

May 14, 2019

VIA SHERIFF'S SERVICE
VIA FIRST CLASS MAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND VIA IN HAND/ABODE SERVICE

Kenneth Williams
47 Cockburn Lane
Colebrook, NH 03576

**Re: ORDER TO RAZE OR REPAIR PURSUANT TO RSA 155-B, *et seq*
NOTICE OF VIOLATION PURSUANT TO RSA 676:17
CEASE & DESIST ORDER PURSUANT TO RSA 676:17-a
ORDER TO REMOVE PUBLIC NUISANCE PURSUANT TO RSA
147:4&11
758 Second Ave., Berlin, New Hampshire**

Mr. Williams:

Pursuant to New Hampshire RSA 155-B 2&3, RSA 676:17, RSA 676:17-a, the City of Berlin Ordinances, and the other statutes and regulations set forth more fully below, you are hereby notified that the condition of your property at 758 Second Ave., Berlin, Tax Map 119, Lot 441 (hereinafter "**the Property**") is in violation of State law and the Berlin Zoning Ordinance.

I. STATEMENT OF STATUS

Currently, the Property is not secured, and several windows are broken. All outward appearances are that the Property is abandoned, and was a target of arson on May 6, 2017. Beyond the foregoing, the structure on the Property is structurally unsound: the porches servicing the Property have collapsed and the roof appears structurally unsound. The aforementioned broken windows may have been damaged through vandalism by unauthorized trespassers, or due to aggressive settling and/or deflection of the structure given its apparent lack of structural integrity.

II. REGULATIONS, PROVISIONS, SPECIFICATIONS OR CONDITIONS WHICH ARE BEING VIOLATED.

You are in violation of:

a. RSA 147:4: in its current condition, the Property stands as public nuisance injurious to the public health. The advanced deterioration of the Property is such that it has become a target for vandals and/or criminal elements. Accordingly, the Property constitutes a fire hazard, and imperils firemen and other first responders who may need to enter a structurally suspect building or otherwise contain a structure fire. These dangers, especially the attraction to criminal elements and the danger of structure fires, extend to the surrounding neighborhood and the public at large.

b. Sec. 6-108 Obligation to Register Vacant Buildings. In its current condition, the Property constitutes a Vacant Blighted Premises, such that it must be registered and a Blighted Vacant Building Plan must be submitted.

c. Sec. 7-18. Maintenance of offensive, injurious conditions on private premises-- Generally. "No person shall suffer or permit any cellar, vault, private drain, pool, sink, privy, sewer, or other place, upon any premises or grounds belonging to or occupied by him or them, to become offensive or injurious to the public health." As set forth above, the conditions of the Property serves as a danger to public health and welfare.

d. Sec. 7-19. Same--Lots, buildings, adjoining public property. "No person or occupant, or any person having control or charge of any lot, tenement, premises, building, or other place, shall cause or permit any nuisance to be or remain in or upon said lot, tenement building, or other place, or between the same, and the center of the street, lane or alley adjoining." As set forth above, the current condition of the Property is such as to constitute a nuisance.

e. Sec. 8-104. Public Nuisance. "No owner, operator or occupant shall cause or let a property to become a Public Nuisance. For purposes of this Chapter, "public nuisance" shall mean the following:

(a) The physical condition, or use of any premises regarded as a public nuisance at common law.

(b) Any physical condition, use or occupancy of any premises or its appurtenances considered an accessible nuisance to children, including, but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences, structures or improperly secured buildings.

[...]

(f) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecure as to endanger life, limb, or property.

[...]

(h) Any structure or building that is in a state of dilapidation, deterioration, or decay; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises."

The condition of the Property is such as to constitute a public nuisance under the above-referenced subsections of Section 8-104.

f. Sec. 8-106. Vacant Buildings. "Every person or entity owning or having charge of or control of any vacant building shall remove all combustible waste and refuse therefrom and lock, barricade, or otherwise secure all windows, doors and other openings in the building to prohibit entry by unauthorized persons." The Property meets the definition of "Vacant" under the Berlin Ordinance. Although the Property is abandoned, there is no indication that combustible materials were removed

III. FORMAL NOTICE

The instant notice is meant to satisfy the various notice provisions provided in the following statutes:

- a) RSA 147:4 – Notice to Remove or Destroy Nuisance
- b) RSA 147:7-a – Notice to Owner of Nuisance and Abatement Cost Collection
- c) RSA 147:11 – Order of Discontinuance of Nuisance
- d) RSA 155-B: 2&3 – Order to Raze or Repair
- e) RSA 676:17 - Notice of Violation
- f) RSA 676:17-A - Cease and Desist Order
- g) Berlin Ordinance Sec. 6-109 and 6-110 – Notice of Blighted Vacancy and Public Nuisance

IV. CORRECTIVE ACTIONS REQUIRED.

This Notice is preliminary in nature: given the apparent abandoned condition of the Property, a full inspection was not possible. To that end, the corrective measures set forth in this subsection are preliminary, and a follow-up inspection will be conducted after the corrective actions contemplated in this notice are met.

You must register the Property as a Blighted Vacant Building pursuant to Berlin Ordinance Sec. 6-108 and 6-110 on or before _____. You must also present the City of Berlin, through Michel Salek, its Code Enforcement Officer Angela Martin-Giroux, City Health Officer, and John Lacasse, Berlin Fire Chief a written plan on abating and removing the violations set forth above (“the Abatement Plan”) on or before _____. The City shall review, approve, or alter same. Without limitation, this plan must constitute and meet the requirements of a Blighted Vacant Building Plan pursuant to Berlin Ordinance 6-112 and 6-113, and provide a plan to raze or repair the Property, and/or otherwise abate the above-referenced violation, prior to _____. If you have any questions regarding this required corrective action, please contact the Fire Chief John Lacasse at (603)752-3135.

V. TIME FRAME TO COMPLETE CORRECTIVE ACTION.

As set forth above, the Property must be registered with the City as a Blighted Vacant Building on or before _____, 2019, and a written Abatement Plan must be furnished on or before _____, 2019. All actions and obligations under the Abatement Plan but be met on or before _____, 2019; failure to do so will lead to further legal action, including but not limited to the City seeking the remedies set forth in the following subsection.

VI. NOTICE OF VIOLATION/LIABILITY FOR ABATEMENT, RAZING AND/OR REPAIR COSTS, AND COMMENCEMENT OF FINES & PENALTIES.

This Notice also serves to advise you of your exposure to liability for Abatement, Razing and/or Repair costs, as well as civil fines. Without limitation to the City’s remedies, you are liable for the following:

Pursuant to RSA 147:7, you are liable for expense of the removal or destruction of the nuisance or other thing, including the fees of the health officers who order or cause the same to be removed. Consistent with RSA 147:7-a(I)(c), failure to take the corrective action within the prescribed timeframe may result in corrective action being taken by the municipality, and that if this occurs, the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property, if not paid. **TO THE EXTENT THE CITY TAKES CORRECTIVE ACTION, ALL PERSONAL AND MOVEABLE ITEMS WITHIN THE PROPERTY WILL BE REMOVED AND DISPOSED, WITHOUT REGARD TO TITLE OWNERSHIP.**

You are also advised, consistent with RSA 155-B 2 & 3, that a motion for summary enforcement of the order will be made to the court of the district or municipality in which the hazardous building is situated unless corrective action is taken, or unless an answer is filed within the time specified in RSA 155-B:6 and that any costs, attorney's fees, and expenses incurred by the municipality in bringing the property into compliance may be enforced as a lien against the subject property and any other property owned by the same owner in the state pursuant to RSA 155-B:9, II.

This notice also constitutes a cease and desist order pursuant to RSA 676:17-a. To that end, you are advised that a motion for summary enforcement of the order shall be made to the court of the district in which the property is situated unless such corrective action is taken within the time provided, or unless an answer is filed within 20 days, as provided in RSA 676:17-a (V). Failure to either take the corrective action, or to file an answer, may result in corrective action being taken by the municipality, and that if this occurs the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property if not paid.

Finally, this written Notice of Violation is given to satisfy the fines and penalties requirement of RSA 676:17, I and II, which provides in part that,

I. "Any person who violates any of the provisions of . . . any local ordinance, code, . . . or any provision or specification of any . . . local . . . land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty not to exceed \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier."

II. "In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees, and investigatory expenses."

VII. NOTICE OF FINES FOR ONGOING VIOLATIONS

To the extent that the above-referenced violations are not remedied by **the deadline for corrective action set forth in the preceding paragraphs**, and those violations continue, you are hereby notified that such continuation of the violations constitute subsequent offenses, thus subjecting you to a fine of \$550 per day that such violations continue. Accordingly, this Notice of Violation provides express notification that the continuation of the above-referenced violations constitutes additional offenses and subjects you to an increased fine for every day that such violations continue.

If you have any questions regarding this **NOTICE OF VIOLATION / CEASE & DESIST ORDER**, you should promptly contact the Berlin Fire Chief at (603)752-3135

CITY OF BERLIN

Date: May ____, 2019

Michel Salek, Code Enforcement Officer

Date: May ____, 2019

Angela Martin-Giroux – Health Officer

Date: May ____, 2019

John Lacasse – Fire Chief

Date: May ____, 2019

Jim Wheeler – City Manager
Duly Authorized by Berlin City Council