soil compaction and disturbance, reducing soil productivity... Soil compaction and disturbance does reduce the long-term viability and productivity of soils.”

58. According to Paragraph 2.A. of the CE Deed, “The Property shall be maintained in perpetuity as open space without their being conducted thereon any industrial or commercial activities, except agriculture and forestry, ... and provided that the productive capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.” Further, the removal, filling, or disturbance of soil surface is prohibited, unless it is commonly necessary for agricultural use and are not detrimental to the Purposes of the Event. (CE Deed, ¶ 2.D.)

59. Ms. Callaghan also reported to the Town that in 2022 VFF sponsored and held on the Property a series of “Summer Community Music Events (every Friday and one Saturday each

month) ... [which was] a live music venue. For an additional fee, drinks and meals may be purchased.” Parking for these events occurred within the CE area.

60. There can be no doubt that a music venue concert series is not agriculture. Moreover, a music venue/concert series “is not commonly necessary for agricultural uses.” And the Town’s own conservation consultant has told the Town that the vehicle parking associated with the event venue/concert series within the CE area degrades the productive capacity of the site and is detrimental to the Purposes of the CE.

61. Notwithstanding that knowledge and information, the Town has refused, failed, and neglected to take any action to enforce the terms of the CE.

COUNT I
(Injunction - Violation of Land Use Ordinances and Creation and Operation of a Nuisance)

62. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 61 above.

63. The Vernon Defendants’ actions, as set forth above, are in clear violation of Town ordinances concerning permitted uses in the Town’s Residential and Agricultural Zone and non-residential site plan review. The use of the Property by the Vernon Defendants as a commercial kitchen/restaurant/bar/event venue was not permitted in 2014 when the Vernons first acquired the Property, is not permitted today, and has never been permitted any time in between.

64. The Vernon Defendants have continued to illegally operate a commercial kitchen/restaurant/bar/event venue on the Property and have repeatedly expanded their illegal use of the Property since 2014.

65. The Vernon Defendants’ actions, as set forth above, constitute a substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property to their immediate and continuing detriment and nuisance. The Plaintiffs have suffered, and continue to suffer from

the illegal operation and nuisance created by the unlawful activities at the Property, including, but not limited to, curtailing maintenance of their yards because of the unreasonable noise, giving up outdoor activities during times which conflict with Vernon events because of the unreasonable noise and volume of traffic, wearing earplugs in order to sleep at night because of the unreasonable noise, giving up outdoor activities because of unreasonable noise, foregoing hosting family and friends because of the unreasonable noise, reorganizing their family schedules so they will be away from their homes when the noise and concerts can be expected, and children being afraid to play outside because of the loud noise, traffic, police presence, and crowds, and periodic trespass onto their properties by attendees of events at the Vernon Property.

66. The Vernon Defendants' conduct in violation of Town ordinances, as set forth above, constitutes an intentional and improper interference with Plaintiffs peaceful use and quiet enjoyment of their property and, if not enjoined, will cause, and continue to cause, immediate and irreparable harm to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

67. Plaintiffs are owners of neighboring property which is specifically damaged by the Vernon Defendants' direct violation of the Town ordinances, and the Plaintiffs are entitled, under N.H. RSA 676:15, to equitable relief to have this Court enforce those ordinances through its injunctive powers.

68. The Vernon Defendants should be enjoined from violating the ordinances of the Town of Newfields, and from operating a nuisance. Their illegal operations should be enjoined until compliance with all appropriate Town ordinances has been obtained.

COUNT II
(Writ of Mandamus)

69. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 61 above.

70. Mandamus is a common law writ which allows a court to order an officer or a board to perform its duty according to law. 14 New Hampshire Practice: Local Government Law § 985.

71. An act may be ministerial, and hence subject to control by mandamus, even though the person performing it may have to satisfy himself that a state of facts exists under which it is his duty to perform the act. 52 Am Jur.2d Mandamus § 80.

72. Mandamus will lie when the action complained of is based on a mistaken view of the law or where there is a clear legal duty to perform the function demanded or where the act is not discretionary, or if discretionary, where the act is arbitrary or fraudulent. Fortier v. Grafton County, 112 N.H. 208, 211 (1972). There is no discretion in the course of conduct open to the Board of Selectmen in its capacity as the land use enforcement authority in the Town in this case.

73. Mandamus lies in the present matter because the Town is on notice that the Vernon Defendants' use of the Property is illegal under the zoning ordinance that the illegal use has an offensive and unreasonable impact on the Plaintiff, and despite these findings, has not upheld the integrity of the zoning ordinance and has not issued an order of abatement to the Vernon Defendants and/or ordered that all operations be stopped pending the fulfillment of all of the conditions of the site plan approval.

74. The Plaintiffs have no adequate remedy at law.

75. This Writ of Mandamus is necessary and efficacious and will promote the interests of justice.

COUNT III
(Nuisance/Claim for Damages)

76. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 61 above.

77. The noise on the Property has constituted, continues to constitute, and will in the future constitute a substantial and unreasonable interference with Plaintiffs' reasonable use and quiet enjoyment of their property.

78. The noise emitted from the Property as a result of this illegal use is significant and exceeds any customary or ordinary interference with the Plaintiffs' use of their land. The sound of the Vernon Defendants' commercial kitchen/outdoor restaurant/bar operation and amplified music events travels well beyond the borders of the Property to the increasing distress of the Plaintiffs.

79. The Property is not, and never has been, in compliance with the Town's zoning ordinances, and therefore, the Vernon Defendants' acts are an unpermitted use.

80. The Vernon Defendants have failed and refused to abate the nuisance they have created.

81. Considering the type of neighborhood, and the circumstances of the locality, the Vernon Defendants' acts are a clear nuisance and should be enjoined by this Court.

82. The Vernon Defendants' actions, and continued actions, constitute a nuisance and have directly and proximately caused Plaintiffs to suffer damages.

83. As a result of The Vernon Defendants' violation of Town land use regulations and the nuisance caused by their illegal and unreasonable use of the Property, Plaintiffs have suffered and will continue to suffer damages, including, but not limited to, damages relating to loss of use and enjoyment of their property, a diminution in value of their property, potential

health and safety risks from the volume of traffic and large scale consumption of alcohol, and costs, including attorney's fees, incurred and to be incurred in prosecuting this litigation. All such damages are in an amount within the jurisdictional limits of the Court.

WHEREFORE, the Plaintiffs respectfully requests that this Honorable Court:

- A. Enter an order enjoining the Vernon Defendants from violating the land use ordinances of the Town of Newfields and enjoining the Vernon Defendants' unlawful and unpermitted use of the Property as a commercial kitchen/restaurant/bar, and event venue;
- B. Order the Vernon Defendants to abate the nuisance caused by its operation and use of the Property;
- C. Issue a Writ of Mandamus ordering the Select Board for the Town of Newfields to enforce the land use ordinances of the Town and the Conservation Easement encumbering the Property, to issue a cease and desist order against the Vernon Defendants to discontinue their unlawful and unpermitted use of the Property, to issue and collect appropriate fines against the Vernon Defendants, and to take any and all enforcement actions against the Vernon Defendants available to a municipality under the law;
- D. Award Plaintiffs all their monetary damages, plus interest and costs, resulting from the Vernon Defendants' violation of law and the nuisance created by the Vernon Defendants' illegal use of the Property;
- E. Award Plaintiffs their costs, including reasonable attorney's fees, in prosecuting this action; and
- F. Grant Plaintiffs such other and further relief as may be just and proper.

Respectfully submitted,

RUTH PATTERSON, GERALD COX, LYNN
GIRARD, MARK GIRARD, and
SCOTTWACHSMUTH

By Their Attorneys,

MCLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

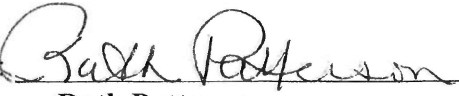
Dated: October 4, 2024

By: /s/ Jennifer L. Parent
Jennifer L. Parent (NH Bar No.: 11342)
Jennifer.parent@mclane.com
Thomas W. Hildreth (NH Bar No.: 4072)
Tom.Hildreth@mclane.com
John F. Weaver (NH Bar No.: 18999)
John.Weaver@mclane.com
900 Elm Street, PO Box 326
Manchester, NH 03105
Tel. (603) 625-6464

Verified

The undersigned swear and affirm that, to the best of our knowledge, information, and belief, the facts set forth in the forgoing Verified Petition are true and correct.

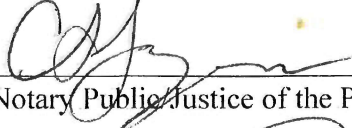
Date: 10/1/2024

By: 
Ruth Patterson

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 1st day of OCT, 2024, personally appeared before me the above-named Ruth Patterson and swore that the foregoing statements are true to the best of his knowledge and belief.

CHRISTINE S. JACQUES
NOTARY PUBLIC - State of New Hampshire
My Commission Expires
September 21, 2027


Notary Public/Justice of the Peace

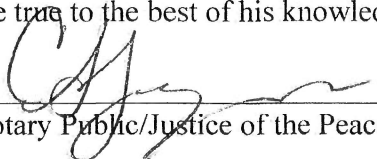
Date: 10/2/2024

By: 
Gerald Cox

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 2nd day of Oct, 2024, personally appeared before me the above-named Gerald Cox and swore that the foregoing statements are true to the best of his knowledge and belief.

CHRISTINE S. JACQUES
NOTARY PUBLIC - State of New Hampshire
My Commission Expires
September 21, 2027

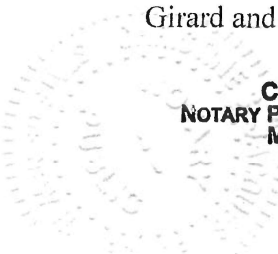

Notary Public/Justice of the Peace

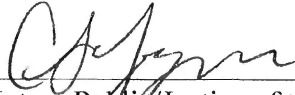
Date: October 1, 2024

By: 
Lynn Girard

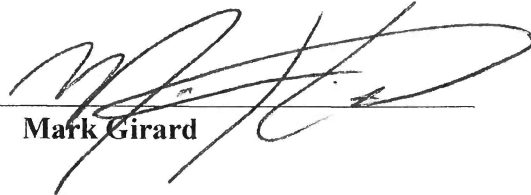
STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 1st day of OCT, 2024, personally appeared before me the above-named Lynn Girard and swore that the foregoing statements are true to the best of his knowledge and belief.


CHRISTINE S. JACQUES
NOTARY PUBLIC - State of New Hampshire
My Commission Expires
September 21, 2027


Notary Public/Justice of the Peace

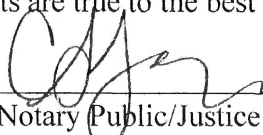
Date: 10/2/2024

By: 
Mark Girard

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

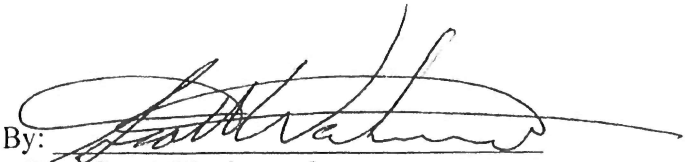
On this 2nd day of OCT, 2024, personally appeared before me the above-named Mark Girard and swore that the foregoing statements are true to the best of his knowledge and belief.


CHRISTINE S. JACQUES
NOTARY PUBLIC - State of New Hampshire
My Commission Expires
September 21, 2027


Notary Public/Justice of the Peace

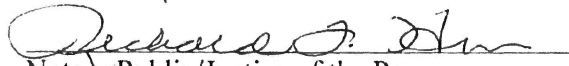
Date: 10-2-24

By:


Scott Wachsmuth

STATE OF FLORIDA
COUNTY OF PASCO

On this 2nd day of Oct, 2024, personally appeared before me the above-named Scott Wachsmuth and swore that the foregoing statements are true to the best of his knowledge and belief.


Notary Public/Justice of the Peace



RICHARD F. HEON
Commission # HH 360930
Expires March 10, 2027