

November 23, 2020

VIA ELECTRONIC MAIL ONLY

Frederika “Riki” French, Chair
Village of Hyde Park Board of Trustees
P.O. Box 400
Hyde Park, VT 05655
rikifrench@gmail.com

Dear Mrs. French:

We represent the Town of Hyde Park (the “Town”) and are contacting you regarding the Village of Hyde Park’s (the “Village”) projects within the Town’s road rights-of-way. As you may recall from a legal opinion sent to you by then-Town Attorney Paul Gillies on October 8, 2015, and from the two enclosed letters, one dated October 18, 2018, from Selectboard Chair Susan Bartlett and another dated December 18, 2019, from our office, the Village is required to obtain a permit from the Town pursuant to 19 V.S.A. § 1111 prior to conducting any activities or engaging in construction within Town’s road rights-of-way.

Since 2019, the Town is aware of at least three instances of the Village’s noncompliance with the requirements of § 1111. In these instances, the Village installed new utility poles within the Town’s road rights-of-way without first submitting applications for permits to use the same pursuant to § 1111. These violations occurred at 68 West Main Street, at 318, 351 and 278 East Main Street and on Johnson Street Extension proximate to its intersection with Tingle Road. The Village’s failure to abide by its obligations under § 1111 places the general public in danger and could not only cause damage to the Town’s road maintenance equipment but also could injure travelers on these town highways.

In light of the Village’s repeated noncompliance with its statutory obligations to obtain permits before working within the Town’s road rights-of-way, we have been asked to prepare the enclosed draft Complaint against the Village for its violation(s) of 19 V.S.A. § 1111 for filing with the Lamoille Unit of the Civil Division of Vermont Superior Court, seeking both an injunction to stop the Village’s unpermitted use of the right-of-way under § 1111(h) and penalties of up to \$10,000 for each violation pursuant to § 1111(j).

If the Village’s failure to obtain § 1111 permits from the Town for its activities in the Town’s town highway rights-of-way continues, the Town will be compelled to

Fredericka "Riki" French
November 23, 2020
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immediately file a Complaint against the Village in a form similar to the attached with the Lamoille Unit of the Civil Division of the Vermont Superior Court.

Please feel free to reach out to the Town Administrator, Ron Rodjenski, or Selectboard Chair, Susan Bartlett, if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "DWR", is written over a light blue horizontal line.

David W. Rugh

DWR/

Enclosures

cc: Via Electronic Mail
Carol Robertson (carol.robertson@hydeparkvt.com)
Ed French, Esq. (efrench@stackpolefrench.com)
Susan Bartlett (senatorbartlett@comcast.net)
Ron Rodjenski (ron@hydeparkvt.com)

STATE OF VERMONT
SUPERIOR COURT

CIVIL DIVISION

LAMOILLE UNIT

TOWN OF HYDE PARK,
Plaintiff,

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)
)
)
)
)
)

DOCKET NO. _____-20 Lecv

v.

VILLAGE OF HYDE PARK,
Defendant.

COMPLAINT

NOW COMES the Town of Hyde Park, by and through its attorneys, Stitzel, Page & Fletcher, P.C., and for its Complaint, states as follows:

1. Plaintiff Town of Hyde Park (hereinafter the "Town") is a Vermont municipality situated in Lamoille County.
2. Defendant Village of Hyde Park (hereinafter "Defendant") is an unincorporated village and a Vermont municipality located within the Town.
3. West Main Street is a "town highway" as defined by 19 V.S.A. § 301(7), designated as Town Highway No. 64, and is a Class 3 Town Highway.
4. In 2019, Defendant installed a two or three new electric utility poles within the right-of-way of West Main Street and proximate to its traveled way near the property known and designated as 68 West Main Street.
5. The Town has not issued a permit to Defendant for erecting new poles for electric utility service near 68 West Main Street.
6. East Main Street is a "town highway" as defined by 19 V.S.A. § 301(7), designated as Town Highway No. 4, and is a Class 2 Town Highway.

7. Upon information and belief, in 2019 Defendant installed three new electricity poles within the right-of-way of East Main Street and proximate to its traveled way near the properties known and designated as 318, 351 and 378 East Main Street.

8. The Town has not issued a permit to Defendant for installing three new utility poles for electricity service proximate to 318, 351 and 378 East Main Street.

9. Johnson Street Extension is a “town highway” as defined by 19 V.S.A. § 301(7), designated as Town Highway No. 4, and is a Class 2 Town Highway. Tingle Road is a “town highway” as defined by 19 V.S.A. § 301(7), designated as Town Highway No. 68, and is a Class 3 Town Highway

10. In 2019, Defendant installed two new electricity poles within the right-of-way of Johnson Street Extension proximate to its intersection with Tingle Road.

11. The Town has not issued a permit to Defendant for installing two new utility poles for electricity service on Johnson Street Extension proximate to its intersection with Tingle Road.

12. The installation of new poles near 68 West Main Street, at 318, 351 and 378 East Main Street and on Johnson Street Extension near Tingle Road can interfere with the flow of traffic and the Town’s maintenance of its town highways, threatening public safety and potentially causing damage to private vehicles traveling thereon, as well as Town maintenance vehicles.

COUNT I

13. The Town repeats and realleges Paragraphs 1-12, above, as if fully set forth herein.

14. Defendant has violated 19 V.S.A. § 1111:

- a. by installing new utility poles within the West Main Street right-of-way proximate to the property designated as 68 West Main Street without a permit; and
- b. by installing three new electricity poles within the East Main Street right-of-way proximate to the property designated as 318, 351 and 378 East Main Street without a permit; and
- c. by installing two new electricity poles within the right-of-way of Johnson Street Extension near its intersection with Tingle Road without a permit.

WHEREFORE, the Town requests that the Court enter an Order granting it the following relief:

A. Requiring Defendant by issuance of a mandatory injunction pursuant to 19 V.S.A. § 1111(h) to cease its use of the Town's town highway rights-of-way without first obtaining a permit from the Town therefore pursuant to 19 V.S.A. § 1111(a).

B. Pursuant to 19 V.S.A. § 1111(j) awarding the Town fines of not less than \$100 and not more than \$10,000.00 per day for each day that each violation of 19 V.S.A. § 1111(a) has continued since and including November ____, 2020.

C. Awarding such other relief as the Court deems proper.

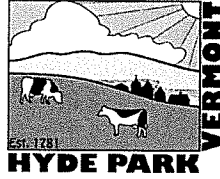
DATED at Burlington, Vermont this ___ day of _____, 2020.

STITZEL, PAGE & FLETCHER, P.C.
Attorneys for the TOWN OF HYDE PARK

By: _____

David W. Rugh, Esq.
171 Battery Street, P.O. Box 1507
Burlington, VT 05402-1507
(802) 660-2555
drugh@firmspf.com
ERN: 1507

DRAFT



October 15, 2018

Frederika "Riki" French, Chair
Village of Hyde Park Board of Trustees
PO Box 400
Hyde Park, VT 05655

Via Email: rikifrench@gmail.com

Re: 23 V.S.A. 1111 – Highway Access Permit

Dear Riki:

The Town of Hyde Park is reviewing the Village's highway access permit application seeking 19 V.S.A. § 1111 approval for one handicap ramp and a sign to be located within the town highway right-of-way. The permit is for work *already completed* at 214 Main Street – Elsa French Park. Before we can approve the permit, we'd like to meet with the Trustees.

The Town expects to review and approve permit applications from all users of the public right-of-way before construction. With major projects the Town expects to be informed during the planning of project designs, in part to avoid construction delays and unnecessary costs. The State requires Town approval for major water and sewer lines, as do other major funding sources.

We're concerned that the design work has not yet included input from the Selectboard, and fear there are road, storm water, run-off issues your engineers might not have considered. With major work taking place on town roads, it's important that all of it be part of a well-coordinated plan to avoid major mistakes.

Please let me know when the Trustees will be available to discuss the pending highway access permit for Elsa French Park and the Village water and sewer improvements.

Thank you.

Sincerely,

Susan Bartlett, Chair
Hyde Park Selectboard

cc: Village Trustees
Dufresne Group
Hyde Park Village Road Commissioner

December 18, 2019

VIA ELECTRONIC MAIL ONLY

Frederika “Riki” French, Chair
Village of Hyde Park Board of Trustees
P.O. Box 400
Hyde Park, VT 05655
rikifrench@gmail.com

Dear Mrs. French:

We represent the Town of Hyde Park (the “Town”) and are contacting you regarding the Village of Hyde Park’s (the “Village”) proposed projects within the Town’s road rights-of-way. As you may recall both from a legal opinion sent to you by then-Town Attorney Paul Gillies on October 8, 2015, and from an October 18, 2018 letter from Selectboard Chair Susan Bartlett, the Village is required to obtain a permit from the Town pursuant to 19 V.S.A. § 1111 prior to using, conducting any activities within or engaging in construction within Town’s road rights-of-way.

Section 1111 of Title 19 of the Vermont Statutes Annotated authorizes the Town and the State, as owners of public road rights-of-way, to regulate the activities of “anyone or any corporation,” including the Village, within their road rights-of-way. Pursuant to § 1111 “a permit shall be required for any use of any highway right-of-way.” As a result, the Village must obtain approval from the Town for any and all activities it conducts within the boundaries of town highway rights-of-way, including but not limited to the following activities:

- Installation of new, replacement of old, or relocation of existing electric and telecommunications poles and wires, 19 V.S.A. §§ 1111(a)(2), (3), and (c); *see also* 30 V.S.A. § 2501, *et seq.* (regulating utilities’ installation of electric or telecommunications wires within town highway rights-of-way);
- Installation, maintenance, repair and replacement of water pipes, lines and appurtenances, including water mains, curb stops and service lines, §§ 1111(c), (d);
- Installation, maintenance, repair and replacement of sewer pipes, lines and appurtenances, including sewer mains, pump stations, service lines and service connections, *id.*;

- Construction of new or maintenance of existing private roads and driveways, § 1111(b);
- Installation, maintenance, repair and replacement of sidewalks and curbing, § 1111(a); and
- Installation, maintenance, repair and replacement of signage, *id.*

The Selectboard appreciates that the Village did apply for and obtain “§ 1111 permits” before construction in some instances. For example, the Village received approval for the installation of the LVRT wayfinding signs at numerous locations along town highways, which was appreciated. However, the Village also applied for but never obtained approval for a new curb cut and a pedestrian crosswalk at the French House on Main Street since the Town indicated during its review that it was concerned about pedestrian safety at this location. Unfortunately, construction is now complete, but the Town never issued an approval pursuant to § 1111. Of particular concern to the Town is both the Village’s recent activities in installing new or replacement electric poles within the Town’s road rights-of-way, for which the Village did not obtain “§ 1111 permits,” and the Village’s planned water line replacement project, for which the Village has not yet obtained approval. While the Village is authorized to use the Town’s road rights-of-way to provide electric service pursuant to 30 V.S.A. § 2501, *et seq.*, and for providing water service pursuant to 24 V.S.A. § 3302, any activities of the Village remain subject to the provisions of 19 V.S.A. § 1111. Thus, the Town expects the Village to comply with its legal obligations, submit the appropriate permit applications for approval under § 1111 and meet with the Selectboard to discuss the conditions under which the Village may use the Town’s road rights-of-way.

For example, with respect to the Village’s proposed water line replacement project, after repair or replacement of water lines within the Town’s road right-of-way, the Village is required to restore the surface of and leave the roads and adjacent public grounds “in as good condition as before....” 24 V.S.A. § 3302. The Town will undoubtedly impose conditions consistent with this requirement in any § 1111 permit that gets issued.¹ If the Town were to find that either the Village did not obtain the appropriate approval for its work, or if the Village’s road repair and restoration work is found to be unsatisfactory, either the Village will have to re-do the work, or be subject to an enforcement action, damages and penalties of up to \$10,000 for each violation pursuant to 19 V.S.A. §§ 1111(h), (j). Therefore, it is imperative for the Village to obtain approval for any activities within the Town’s road rights-of-way before engaging in any work.

¹ Although any § 1111 permit is subject to appeal, court review of an appeal is limited and “on the record” pursuant to Vermont Rule of Civil Procedure 75.

Frederika "Riki" French

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In light of the foregoing requirements, the Town has identified opportunities for the Town and the Village to collaborate with respect to both the water line repair and replacement work and the repair and restoration of the Town's roads and adjacent grounds after such work. As the Village may recall, the Town has been engaged in a dedicated planning process for new public improvements. In the near future the Town intends to perform work within its road rights-of-way to improve stormwater management and to beautify the street scape in the Village through the Better Connections Grant. As a result, the Town would like to collaborate with the Village's construction activities in part to limit the need to restore the surface of the road and adjacent grounds to their pre-existing condition more than once. Such collaboration may also include coordinated project planning; cooperative construction scheduling and sequencing of work; and combined road surface restoration and re-paving. Significantly, such coordination if well-planned may generate cost savings for the Village, the Town, and the parties' mutual taxpayers.

Accordingly, the Town requests to meet with the Village within the next month to discuss the Village's obligations under § 1111 and the upcoming construction projects that affect the Town's road rights-of-way. The Town appreciates the time the Village has dedicated to its proposed projects to date, but it is essential for the parties to meet and collaborate to enable coordination of their respective construction activities within the Town's road rights-of-way and adjacent grounds. Please reach out to the Town Administrator or Selectboard Chair at your earliest convenience to discuss how we may provide coordinated and efficient service to the parties' mutual taxpayers.

Sincerely,



David W. Rugh, Esq.

DWR/

cc: Via Electronic Mail:
Carol Robertson (carol.robinson@hydeparkvt.com)
Susan Bartlett (senatorbartlett@comcast.net)
Ron Rodjenski (ron@hydeparkvt.com)