

VERMONT SUPERIOR COURT
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Environmental Division
Docket No. 29-4-20 Vtec

**City of Burlington,
Plaintiff,**

v.

**Sisters and Bros. Invest. Grp., LLP,
Defendant.**

DECISION ON THE MERITS

This case is a municipal zoning enforcement matter in which the parties' principal dispute concerns the City of Burlington's ("City") claim that Sisters & Brothers Investment Group, LLP ("SBIG") has been operating the former service station at 281 Pearl Street in the City as an unpermitted private parking lot. The City seeks injunctive relief and fines related to zoning violations cited in the notice of alleged zoning violations issued on April 5, 2019, and upheld by the DRB on June 13, 2019.

After the parties' efforts at a voluntary resolution proved unsuccessful, the Court held a remote trial, via the WebEx platform, on September 21, 2021. While the matter had been scheduled for two days, all parties were able to complete their presentation of evidence in one day.

Once the presentation of evidence was completed, the Court provided the parties with an opportunity to file post-trial Proposed Findings of Fact and Conclusions of Law. Those filings were completed on October 23, 2021, at which time this matter went under advisement with the presiding judge. The undersigned regrets that other commitments delayed his efforts to complete this Merits Decision.

Based upon the credible evidence presented, the Court renders the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

I. Background and SBIG's Purchase of the Subject Property

1. Sisters & Brothers Investment Group, LLP ("SBIG"), is a limited liability partnership that holds real estate and operates, or leases out to others to operate, various businesses on its real estate holdings, including automobile fuel, service, towing, and repair businesses. At trial, Joseph Handy was presented as an official and agent of SBIG.

2. SBIG purchased the property subject to this enforcement action, located at 281 Pearl Street in the City ("Subject Property" or "Property"), on June 17, 2004. The Property is located in the Residential-High Density Zoning District ("R-HD District") of the City.

3. At the time of SBIG's purchase, the Subject Property was being used as a commercial automobile service and gas station. That use of the Property began sometime in 1964 as a two-bay service station with fueling pumps; this use was established prior to the enactment of the zoning regulations that restricted such uses in this zoning district.

4. On January 29, 1987, the then owner sought and received permission to construct an addition on the building to add a third service bay to that portion of the business. However, due to changes in the applicable zoning regulations—specifically, that an automobile service station was no longer a permitted use in the applicable zoning district—that use of the Subject Property became a permitted use, but one that no longer complied with the existing zoning regulations. The business that operated on the Subject Property was commonly known as "Pearl Street Mobil."

5. Mr. Handy testified that at the time of SBIG's purchase in 2004, the uses of the Subject Property included the retail sale of gasoline, automobile repair, and paid parking.

6. Mr. Handy did not specify the number of paid parking spaces that existed at the time of SBIG's purchase; he generally represented that there were six to ten spaces located at the service station that were rented to private parties in the

area. However, he could not identify the individuals renting parking spaces at that time and he could not provide leases or other written documentation to verify these private parking rentals. He also did not specify the location of the rental spaces on the Property. In fact, there was no credible evidence offered to substantiate Mr. Handy's testimony about the pre-existing use of the Property for private (i.e.: non-public) parking.¹

7. SBIG did offer evidence of two individual parking space rentals: one space in the early 1980's and one other space rented from 2010 to 2016. SBIG initially planned to call two individual witnesses to substantiate each claim, but the witness testimony became unnecessary when the City agreed to stipulate at trial that the two witnesses' testimony would establish these individual parking rentals. This stipulation did not offer any evidence of more than one parking space rental during the specified periods.

8. On December 8, 1998, the prior owner applied for approval to replace the canopy over the gasoline pumps, replace the existing ground-mounted sign, and install new landscaping around the base of the sign. A copy of the 1998 zoning application was admitted at trial as City Exhibit C. In response to an inquiry on the application form, the applicant stated that the "Existing Use" was "Service Station." There is no private parking listed as an existing or proposed use.

9. The form for the 1998 zoning permit application includes a section on "Parking Spaces," with blanks for the number of existing, proposed, and required spaces. In response to those prompts, the applicant represented that there were 18 existing spaces, zero proposed spaces, and 18 required spaces on the Property.

¹ The Court uses the term "private parking" to mean non-public parking spaces that are available for rent, and it refers to the use of parking spaces on the Property for paid or rental parking that is unrelated to the operation of the Property's service station use. The Court uses the term in a manner that aligns with the "private parking" activity that is at issue in the 2019 NOV and "rental parking" in the DRB decision and does not find a meaningful difference between the City's use of the term "private parking" or "rental parking" and SBIG's use of the term "paid parking" in its briefing.

10. The City later sought to enforce certain permit conditions and enforce other zoning infractions against the owner of the Property at the time. When that prior owner failed to adequately respond to the City's requests for corrective measures, the City, on January 25, 2002, issued a notice of alleged zoning violations ("2002 NOV"). When that owner failed to timely file an appeal, the 2002 NOV became final.

11. On October 17, 2002, the prior owner again applied for approval to replace the canopy over the gas pumps at Pearl Street Mobil. A copy of the 2002 zoning application was admitted at trial as City Exhibit D. On that application, the owner at the time listed the existing use of the property as "Other: Service Station."² When asked what the proposed use of the Property would be, the Applicant stated "Same."

12. Use of Property as a private parking lot was not listed as an existing or proposed use on either the 1998 or 2002 permit applications.

13. Prior to SBIG's 2004 purchase of the Property, the City sought to enforce the unappealed 2002 NOV, as well as several other zoning infractions. These efforts led to an agreement between the City and the owner at the time that set out the necessary steps for all the zoning violations to be resolved. A copy of the parties' June 16, 2004, Agreement was admitted at trial as City Exhibit E.

14. The Agreement required that if the then owner "wishes to sell the property in the future he must first submit this Agreement to the new Owner(s) and deliver a copy of a letter to the City signed by the prospective new Owner(s) stating they have received a copy of this Agreement and have read and understand all of its provisions, not less than five (5) business days before the closing." City Exhibit E, ¶ 18. The Agreement additionally states that "this commitment is specifically

² We understand that the 2002 applicant checked the box "Other" because the only options listed on the 2002 form were "Single Family" or "Duplex," which were the only permitted uses then identified as allowed in this zoning district. We conclude that this is additional verification that at the time of the 2002 permit application, the automobile service and fueling station use was a pre-existing, but then non-conforming use.

enforceable and is binding upon the successors and assigns of” the prior owner. Id.

15. We note that the day after the City and the prior owner of Pearl Street Mobil entered into this Agreement, SBIG completed the purchase of the Subject Property. These circumstances lead us to conclude that SBIG and its agents knew or should have known of the details and circumstances surrounding the 2004 Agreement and the zoning violations the parties sought to rectify by that Agreement.

16. The 2004 Agreement identified a number of site and landscaping deficiencies that needed to be corrected; a number of other permit deficiencies to correct; and specified the number and location of parking spaces to be used in connection with the service station business.

17. A site map attached to and incorporated into the 2004 Agreement shows the stipulated parking locations. See Id. at 7 (referenced in the 2004 Agreement as the “June 16, 2004, amended site plan”). Specifically, the site map identified three spaces inside the service bays at the service station, seven spaces to the west of the station, and eight spaces to the east of the station, for a total of 18 parking spaces. Id.

18. The 2004 Agreement required the then owner to “stripe all of the parking spaces at the Premises consistent with the June 16, 2004, amended site plan [and that i]t shall be the perpetual responsibility of Owner to maintain said striping.” Id. at 2, ¶5. The Agreement does not recognize or identify any parking spaces that were to be specifically used for private parking.

19. The credible and generally uncontested testimony of the City’s Planning and Zoning Manager showed that at the time of the 1998 and 2002 zoning permit applications, as well as when the City and the prior owner entered into the 2004 Agreement, the applicable zoning regulations required a minimum of 18 parking spaces to be used in support of a three-bay service station.

20. If any of the 18 parking spaces identified on the 2004 site plan were instead used for private parking, the Property would no longer have the

minimum parking spaces required for a three-bay service station under the then-existing zoning regulations.

21. No evidence was presented that the prior owner requested or received a waiver of the 18-parking space zoning regulation requirement for a three-bay service station. We therefore conclude that at the time of the 1998 and 2002 permit applications, the 18 parking spaces available at the Pearl Street Mobil facility on the Subject Property were then exclusively authorized for use in support of the three-bay service station.

22. No evidence was presented at trial that the prior owner identified or advertised, prior to the 2004 Agreement, that private parking spaces were available for rent at the Pearl Street Mobil facility.

23. Based upon the substantial credible evidence admitted at trial, we conclude that the 18 parking spaces at the Subject Property prior to SBIG's 2004 purchase were permitted and authorized to be used only in connection with the pre-existing, non-conforming use of the Property as an automobile service station. No other use of the on-site parking spaces was specifically identified or authorized during any of the 1998, 2002, or 2004 proceedings.

II. SBIG's Use of the Property

24. At some point after SBIG's 2004 purchase, SBIG began offering individual parking spaces for rent to private individuals. No testimony or other evidence was presented on the specific number or location on the site of parking spaces made available to private individuals. Mr. Handy did offer that at some point around the time of SBIG's purchase, there were six to ten parking spaces that were rented to private individuals at the Pearl Street Mobil site.

25. The parking space renters that SBIG allowed were individuals or nearby businesses, for use by their employees.

26. Aerial photographs admitted into evidence as SB Exhibits 1 through 8, inclusive, show vehicles parked in spaces on the Subject Property that numbered

as follows:³ 5 vehicles in 1999; 11 vehicles in 2000; 9 and 2004; 4 vehicles in 2007; 7 vehicles in 2013; 15 vehicles in 2015 and 2016; and 8 vehicles in 2018. At trial, there was no testimony or other evidence presented as to what specific parking spaces depicted in these photos, if any, were rented out to third parties that were not otherwise on site to have their vehicles serviced.

27. During the time depicted in SB Exhibits 2 through 8, either SBIG or an entity it leased to was operating an auto service station business with services that included vehicle repair, towing, and gasoline sales at the Pearl Street Mobil facility. No party at trial identified the specific number of vehicles depicted in SB Exhibits 2 through 8 that were on the Property because of the towing, gasoline sales or service businesses.

28. The City also offered photographs into evidence at trial of the Property during various times in a period spanning from 2018 to 2021. The Court admitted these photographs as City Exhibits L-1 through L-23, inclusive. These photos showed vehicles parked on the property, many of which were parked along the corner of Pearl Street and Hungerford Terrace (in violation of ¶ 4 of the 2004 Agreement) and at all of the spaces located beside the fueling pumps; these latter vehicles appeared to be unattended by their operators and not in the process of refueling, but rather parked at the fuel pumps for some time.

29. The City's photos show that as many as 16 vehicles have been parked on site at some points between 2018 and 2021, not counting any vehicles that may have been parked inside the building.

30. The City's photos do not show any evidence that the parked vehicles were then being serviced at this site.

31. The evidence presented at trial established that SBIG and its lessees had stopped operating the service station, including any auto service, repair,

³ All numbers represent what the Court could discern from the aerial photos and are therefore approximate. These estimated counts do not include vehicles that may have been parked in the interior service bays, since those interior spaces are not visible in these photos.

gasoline, or towing businesses, from the Property at least by July of 2017, and potentially earlier in the year.

32. The closure of the gasoline sales and vehicle service businesses in 2017 was verified at trial by credible and generally uncontested evidence that SBIG representatives advised City officials that the building became vacant when the commercial tenant moved out in 2017 and that this vacancy continued for more than one year. In fact, the credible evidence verified that the building was not in use and was, in fact, continually vacant up to the date of trial and only used for the unpermitted private parking.

33. The non-use of the building on the Subject Property was also verified by the fact that, while the City water supply remained connected to the building, the City water meters reported no usage beginning sometime in early 2017.

34. Shortly after the 2017 closure of the gasoline sales and vehicle repair businesses on the Property, the City began receiving complaints about the uses and condition of the Property and its building. These complaints included specific references to its use as a parking lot and graffiti on the building.

35. At some point after the commercial tenant vacated the property in 2017, a sign was posted inside the front window of the Pearl Street Mobil building that said:

For Car Repairs
Please Go To:
Handy's Service
Station
75 South Winooski Ave
Burlington
Or call
802-862-0656

City Exhibit L-13, which depicts a photo taken on June 4, 2019, by the City of Burlington Code Compliance Officer.

36. In that same photographic Exhibit, another sign appears from a commercial real estate broker, advertising the availability of the Property for purchase. Id.

37. Further, there was no credible evidence presented at trial that service station personnel were employed and operating out of the Pearl Street Mobil facility after 2017.

38. After SBIG or its lessee stopped operating the gasoline sales and vehicle repair service station, the building was neglected and came into disrepair, presumably due to the non-operation of the businesses and inattention of employees in regular attendance.

39. Shortly thereafter, vandals began defacing the building and gasoline pumps with spray painted graffiti, as depicted in City photographic Exhibits L-22 and L-23. The City received verification that the service station business had closed, and the private parking lot was the sole remaining use of the Property by individuals who contacted the City to complain about the unpermitted use of the Property as a private parking lot and the graffiti that had been accumulating on the building and gas pumps. Some of these complaining individuals contacted the City through its web-based complaint page known as "SeeClickFix."

III. The City's Enforcement Efforts and SBIG's Response

40. After SBIG began using the former Pearl Street Mobil as a private parking lot and after SBIG ceased the operation of its gasoline sales and service station facility, the City officials determined that they had to institute zoning enforcement proceedings against SBIG if the Property was to be brought into compliance.

41. The City first contacted SBIG in 2018 to request that it bring the Property into compliance with the existing zoning regulations. When SBIG failed and refused to address the City's requests, City officials determined that they needed to renew formal enforcement proceedings against the Property.

42. On April 5, 2019, the City of Burlington Zoning Administrative Officer sent Notice of Zoning Violation letter No. 358671 ("the 2019 NOV") to SBIG by both regular and certified mail. A copy of the 2019 NOV was admitted at trial as City Exhibit G.

43. SBIG agents verified receipt of the 2019 NOV.

44. The 2019 NOV details the following zoning violations committed or allowed by SBIG on the Subject Property:

- a. Change of use from service station to a private parking lot without prior zoning approval.
- b. Breach of the terms of the June 16, 2004, Agreement.
- c. Site improvements (or lack thereof) that are inconsistent with the amended site plan that was approved as part of the June 16, 2004, Agreement.
- d. Failure to obtain Certificates of Occupancy required by zoning permits Nos. 01-067, 04-684, and 99-635.

45. The 2019 NOV noted that, if not cured within seven days after the NOV was served upon SBIG, the specified zoning violations would each be subject to fines of up to \$200.00 for each day that each zoning violation continued. Id.

46. The 2019 NOV further provided how SBIG may appeal the allegations of zoning violations to the City of Burlington Development Review Board (“DRB”). Id.

47. The 2019 NOV provided the following detail for the claimed zoning violations at the former Pearl Street Mobil site, first listing violations of the amended site plan from June 16, 2004:

- a. Landscaping missing on the northeast corner of Property, under the gasoline pricing sign.
- b. Striping for parking spaces has not been maintained.
- c. Planting barrels with perennials are missing from the pump island and in close proximity of the entrance door to building.
- d. Unapproved parking around, under, and beyond pumps.
- e. Unapproved parking near “pricing sign” on corner of Pearl and Hungerford Terrace.

48. In regard to the alleged breaches of the June 16, 2004, Agreement, the 2019 NOV further detailed that:⁴

#3. Landscaping on the corner of Pearl Street and Hungerford Terrace has not been maintained.

⁴ The following numbers are quoted from the June 16, 2004, Agreement. See City Exhibit E at 2-7.

#4. Parking occurring at the north corner of Pearl and Hungerford Terrace is prohibited in Agreement.

#5. Striping identifying parking spaces at Premises has not been maintained.

#6. Owner failed to submit a survey stamped and certified by a licensed surveyor to the Code Enforcement Office.

#10. Timber barrier has not been maintained.

#12. Planter barrels on the northeast corner of the building are missing. Two planter barrels on the pump island, close to Pearl Street, are missing.

#14. Premises is not clear of exterior storage. Exterior storage currently exists in close proximity of west garage wall.

49. SBIG filed a timely appeal of the 2019 NOV with the DRB. By decision dated June 13, 2019, the DRB concluded that the pre-existing non-conforming vehicle repair and gasoline sales service station use of the Property had been discontinued for more than one year and had, therefore, been abandoned. The DRB further concluded that the non-conforming private parking lot use was also not permitted and was therefore a continuing zoning violation.

50. A copy of the DRB's June 13, 2019, decision was admitted at trial as City Exhibit K.

51. For reasons not fully explained in the DRB decision, the DRB chose not to address the City's NOV allegations that SBIG had:

- Breached of the terms of the June 16, 2004, Agreement; and
- Allowed site improvements (or lack thereof) that are inconsistent with the amended site plan that was approved as part of the June 16, 2004, Agreement.

2019 NOV (City Exhibit G) at 2.

52. The DRB stated that the "decision does not address" the violations of the 2004 Agreement. City Exhibit K at 4. It did, however, include in its findings that SBIG violated numbers 4, 5, 9, 10, 11, and 12 of the 2004 Agreement (leaving out #3, #6 and #14 from the NOV). *Id.* at 2.

53. SBIG did not appeal the DRB's June 13, 2019, decision.

54. The credible evidence presented at our trial convinced us that all of the zoning violations detailed in the 2019 NOV existed on the property when the NOV was issued, continued to exist after the seven-day cure period expired, and continued to exist at the time of our September 21, 2021, trial.⁵ See *e.g.*, City Exhibit L, Part 3. In fact, as is exemplified by the photographic evidence admitted at trial, the credible evidence convinced us that the unpermitted parking was allowed to increase.

55. SBIG offered no testimony or other evidence that it had ceased the zoning violations at the time of trial, nor had it begun any remedial efforts to cure the zoning violations.

56. SBIG has failed to apply for or receive Certificates of Occupancy for each of the following zoning permits issued for the Property: Zoning Permits Nos. 99-635, 01-067, and 04-684. By their respective provisions, the terms of these Zoning Permits have all expired.

57. Given that the pre-existing non-conforming use of the Property as a gasoline sales and vehicle service station ceased for more than one year, and that the service station building has remained vacant through the date of trial, and that the private parking lot use of the property has never been permitted, there is currently no authorized use being conducted on the Property. In fact, there is currently no use authorized or permitted for the Property.

58. At the time of the 2019 NOV, and at the time of trial, SBIG was renting out at least 14 parking spaces for private use at an average rate of \$125.00 per month for each space.

59. The 2019 NOV provided SBIG with seven days to cure the zoning violations. That cure period expired on April 12, 2019. All noticed violations continued unabated through the date of trial, September 21, 2021, for a total of 892 days.

⁵ As will be explained in more detail below, this finding includes violations that the DRB did not address in its decision to uphold the 2019 NOV, which the Court considers only as they are relevant to the factors for penalty assessment.

60. The current zoning regulations identify the area in which the Subject Property is located as the Residential – High Density Zoning District (“R-HD District”). Uses currently allowed in the R-HD District do not include gasoline sales, vehicle service stations or private parking lots.

IV. The City’s Costs of Enforcement

61. The City has expended resources and devoted officials’ time in the City’s efforts to bring the Subject Property into compliance with the applicable zoning regulations. At trial, the City limited the evidence it presented on the costs of its enforcement efforts to the time expended by City officials in their preparation and prosecution of the 2019 NOV.

62. The City’s Zoning Division Manager, Scott Gustin, spent over 8.6 hours devoted to first addressing complaints about the zoning violations at the Subject Property, and then prosecuting those zoning violations. To substantiate his time, Mr. Gustin submitted an invoice for the first 5.6 hours of his time, a copy of which was admitted at trial as City Exhibit F. That Exhibit evidenced the time Mr. Gustin expended through September 13, 2021; he credibly testified at trial that he expended over 3 additional hours in preparing for, testifying, and attending parts of our trial.

63. The expense to the City for Mr. Gustin’s time devoted to addressing the zoning violations at the Subject Property totaled \$451.25.⁶

64. The City’s Code Compliance Officer, Theodore Miles, spent over 57 hours devoted to first addressing complaints about the zoning violations at the Subject Property, and then prosecuting those zoning violations. To substantiate his time, Mr. Miles submitted an invoice for the first 54.5 hours of his time, a copy of which was admitted at trial as City Exhibit M. That Exhibit evidenced the time Mr. Miles expended through September 8, 2021; he credibly testified at trial that he expended over 2.5 more hours in preparing for, testifying, and attending parts of our trial.

⁶ See City Exhibit F. We have added \$175.11 to the total shown on Exhibit F to reflect the cost of the additional three hours Mr. Gustin expended after September 13, 2021.

65. The expense to the City for Mr. Miles's time devoted to addressing the zoning violations at the Subject Property totaled \$2,493.48.⁷

66. The City's Director of Permitting and Inspections, William Ward, spent over 48 hours devoted to first addressing complaints about the zoning violations at the Subject Property, inspecting the site, taking photographs of the site, and then prosecuting those zoning violations. To substantiate his time, Mr. Ward submitted an invoice for the first 46 hours of his time, a copy of which was admitted at trial as City Exhibit N. That Exhibit evidenced the time Mr. Ward expended through September 13, 2021; he credibly testified at trial that he expended over 2 more hours in preparing for, testifying, and attending parts of our trial.

67. The expense to the City for Mr. Ward's time devoted to addressing the zoning violations at the Subject Property totaled \$3,065.79.⁸

68. The amount of time and hourly rates that each of these City officials based their cost claims upon are fair and reasonable.

69. The City's in-house legal counsel, Kimberly Sturtevant, provided legal services to the City in its efforts to bring the Subject Property into compliance with the applicable zoning regulations. Attorney Sturtevant credibly testified that she expended a total of 76.2 hours devoted to prosecuting SBIG in this zoning enforcement proceeding. This total time included the 56.2 hours itemized on City Exhibit O (referenced below), which time was expended through September 13, 2021, as well as the additional 20 hours that Attorney Sturtevant credibly testified that she expended up through the time of trial.

70. The expense for Attorney Sturtevant's time devoted to the prosecution of this zoning enforcement action totaled \$15,240.00.⁹

⁷ See City Exhibit M. We have added \$115.35 to the total shown on Exhibit M to reflect the cost of the additional 2.5 hours Mr. Miles expended after September 8, 2021.

⁸ See City Exhibit N. We have added \$135.82 to the total shown on Exhibit N to reflect the cost of the additional 2.0 hours Mr. Ward expended after September 13, 2021.

⁹ City Exhibit O details the time Attorney Sturtevant expended through September 13, 2021. We have added \$4,000 to the itemized total fee amount shown in Exhibit O to

71. The City also incurred court filing fees (including E-Filing fees) of \$309.40 and fees for an independent mediator of \$600.00, for total in out-of-pocket expenses of \$909.40

72. Attorney Sturtevant introduced an itemization of her time and expenses, which was admitted at trial as City Exhibit O pursuant to the parties' stipulation.

73. The amount of time and hourly rate that the City incurred for Attorney Sturtevant's efforts are fair and reasonable. We further find that the mediation expenses and court fees are fair and reasonable.

74. All fees and expenses incurred by the City in its prosecution of SBIG for these zoning violations at the Subject Property total \$22,159.92

Conclusions of Law

The City requests both injunctive relief and monetary penalties under 24 V.S.A §§ 4451 – 4452 and CDO § 2.7.7(b) in its effort to enforce the zoning violations cited in the 2019 NOV and upheld by the DRB. The 2019 NOV cited violations related to the change of use from a service station to a private parking lot, breach of the 2004 Agreement, and failure to obtain certificates of occupancy for Permits 99-635, 01-067, and 04-684. In the unappealed decision issued June 13, 2019, the DRB upheld the 2019 NOV as to the unauthorized change of use from a service station to a private parking lot, the failure to obtain certificates of occupancies, and the unpermitted use of the Property for private parking.

Asserting that there is currently no approved use for the Property, the City seeks to have the Court enforce the violations by enjoining all uses until SBIG obtains approval for a new use and plan, and also requests penalties of at least \$ 36,920.00. SBIG argues in opposition that the Court should set aside the DRB decision upholding the 2019 NOV and find that the City can no longer enforce zoning violations related to the paid parking use of the Property because it has existed for 15 or more years. The Court first addresses the issues relevant to this argument and then considers the City's requested relief.

reflect the cost of the additional 20 hours that Attorney Sturtevant expended, at her established billing rate of \$200.00 per hour.

A. Is the City’s Enforcement Action Barred by a Statute of Limitations?

SBIG spent a considerable amount of time, both at trial and in its post-trial filings, asserting that its use of the Property as a private parking lot could not be subject to an enforcement action by the City because of the statutory limitation on a municipality’s enforcement of a zoning violation that has occurred continuously for more than 15 years.¹⁰ 24 V.S.A. § 4454(a). We acknowledge that, had the credible evidence convinced this Court that the Subject Property had continuously hosted a private parking lot for 15 or more years before the City initiated enforcement, we would be required to conclude that the City was barred from prosecuting that zoning violation. *See, 204 North Avenue NOV*, 2019 VT 52, ¶ 7, 210 Vt. 572, 576. *See also, In re 15-17 Weston Street NOV*, 2021 VT 85, ¶ 18 (explaining that a zoning violation must be continuous, and “an ongoing use violation,” in order to be afforded the protection of the 15-year statute of limitations against municipal enforcement under 24 V.S.A. § 4454(a)).

SBIG advances this statute of limitations argument as grounds for modifying or setting aside the unappealed DRB decision. We need not engage in an analysis of whether this statute bars the City’s enforcement efforts here against SBIG’s private parking lot activities, or whether it could impact the finality of the DRB’s decision, because we conclude that those activities did not occur “continuously” for 15 or more years. In fact, the credible evidence presented was that SBIG’s unpermitted private parking lot was maintained for a

¹⁰ SBIG also argues that § 4454(a) bars zoning enforcement related to use of the Property for vehicle repairs, which the DRB upheld as a discontinued use that could not be reestablished. The Court disposes of this argument because of our finding that the service station use was discontinued in 2017, including the use of the Property for vehicle repairs. The discontinuance “restarted” the statute of limitations clock, so § 4454(a) would not bar enforcement even if SBIG had presented evidence to support a finding that vehicle repairs occurred on the Property after 2017. *See In re 15-17 Weston Street NOV*, 2021 VT 85, ¶¶ 10 – 12 (holding that the Burlington ordinance establishing a discontinuance after a certain period of time is valid, and that such discontinuances “restart the clock” under § 4454(a)). Additionally, while SBIG claims that it continued to use the Property for vehicle repairs throughout its ownership, it failed to support this claim with credible evidence.

period of time well short of 15 years prior to the City's issuance of the April 5, 2019, NOV.

SBIG's evidence offered little by way of specifics concerning their unpermitted private parking lot, lacking even the specific number of spaces available for rent and where those spaces were located on the former Pearl Street Mobil site. SBIG may have rented out four to ten parking spaces sometime after its June 17, 2004, purchase of the property, but there was no evidence presented of whether that practice was continuous. In fact, the credible evidence was that SBIG's rental practice was sporadic, at best. The aerial photos SBIG submitted of cars parked on the Property in 1999, 2000, 2004, 2007, 2013, 2015, 2016, and 2018 at most establish that there were cars in parking spaces on the Property on that single day of those specific years. They do not establish ongoing use over a period of 15 years and, with no detail on whether the vehicles were there because of a paid parking arrangement or because of the service station, they do not even establish the type of use illustrated in the photos taken before the service station closed. The stipulated testimony from witnesses claiming to have rented parking spaces from SBIG at various times does not provide the necessary proof of continuous use either, as the longest period that could be established by that testimony is six years (2010 to 2016) and begins well after 2004.

SBIG provided very few specifics about its parking space rentals, relying solely on the photos and Mr. Handy's testimony to establish the use. Far from providing any documentation, Mr. Handy did not even testify as to what SBIG charged for parking rentals in the first few years after purchasing the Property, or where those spaces were located on the Property. While he speculated that some form of documentation about rental payments might exist, such as his tax returns, SBIG did not submit any such evidence. SBIG most likely chose not to specify the number and location on site of its private parking spaces because it wanted to conceal its unpermitted activities from City officials, and others, given that it was under an obligation to devote 18 parking spaces to support its service station use, which in itself was a permitted, but non-conforming use of the

property. Given our speculation here, we are limited by the lack of specifics that SBIG disclosed at trial.

In fact, what the credible evidence does reveal is that SBIG significantly increased the number of private parking spaces it made available after 2017, when the Property stopped being used as a service station. The photos in evidence from 2018, 2019, 2020, and 2021 show parked cars overwhelming the site once the vehicle repair and gas businesses closed, with six or more cars parking alongside the fuel pumps. While the City only provided some specifics, we estimate from the photos and testimony that SBIG's private parking business substantially increased after 2017 to as many as 16 spaces in 2019. The Court finds continuous use of the Property for unpermitted private parking, starting in 2017 and extending through the date of trial.

We recognize the motivation to increase the number of parking spaces leased out, given that SBIG was receiving \$125.00 per month for each space and was no longer receiving income from its fueling and service station. This rationale does not justify SBIG's use of the Property, given that it was unpermitted, illegal, and continued long after SBIG received the City's initial request in 2018 to bring the property into zoning compliance.

Given the lack of specifics on the record, the Court could at most find sporadic use of the Property for private parking prior to SBIG's purchase in 2004. There is no evidence on which the Court could ground a finding of continuous use of the Property for private parking prior to 2004, and little to support such a finding in many of the years following SBIG's 2004 purchase, potentially even until the increase in the private parking use following the discontinuance of the service station use in 2017. Further, the 15-year limitation in § 4454(a) would not apply even if the Court could find continuous private parking use during SBIG's ownership because its ownership at the time the NOV was issued was less than 15 years: the City issued the NOV on April 5, 2019, which was less than 15 years from SBIG's June 2004 purchase. See 24 V.S.A. § 4454(a) (enforcement proceeding must be "instituted within 15 years from the date the alleged violation first occurred"); 204 North Avenue NOV, 2019 VT 52 (employing

the date of the NOV as the date enforcement was initiated for the purposes of § 4454(a)).

Consequently, § 4454(a) does not present an obstacle to the City's enforcement action.

B. Impacts of SBIG's Failure to Appeal the DRB Decision

Next, in light of SBIG's argument that the DRB decision should be set aside, the Court wishes to make the finality of that decision especially clear. SBIG failed to timely appeal the DRB decision issued June 13, 2019, in which the DRB upheld the 2019 NOV. The consequence of the failure to appeal is significant, since with that, SBIG lost its right to challenge the DRB's conclusions that they had committed significant zoning violations on the Property. Specifically, the DRB concluded in its review of the 2019 NOV that:

- The nonconforming automobile/vehicle repair and fueling station use has been discontinued for more than 1 year and has, therefore, been abandoned.
- The nonconforming parking lot use, in its current state, is not permitted and is also a zoning violation. The appellant may seek an administrative determination as to the continuation of the parking lot use.

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See City Exhibit K at 4. The DRB also found that SBIG failed to obtain necessary certificates of occupancy.¹¹ *Id.* at 1 – 2.

SBIG offers that they did not appeal because the attorney assisting them at the time the DRB issued its decision was gravely ill. We regret those circumstances and offer our sympathies to that individual and their family. However, it was SBIG's duty in the first instance to assure that a timely appeal was filed. The "exclusive remedy" available to an interested party with "respect to any decision or act taken [by the DRB] . . . shall be the appeal to the Environmental Division" 24 V.S.A. § 4472(a). "In the absence of such an

¹¹ The DRB also made findings that SBIG violated certain provisions of the 2004 Agreement but excluded those violations from the ultimate decision to uphold the 2019 NOV. *Id.* at 4.

appeal, all parties are bound by the DRB's decisions and 'shall not thereafter contest, either directly or indirectly, [the] decision or act . . . in any proceeding.'" In re Gulli, 174 Vt. 580, 583 (2002), citing 24 V.S.A. § 4472(d). When SBIG failed to appeal the DRB's decision, the determinations that the service station use had been discontinued for more than a year and that the use of the parking lot is unpermitted and a zoning violation became final and binding. See, McGlynn v. Town of Woodbury, 148 Vt. 340, 343 (1987) ("absent allegations of a constitutional defect, the failure to file a timely notice of appeal from an adverse decision of a[n appropriate municipal panel] forecloses further review").

SBIG has offered no legally recognized rationale for ignoring the mandate of 24 V.S.A. §4472(d), and our own research, including the analysis above regarding § 4454(a), has not revealed any either. We therefore conclude that SBIG is foreclosed in this proceeding from challenging the unappealed DRB determinations in the decision issued June 13, 2019.

For all these reasons, we conclude that SBIG did commit and is liable for these zoning violations cited in the DRB decision.

C. Remaining Zoning Violations Cited in the 2019 NOV

The DRB chose not to address some of zoning violations alleged in the 2019 NOV, including the allegations that SBIG (1) breached the terms of the June 16, 2004, Agreement; and (2) failed to complete site improvements consistent with the amended site plan that was approved as part of the June 16, 2004, Agreement. While the DRB made findings that SBIG violated a number of the provisions of the 2004 Agreement, it noted that the decision to uphold the 2019 NOV does not address the failure to abide by the 2004 Agreement. City Exhibit K ("This decision does not address the agreement between the City and the prior owner dated June 16, 2004 referred to in the findings above").

The Court's role in this enforcement matter is to determine whether the 2019 NOV, as upheld by the DRB, should be enforced. However, the credible and uncontroverted evidence leads us to conclude, independently from the DRB, that SBIG failed to ever comply with the 2004 Agreement after it purchased the

Property. See Findings 44, 54, and 55 above. These findings relate to SBIG's record of compliance, and the Court will consider them for the purpose of determining a penalty amount below, where prompted by the relevant penalty assessment factors found in 10 V.S.A. § 8010(b).

D. Injunctive Relief and Fines

We first address the City's requests for injunctive relief. The City seeks to have the Court enjoin all uses on the Property until SBIG receives approval for a new use in this location. We find this request to be reasonable because SBIG has not ceased or remedied the zoning violations on the Property despite receipt of proper notices of violation, and despite the decision issued by the DRB on June 13, 2019, which is now final and binding.

The evidence establishes that SBIG continued to use the Property as a private parking lot at least through the date of trial. Mr. Handy even testified on cross-examination that he was currently renting out approximately 14 parking spaces at \$125 per month. The DRB noted in its decision that SBIG could seek an administrative determination if it wished to continue its parking lot use, but there is no evidence to suggest that SBIG ever did so. Further, there is currently no approved use for the property.

The City of Burlington Comprehensive Development Ordinance ("CDO") currently provides that a "nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one (1) year or longer." CDO § 5.3.4(b). Given that the pre-existing, non-conforming use of the property as a gasoline sales and vehicle repair service station ceased in 2017 and was not revived thereafter, such use has been abandoned and may not be resurrected on this site. Similarly, SBIG has not received permission to use the Property for private parking, so such private parking use is not allowed as a permitted or conditional use in the R-HD District.

The purpose provisions for the RH-Density Bonus Overlay District, which fully encompasses the R-HD District, have particular relevance to the legal issues that arise in this appeal. The purpose provision provides that:

[t]he RH-Density Bonus Overlay District is intended to provide an incentive for the conversion of non-residential uses to residential uses within the RH Zoning District to reduce the number of non-conforming uses and increase the supply of housing near the downtown area.

CDO § 4.5.3(a).

Neither of SBIG's prior uses of the Subject Property are allowed uses, nor do they fit with the purpose of the zoning district, and SBIG does not have permission to conduct any other uses on the Property. We therefore **ORDER** SBIG to cease all uses of the Property and enjoin SBIG from any further use of the Property until such time as a use is permitted and authorized by a zoning permit. This injunctive directive shall become effective thirty (30) days from the date this Decision and accompanying Judgment Order become final.

While we conclude that SBIG and its predecessor also failed to apply for or receive the Certificates of Occupancy required by Zoning Permits Nos. 99-635, 01-067, and 04-684, we decline to now order SBIG to acquire such Certificates of Occupancy, since the underlying Permits have expired. Rather, as a consequence of this failure, we conclude that the authority to develop pursuant to Zoning Permits Nos. 99-635, 01-067, and 04-684 are now **VOID**.

We now turn to the City's request that fines be imposed against SBIG for its zoning violations.

By its CDO, the City has provided that "each day that a [zoning] violation is continued shall constitute a separate offense" and that the daily penalty claimed in a City zoning enforcement action "shall be . . . not more than the maximum amount authorized by statute for each offense." CDO § 2.7.7(b). Since 24 V.S.A. § 4451(a) provides that a zoning violator "shall be fined not more than \$200.00 for each offense," for each day that the offense continued, we consider the City's fine requests within that statutory limit.

Of the violations upheld in the DRB decision, the continuing violation is SBIG's use of the Property for private parking. SBIG can be fined for continuing or allowing the unauthorized private parking use to continue from April 13, 2019, the day after the cure period specified in the 2019 NOV expired, to the

date of our trial on September 21, 2021. This amounts to a total of 892 days that the violation occurred.¹²

We have interpreted the statutory directive of “not more than” \$200.00 per day, per offense, as encouragement to only impose the maximum fine for the most egregious of zoning violations. In re Huntington NOV Appeal and Town of Bradford v. Huntington, Nos. 204-8-06 Vtec and 209-9-06 Vtec, slip op. at 8 (Vt. Env’tl. Ct. Mar. 18, 2008) (Durkin, J.). We follow that directive here, and also keep in mind that fines authorized by 24 V.S.A. § 4451(a) are civil in nature, not punitive. See Town of Hinesburg v. Dunkling, 167 Vt. 514, 527-28 (finding a fine not punitive where “rationally related to the damages suffered from landowner’s violation of [the] Town’s bylaw”).

When this Court has concluded that a zoning violation has occurred and that the imposition of fines is appropriate, we have often relied upon the criteria detailed in the Uniform Environmental Law Enforcement Act (10 V.S.A. § 8010) (“UELEA”) to determine what an appropriate level of fines should be imposed against the zoning violator. See, Town of Pawlet v. Banyai, 105-9-19 Vtec, slip op. at 15 (Vt. Super Ct. Env’tl. Div. Mar. 5, 2021) (Durkin, J.), *aff’d* 2022 VT 4. See also, In re Beliveau NOV, 2013 VT 41, ¶ 23, 194 Vt. 1 (“The [trial] court has the discretion to determine the amount of a fine, and, in doing so, to balance any continuing violation against the cost of compliance and to consider other relevant factors, including those specified in the Uniform Environmental [Law] Enforcement Act”) (*citing In re Jewell*, 169 Vt. 604, 606–07 (1999) (mem.)). We therefore turn to the provisions of the UELEA to assist us in determining the appropriate level of fines to be assessed against SBIG for the zoning violations it has caused and allowed to be committed on the Subject Property.

¹² We have concluded that SBIG allowed its pre-existing non-conforming use of the Property as a fueling and vehicle repair service station to be discontinued for more than one year, so we do not include that as a “violation” for purposes of calculating daily fines, since SBIG’s use of the fueling and service station ceased in 2017, well before the 2019 NOV.

1. Actual or Potential Impact on Public Health, Safety, Welfare, and the Environment

By the first criteria, we are directed to determine “the degree of actual or potential impact on the public health, safety, welfare, and the environment resulting from the violation.” 10 V.S.A. § 8010(b)(1). For the reasons stated below, we conclude that this criterion provides some weight in favor of imposing fines upon SBIG.

First, we note that by refusing to apply for a zoning permit for its private parking lot, which would have included a complete disclosure of the number of spaces to be rented and their location on the Subject Property, SBIG deprived City officials, its neighbors, and other area residents of disclosures about what improvements and activities were planned for the Property. SBIG first began the unpermitted parking lot use on the Property sometime after its purchase in 2004, although the credible evidence presented showed that the parking lot use appears to have only begun on a consistent basis in 2017, when SBIG ceased its use of the Property as a service station.

SBIG’s private parking use continued after it received warnings about its illegality from City officials in 2018, and even continued after it received the 2019 NOV that forms the basis for the Town’s enforcement complaint. By refusing to disclose its plans, SBIG left City officials and his neighbors at a loss to determine the specifics of its use, including (1) the number and dimensions of the parking areas; (2) the setbacks between those spaces and exterior boundary lines; (3) the other site improvements, such as landscaping and how they compared to the terms of the 2004 Agreement; (4) the days and hours of operation; and (5) any planned lighting.

By failing to submit a complete application, SBIG also deprived the City and neighbors of opportunities to challenge whether their planned use conformed with the zoning regulations.

The generally unregulated and unsupervised use of the Property brought visual blight to the neighborhood, including the lack of maintained landscaping and the graffiti that has covered the gas pumps and building through the date

of our trial. Further, and significantly, by using the Property for unauthorized private parking, SBIG has prevented the public from benefitting from a use that conforms to the RH Zoning District, even though multiple years have passed since the only lawful pre-existing non-conforming use on the Property was discontinued.

Thankfully, SBIG's zoning violations did not otherwise cause actual impacts on the public health, safety, welfare, and the environment. We take this into consideration in determining the level of fines warranted for SBIG's zoning violations.

2. Mitigating Circumstances

Second, we are asked to consider any "mitigating circumstances, including unreasonable delay" by the City as it sought to enforce its zoning regulations against SBIG. *See* 10 V.S.A. § 8010(b)(2).

We first note that we were not made aware of any "unreasonable delay" by the City in its prosecution efforts. The DRB rendered a decision on SBIG's appeal of the 2019 NOV within a few weeks of the close of its hearing. The City then waited for SBIG to appeal the DRB's adverse determination to this Court, but SBIG failed to file a timely appeal. The City then filed its enforcement complaint with this Court about 9 months after the time for SBIG to appeal had expired. We find that this time period does not evidence an unreasonable delay, particularly as we all responded to the world-wide COVID-19 pandemic.

We received no evidence that SBIG took steps to correct or mitigate its zoning violations. We find it particularly distressing that SBIG apparently purchased a property that had already been the subject of multiple zoning enforcement efforts, and then completed its purchase on the day after the City and the prior owner entered into the 2004 Agreement that established a mechanism for resolving all of the pending zoning violations. SBIG officials knew or should have known of its obligations to cure those prior violations. The record contains no evidence that SBIG took any actions to address those zoning violation in the 17 years it has owned the Property. In fact, SBIG aggravated

some of those violations by establishing parking spaces in the very areas restricted by the 2004 Agreement.

The Court cannot find any mitigating circumstances here. SBIG's actions only evidence aggravating factors related to the zoning violations it has committed or allowed to continue.

3. Knowledge of the Violation

Third, we are asked to consider "whether the respondent knew or had reason to know the violation[s] existed." See 10 V.S.A. § 8010(b)(3). SBIG has been aware of the violations upheld by the DRB since 2018 when the City first made contact about bringing the Property into compliance with zoning regulations, and since April 5, 2019, when the City issued the 2019 NOV. SBIG has not provided any reason to believe it was somehow unaware of the violations or that there were any problems with notice.

4. Record of Compliance

Fourth, we are asked to consider the respondent's record of compliance. See 10 V.S.A. § 8010(b)(4). This factor prompts the Court to consider both SBIG's failure to abide by the terms of the 2004 Agreement and its awareness of such noncompliance.

The 2004 Agreement between the City and a prior owner of the Subject Property was executed the day before SBIG's purchase; its terms explicitly bound successor owners of the Property. SBIG, however, saw fit to ignore the duties imposed upon it, as a successor owner, to correct zoning violations that existed from the moment it purchased the Property. The record contains ample evidence of SBIG's failure to implement required improvements or abide by the site plan that accompanies the Agreement. Even SBIG's own exhibits illustrate breaches throughout its ownership, and SBIG does not attempt to refute, or provide explanation for, its failure to comply with the 2004 Agreement.

From the credible evidence presented at trial, much of which was unchallenged, we can further conclude that SBIG was very much aware that zoning violations existed on the Property at the time of its 2004 purchase, and

that its actions following the purchase exacerbated those violations. It is rare that we have such incontrovertible evidence as was presented here, including documentation, that a property owner was so well aware of the zoning violations that existed on its Property. These circumstances weigh heavily in favor of the imposition of significant fines against SBIG.

5. Proper Level of Fines as a Deterrent

Fifth, we are asked whether the imposition of fines would have a deterrent effect upon SBIG. *See* 10 V.S.A. § 8010(b)(6).¹³ The credible facts presented at trial convinced the Court that only significant fines will have a deterrent effect upon SBIG, particularly since it ignored the violations that were clearly documented when it purchased the property, ignored the obligations to mitigate and correct those violations, added additional zoning violations during its ownership, and continued to rent out parking spaces after the DRB upheld the 2019 NOV.

Additionally, we are not aware of SBIG's financial resources or obligations, but we note that the illegal private parking lot has generated significant income for SBIG. Even when we limit our calculations to the period of time covered by the 2019 NOV (i.e.: April 13, 2019 through our September 21, 2021 trial),¹⁴ and using what Mr. Handy admitted was the rental rate of \$125.00 per month for each private parking space, an average of 10 parked cars would have generated a total gross income of \$37,500.00 for that 30-month period.¹⁵ *See City of St. Albans v. Hayford*, 2008 VT 36, ¶¶ 15, 17, 183 Vt. 596 (upholding penalty that accounted for financial benefit obtained from the violation, noting trial court's discretion to determine a fine).

¹³ 10 V.S.A. § 8010(b)(5) has been repealed. We therefore do not consider the criterion that was once the subject of that statutory provision.

¹⁴ We begin this calculation on April 13, 2019, since that is the first day after the 7-day cure period expired from the April 5, 2019, NOV).

¹⁵ This is a conservative estimate; the evidence for the period between the issuance of the NOV and the day of trial supports rental of more than 10 spaces.

For these reasons, we conclude that only significant daily fines for each category of the ongoing zoning violations would possibly have a deterrent effect and convince SBIG to bring the Property into compliance.

6. Costs of Enforcement

Sixth, we are asked to determine the costs of enforcement. 10 V.S.A. § 8010(b)(7). The City presented credible and unrefuted evidence that it incurred costs for the time employees devoted to SBIG's zoning violations, plus attorneys' fees and litigation costs (including service, mediation, and filing fees) that total \$22,159.92. We conclude that the costs incurred by the City were not unreasonable, given the multitude of zoning violations, the length of time they existed, and the resistance to the City's enforcement efforts that SBIG agents exhibited.

7. Length of Time the Violation Existed

Lastly, we are asked to consider the length of time that the violations noticed in the 2019 NOV existed. 10 V.S.A. § 8010(b)(8). The April 5, 2019, NOV provided SBIG with seven days in which to cure the zoning violations alleged, meaning that it could have cured the violations by April 12, 2019, and not be assessed any fines. SBIG was also advised that it could appeal the adverse determination by the DRB to this Court, but SBIG failed to do so.

Thus, SBIG, through its refusal to take any mitigating or corrective measures in response to the City's 2019 NOV, became liable for a daily fine beginning on April 13, 2019. SBIG's liability for daily fines continued through the date of trial (September 21, 2021), given its constant continuation of the noticed violations and the DRB decision to uphold the 2019 NOV with regard to the violative parking lot use. Thus, since each day a zoning violation continues constitutes a separate violation, SBIG is liable for a total of 892 days of violation. See 24 V.S.A. § 4451(a).

Taking in consideration all the above criteria, we conclude that a fine of \$50.00 per day for the continuing violation of operating an illegal private parking lot is warranted. This fine is far below the \$200 daily maximum, but reasonably

takes into account the continuing violation, SBIG's financial gain from the violation, its poor record of compliance, and the time SBIG has had to cure the violation. We therefore impose a fine that currently totals \$44,600.00.¹⁶

Given the totality of the circumstances here, including the reasonableness of the costs that the City was forced to incur due to SBIG's actions, we also order that SBIG reimburse the City for its costs.

We therefore award a total of \$66,759.92 to the City and against SBIG in this enforcement action.

Order

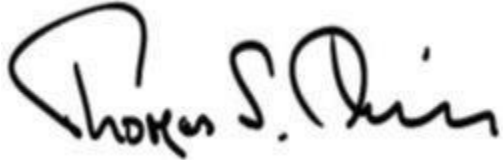
For all the reasons specified above, we order and award the following relief to the City of Burlington and against SBIG:

1. SBIG shall cease its operation of a private parking lot on the Subject Property within thirty (30) days of this Decision and the accompanying Judgment Order becoming final.
2. SBIG shall not renew its abandoned use of the Subject Property as an automobile fueling and service station.
3. SBIG shall not commence any use or further development of the Subject Property without first applying for and receiving the necessary municipal and state permits.
4. Within 30 days of this Decision and the accompanying Judgment Order becoming final, SBIG shall pay the City of Burlington the principal sum of \$66,759.92, together with interest accruing at the statutory rate of 12% per annum until paid in full.
5. Also, within 30 days from this Decision and the accompanying Judgment Order becoming final, SBIG shall address all site improvement deficiencies, as detailed in the 2004 Agreement.

¹⁶ The City also requests that we impose additional fines to accrue in the future, should SBIG fail to abide by this Decision and Order. However, we believe imposing fines now for future offenses would be improper. Rather, we reserve the right to entertain the imposition of additional fines in a further, post-judgment proceeding, should the Court be convinced that SBIG has failed to satisfy any final judgment.

6. In the event that SBIG does not satisfy the terms of Paragraphs 1 through and 5, above, SBIG may be subject to further fines and injunctive relief as may be determined in any post-judgment proceeding.

Electronically signed at Burlington, Vermont on June 27, 2022, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T' and a cursive 'D'.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division