

ATTEST: Stacy L Grant, Waldo Co Registry of Deeds

ORDER AND DECISION OF
THE MUNICIPAL OFFICERS OF THE TOWN OF NORTHPORT, MAINE
RE: PROPERTY OF SANDRA BUTTERS AND JAMES BUTTERS, TRUSTEE, BUTTERS
BAYSIDE FAMILY CAMP IRREVOCABLE TRUST
9 NORTH AVENUE, NORTHPORT; TAX MAP US LOT 149

Upon due and sufficient notice provided to Sandra Butters and James Butters as Trustee of the Butters Bayside Family Camp Irrevocable Trust (Collectively, "Butters"), a hearing regarding real property located at 9 North Avenue, Northport, ME, ("Premises") and described in a deed to Butters as recorded in Book 4790 Page 289 of the Waldo County Registry of Deeds, was convened on August 14, 2023 at 6:15 pm in the Northport Town Office, pursuant to 17 MRS 2851 by the Municipal Officers ("Select Board") of the Town of Northport. Sandra Butters was present and James Butters was represented by Attorney Paul Dillon. Testimony was provided by the Town Code Enforcement Officer Toupie Rooney ("CEO"), and a structural engineer Carmen Bombeke, P.E., who was retained by the Town to complete a dangerous building assessment, Sandra Butters, and Paul Dillon on behalf of James Butters. There is an audio recording of the hearing which may be consulted as to the testimony and discourse.

EXHIBITS INTRODUCED AT HEARING

Exhibits introduced and considered by the Select Board were marked as follows:

Exhibit A -- Copy of the June 2, 2023 cover letter and Notice of Hearing, with attached copies of Title 17 MRS 2851 et seq., and the Professional Engineer's Report dated April 13, 2023;

Exhibit B – Copy of Tax Assessing card and deeds for the Premises;

Exhibit C – Certified Mail receipts and service for Butters;

Exhibit D – Notice of Violation letter, dated April 19, 2022, and copies of photos of inspection from 2022 inspection of the Premises by the CEO;

Exhibit E – Introduced by Paul Dillon, copies of photos of pilings placed by James Butters to help stabilize the Premises;

Exhibit F – Email and copy of two estimates by Pelletier and Daughters to do certain described repair work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The CEO testified as to the history of her inspection of the Premises in 2016 after receipt of a written complaint. Photos were taken at that time, but the CEO did not order any remedial action. Upon additional complaints in the first two months of 2022, the CEO again visited the Premises. The CEO described the alarming scope and severity of deterioration of the Premises, when compared to her inspection in 2016. The CEO issued a Notice of Violation, dated April 19, 2022 (“NOV”), describing the condition of the premises and setting forth a timeline for correcting the hazards she identified. The NOV letter set a deadline of one year from the date of that letter (i.e., April 19, 2023) to make the building safe or demolish it.

After approximately one year of discussions with Butters, which did not result in any meaningful remedy of the deteriorated Premises, the CEO in the spring of 2023 retained a structural engineer, Carmen Bombeke, P.E. of Gartley and Dorsky Engineering (“Engineer”). The

Engineer's report ("Report"), entitled "Dangerous Building Assessment" was relied upon by the CEO in her decision to initiate this prosecution.

The Engineer described her 16-year practice as a Professional Structural Engineer who does conduct Dangerous Building Assessments. She has an engineering BS degree from Stanford University and a Masters from Columbia University. She testified in detail as to her findings, as outlined in her Report, and her conclusion that for the multiple independent reasons referenced in the Report, the building is "*structurally unsafe, constitutes a fire hazard, is unsuitable or improper for occupancy, and constitutes a hazard to health and safety due to inadequate maintenance, dilapidation and abandonment.*" Report, pg. 2.

Sandra Butters did not refute the substance of the Engineer's findings in the Report, but did clarify an issue as to who did some repair work on the porch. Ms. Butters testified that she has been making efforts to hire a contractor to remove a chimney and install footings and frost walls to support the building. She described the obstacles of her neighbor (won't move items on his property to allow her contractor access to a ladder), the Northport Village Corporation (getting confusing responses from NVC as to her application, and the NVC has not processed her application to drive over an NVC park), illness and delays of her first contractor (contractor got ill and subsequently refused to schedule work), and the "other owner" (will not help pay for repairs and other difficulties), which have all contributed to the delay in repairing the Premises. Sandra Butters had no written estimate or outline of the scope of repairs to reflect any repair work that she is willing to start in the near future. The work she is willing to commit to appears to be foundation work and removal of a chimney. After multiple questions from the Select Board as to the full list of repair work and commitment to pay for it, regardless of contribution from James Butters as Trustee, it was clear that Sandra Butter is not ready or willing to commit

to solely pay for and undertake repairs to address the many unsafe and hazardous conditions on the Premises, other than pay for one-half of the chimney and foundation repairs. Ms. Butters testified that the inside of the cottage is in better condition than the exterior or foundation.

The President of the Northport Village Corporation (“NVC”) testified that the long-term policy of the NVC is the requirement of a complete application and approval to use NVC property for access to cottage repair. Additionally, access is permitted only between October 20 and the following May 15. She stated that the NVC Overseers declined to consider the application because it was not complete. If procedures are followed, the NVC routinely authorizes cottage access according to the written policy.

Paul Dillon, on behalf of James Butters did not dispute the findings of the Report, and instead focused on a period of time, such as one year, in which his client would seek to come to terms with Sandra Butters to work cooperatively to sell the property. It is apparent from the testimony that the Butters have been unable to agree to any particular Plan to either renovate or sell the Premises; importantly including that there is no agreement of cost sharing between these two Owners. Mr. Dillon introduced two estimates of repair from Pelletier and Daughters (Exhibit E), which provided two different scopes of work, one for \$ 62,900 and a more inclusive one for \$ 91,900. His point was that the repair cost is prohibitive for James Butters who is on disability, and the Trust has no means to pay for repairs. He requested time, of a year or so, to sell the property by agreement with Sandra Butters. There was no agreement by Ms. Butters with this proposed path forward. Mr. Dillon also submitted multiple photographs (Exhibit F) which depicted temporary dimensional lumber posts on uninsulated concrete pads sitting on grade, which the Engineer made comment to the effect that these temporary posts will shift in the winter with freezing and thawing.

After the evidentiary hearing was closed by unanimous vote of the Select Board, the Select Board then began general deliberations, and quickly and unanimously found that it was very clear from the Report and testimony from the CEO and Engineer that each of the five criteria found in 17 MRS 2851(2-A), which are necessary to adjudge a building to be a nuisance or dangerous, had been met. The Select Board further discussed the fact they wished to provide the Owners a final opportunity to address the many required repairs, consistent with 17 MRS 2851 which generally provides for delay in the Municipality's Order to dispose of the building for the purpose of giving the Owners one last chance to keep control of the Premises if the Owners demonstrate the "ability and willingness to satisfactorily rehabilitate the building." There was consensus that two paths should be offered for Owner controlled resolution: (i) a signed contract(s) with professional contractors, with evidence of current financing to sufficiently pay, for a scope of work which will address all the safety and hazard concerns outlined in the Engineer's Report, or (ii) a signed listing agreement with a reputable licensed real estate agent with a commitment to sell the premises to a third party with sufficient resources to bring the Premises into a safe and habitable condition.

The Select Board makes the following findings of fact:

1. There was no real dispute at this hearing that the Engineer's Report and incorporated photographs accurately depicted and described the conditions on the Premises. No contradictory professional opinion nor any written evidence was provided by Butters; nor was any credible evidence submitted by Butters to refute the Engineer's conclusion of existing conditions of significant dilapidation, unsafe conditions, nuisance and a dangerous building. No credible evidence was introduced to challenge the rational and compelling findings of the Engineer in her

Report and her testimony. We adopt the CEO's testimony and the Engineer's Report and testimony as reasonable, reliable and demonstrating far more than a preponderance of the credible evidence to find that the building is dangerous and a nuisance as defined in 17 MRS 2851 *et seq.*

2. The explanations provided by Sandra Butters as to why no effort had been made after approximately 16 months of the CEO's requests to bring the Premises into a safe and hazard-free condition were not credible. It was clear that the Butters cannot agree on much of anything as to funding the repairs, or the scope of repairs, but the Select Board cannot broker a deal between the Butters. The dangerous building statute does not provide the Butters with a right to delay sufficient remedial action to bring an unsafe and dangerous building into reasonably habitable condition. It is further noted that the Butters were sent a Notice of Violation dated April 19, 2022, and Notice of this Hearing by letter dated June 2, 2023, and after approximately 16 months and numerous telephone calls from Ms. Butters and Attorney Dillon to the CEO, no remedial work progressed, regardless of the many excuses provided by Ms. Butters.

3. James Butters, as Trustee of the Butters Bayside Family Camp Irrevocable Trust, has no financial ability to contribute to the remediation of the Premises.

4. There was no viable proposed Plan presented to the Select Board to actively remediate the premises, but there was a willingness by Sandra Butters to apparently commence work with a contractor to remove the chimney and replace the foundation. However, that verbal proposal to remove the chimney and replace the foundation was not sufficient to address the entire list of dangerous and nuisance conditions which need immediate attention.

5. There was no evidence of any financial capacity of the Owners to effectively cure the dangerous and nuisance conditions; Ms. Butters did not state she had funds available to do the required remediation, and it appeared that she indicated she would be need to get a loan to finance the repairs (or perhaps a loan to only pay for one-half the cost of repairs – it was unclear by her testimony), and the Butters Trust has no funds.

6. Unreasonable delays in the demolition of the Building will cause a threat to the health and safety of the public, and in particular the health and safety of children playing in the area.

The Select Board makes the following conclusions of law:

1. The Dangerous Buildings statute provides that if the municipal officers adjudge a building to be a “nuisance or dangerous” they may make an order to prescribe what disposal must be made of that building. To satisfy the standard to determine if a building is a nuisance or dangerous, the municipal officers must find that the building is (i) structurally unsafe, unstable or unsanitary (ii) constitutes a fire hazard (iii) is unsuitable or improper for the use or occupancy to which it is put (iv) constitutes a hazard to health or safety because of inadequate maintenance dilapidation obsolescence or abandonment OR (v) is otherwise dangerous to life or property. (17 MRS 2851(2-A)). Any one of these criteria is sufficient, if found, to support a finding of nuisance and dangerousness.

2. The Select Board finds that all five of the criteria described in 17 MRS 2851(2-A), which are found both individually and collectively for items 1 through 18 as depicted and described in the Engineer’s Report, have been met in this case, and therefore based on the findings described above, the evidence and testimony of record, the Building is hereby declared to meet the statutory standard of nuisance and a dangerous building.

ORDER and DECISION

It is hereby Ordered as follows:

1. The Butters shall have a final opportunity to control the demolition of the building, if one or both of them can present a written Plan which shall include (i) demonstration of available finances (or loan commitment from an institutional lender) to pay for remediation of the 18 items referenced in the Engineer's Report, (ii) a signed contract(s) with reputable contractor(s) with demonstration of sufficient experience to perform a clearly stated scope of work that specifically includes the 18 items in the Engineer's Report, and includes a start date on or about October 15, 2023 and completion of all work on or before December 30, 2023, (iii) demonstration of written permission from the NVC to access the Premises from the NVC property, and (iv) all necessary approvals and building permits issued by the Town of Northport for the work. Each of the items listed above must be received by the CEO, to her reasonable satisfaction, on or before October 15, 2023. The Plan will include an analysis of hazardous materials as may be on site, and a disposal Plan for those hazardous materials, pursuant to Maine law. The Plan shall be approved in the discretion of the CEO, in consultation with appropriate professional engineers as may be necessary.

Provided, however, as a prerequisite to consideration of this Plan by the Select Board, Butters shall cause access to the basement/crawl space, the foundation, the porch, ground under the north addition, and every other access point into or under the Premises, to be secured by the Butters to the reasonable satisfaction of the CEO, within 14 days of the date of this Order and Decision. If

the securing of the Premises as described above is not accomplished within said 14 days by Butters, the Plan offered and described in this paragraph shall be terminated and the CEO shall take possession of the Premises and secure it pending complete remediation or demolition by the Town.

2. If the Butters seek to comply with the Plan described in the preceding paragraph, they shall pay such reasonable Town expenses as may be calculated by the CEO relating to engineering services for the review of the Plan, and periodic inspection by the CEO during the course of the remediation by Butters, who shall be jointly and severally liable, within 30 days of the demand for such payment, as authorized by 17 MRS 2853.

3. In the alternative to the Plan offered to Butters in paragraph 1 above, and per the request of James Butters, the Butters may choose to provide to the Town the following Plan for the sale of the premises to a bona fide third party for value: a conforming copy of a signed listing agreement, followed by diligent marketing, with a licensed real estate agent to sell the Premises in its present condition. The listing agreement shall be free from an unreasonable asking price or unreasonable conditions, in the opinion of the Town Attorney, that would serve to negatively impact the marketability of the Premises in an arms-length sale to a bona fide third party purchaser for value. The signed listing agreement must be provided to the CEO on or before September 15, 2023.

Provided, however, as a prerequisite to consideration of this Plan by the Select Board, Butters shall cause access to the basement/crawl space, the foundation, the porch, ground under the north addition, and every other access point into or under the Premises, to be secured by the Butters to the reasonable satisfaction of the CEO, within 14 days of the date of this Order and Decision. If the securing of the Premises as described above is not accomplished within said 14 days by

Butters, the Plan offered and described in this paragraph shall be terminated and the CEO shall take possession of the Premises and secure it pending complete remediation or demolition by the Town.

In the event that a sale to a bona fide third party purchaser for value is not completed on or before December 30, 2023, then in that event the Plan described in this paragraph 3 shall be terminated and void.

4. If no Plan per paragraph 1 or 3 is filed and approved by the CEO within the time frames required, the CEO shall take all steps necessary to take complete possession of the Building, secure it to be free from access by any person, and thereafter either commence repair and remediation of the 18 items on the premises if it can be accomplished at a cost not to exceed the estimate of \$ 91,900 as provided in the estimate of Pelletier and Daughters, or cause the demolition of the Building to grade and remediate the site consistent with any applicable ordinance or law. The CEO shall cause a survey or analysis of the premises as may be required prior to remediation or demolition to inspect for hazardous materials, which shall be disposed of consistent with Maine law. The CEO shall retain and consult with an engineer to adopt a Plan of demolition. The CEO shall request contractor bids for the demolition, which shall be forwarded to the Select Board for approval and award, subject to requisite appropriations for funding at Town meeting.

5. The Engineer shall submit to the CEO an invoice for her fees for her inspection of the Premises on April 7, 2023, the drafting of her Report, and for attendance at the hearing on August 14, 2023, which are hereby found to have been necessary expenses incurred by the Town in this matter related to the abatement or removal of the building, consistent with the authority

granted in 17 MRS 2853. The invoice shall be paid by the Butters to the Town, with joint and several liability, within 30 days after demand as required by 17 MRS 2853.

6. The Town Attorney shall submit invoices for his fees and costs incurred related to the preparation of the matter for hearing, attendance at the hearing, and preparation of this Order and Decision. The invoice shall be paid by the Butters, with joint and several liability, within 30 days after demand as required by 17 MRS 2853.

7. All of the pre-demolition and actual demolition expenses shall be paid by Butters, with joint and several liability, to the Town within 30 days after demand as required by 17 MRS 2853, including but not limited to: Town attorney fees, expenses of the engineering consultant fees, permit application expenses to the Maine Department of Environmental Protection if necessary, permit application fees to the Town of Northport, or the NVC as applicable, demolition of the Building including but not limited to all contractor fees and disposal fees, and the cost to return of the site to grade in compliance with Maine laws, which shall be paid within 30 days of demand by the Town as authorized by 17 MRS 2853.

8. To the extent any state or federal permitting, license, study or other investigation, analysis or work requires cooperation from the Butters, they shall cooperate and execute any and all necessary documents related to any permits, study, testing, investigation, requests, applications, and shall provide permissions for access to the site. In the event that the Butters refuses to cooperate, the CEO is hereby appointed as the sole authorized Agent of the Butters to take whatever action is necessary to obtain such permitting, license, testing, study, investigation or site access as is reasonably necessary to accomplish the demolition of the Building and remediation of the site. Butters shall maintain liability insurance and name the Town of

Northport as an additional insured, or the Town of Northport may obtain a general liability insurance policy, at the cost of the Owner.

9. To the extent deemed necessary by the CEO, the Town Attorney may seek a Writ of Attachment(s) of Owner's property for the pre-demolition or demolition expenses, as authorized by 17 MRS 2851.

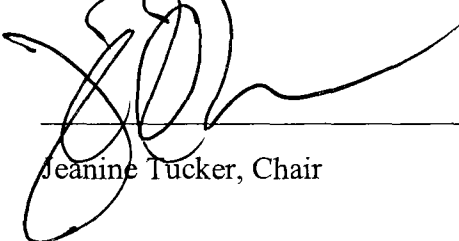
10. It is specifically Ordered that the Town may use any and all mechanisms to recover the costs, fees and expenses as authorized by 17 MRS 2853, including but not limited to a civil action or one or more Special Assessments, as may be assessed by the Assessors, and may thereafter take ownership and possession of the Owner's property at 9 North Street, Northport, Maine, for any unpaid assessment that is automatically foreclosed, as provided and authorized by Title 36 and 17 MRS 2851 et. seq.

11. An attested copy of this Order and Decision shall be filed in the Waldo County Registry of Deeds.

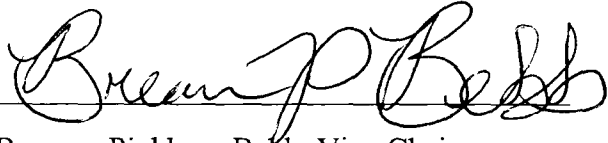
Notice is hereby provided that any appeal of this Order and Decision must be filed in the Waldo County Superior Court pursuant to 17 MRS 2852, which has been provided to the Butters, and Rule 80B of the Maine Rules of Civil Procedure.

DATED: AUGUST 21, 2023

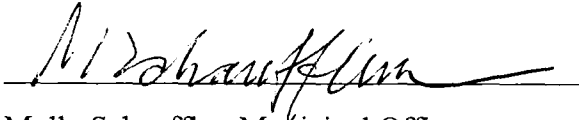
MUNICIPAL OFFICERS OF THE TOWN OF NORTHPORT, MAINE



Jeanine Tucker, Chair



Breanna Pinkham-Bebb, Vice-Chair



Molly Schauffler, Municipal Officer

STATE OF MAINE
County of Waldo, ss.

August 21, 2023

Then personally appeared before me the above-named Jeanine Tucker, Breana Pinkham-Bebb and Molly Schaufler, and acknowledged the foregoing instrument to be their free act and deed in their said capacity.

BEFORE ME

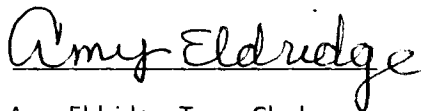


Attorney At Law

WILLIAM S. KELLY, Esq.
Print/Type Name

My Commission Expires: BAR # 2077

ATTESTED:



Amy Eldridge, Town Clerk

SEAL