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October 5, 2018

Peter Wade, Supervisor
Town of Rushford
8999 Main Street
Rushford, NY 14777

RE: Client Matter: Rushford Zoning Matters
Our File No. 3707-036

Dear Supervisor Wade:

As you undoubtedly know, I am a partner with the law firm of Richardson & Pullen, P.C. I have practiced law in Allegany County since 1975. In the early 1980s, I helped write the law that created the Rushford Lake Recreation District. As you also know, our law firm represents James Kay and Deer Valley Ranch, East, LLC. However, you may not know that our law firm represents more than 30 municipalities and school districts across a wide geographic area. Our firm has provided guidance and counsel to numerous municipalities regarding enforcement of their zoning laws. We have also assisted numerous municipalities in drafting and/or amending their zoning laws.

I write you concerning Mr. Kay's offer to help the town amend its zoning ordinance so that campers and recreational vehicle trailers can continue to be used in the manner they have been used both before and after the Town adopted its first zoning ordinance in the mid-1970s. Mr. Kay thinks that our experience in this area of the law and familiarity with the local community and its history would be an asset in proposing a solution and providing a how-to guide to the town board. A passionate minority of people who oppose this traditional and customary use has caused a significant upheaval because they apparently wish to ban or eliminate camper use. These people say that they want to preserve their property values, though some town residents have questioned publicly whether this is the true reason. Regardless of the reason, the effort to curb or eliminate camper or RV use in the recreation district deviates substantially from past practice, marks a significant change in the community and, if successful, will establish a new community character. Unfortunately, this collision of competing visions has resulted in community rancor. We hope that the board will consider our analysis of the situation and our proposed solutions. When considered in the context of the historical evolution of the zoning ordinance and the factors which influenced its development, we believe the proposals provide a way forward that both the pro-camper and anti-camper advocates can agree with. It is hour sincere hope that peace can be restored.

My partner, Richard Buck, helped research the ordinance history and has obtained the perspectives of two individuals who served on the Town Board when the Zoning Ordinance was adopted. Those individuals are Eldyn Davis and Michael Abraszek. Rushford adopted its first

zoning ordinance in 1974 or 75. It is my understanding that since then the zoning ordinance has been amended three times. Those amendments occurred in 1983, 1994 and 2007.

When the 1983 and 1994 amendments were being considered and adopted, four concerns and priorities guided the board in making their decisions. Those four concerns were septic requirements, prohibiting people from living permanently in campers or recreational vehicles or having such places declared as a primary residence, ensuring that people kept their campers or recreational vehicles tidy and well-maintained and imposing a minimum of restrictions on what people could do on their property while complying with the above three factors. The 1983 and 1994 amendments were significantly influenced by the then code enforcement officer, John Simpson, who is now deceased. Mr. Simpson was a sewer engineer.

The issue of limiting the number of campers on a vacant lot was not an issue the board was concerned about in 1983 and 1994. The perspective was that it was a recreation district and so campers were expected. Neither Mr. Davis nor Mr. Abraszek could specifically recall why the board limited one trailer to a lot with a permanent structure on it. However, they indicated it was probably because Mr. Simpson may have been concerned with the possibility that a septic system designed to comply with the septic requirements in effect at the time may not have been able to handle more than a permanent structure and a trailer/camper depending on the number of rooms in the permanent structure. Ultimately, Mr. Abraszek stated that the board was not concerned with the maximum number of campers or recreational vehicles on a parcel, so long as they were tidy and were not being used as permanent residences. It simply was not an issue.

The 2007 amendment concerned only wind facilities, no discussion of campers or trailers was had. Additionally, the town board adopted three laws affecting zoning enforcement and qualifications. Those enactments took place in 1986, 2013 and 2017. The most recent laws did not amend the zoning ordinance per se, but were independent laws concerning the enforcement authority and discretion of the Code Enforcement Officer to enforce the Zoning Ordinance and eliminating the requirement that the Code Enforcement Officer/ Zoning Enforcement Officer be an elector in the Town.

I trust that these insights into the historic evolution of the zoning ordinance and the factors that influenced it, are helpful in both interpreting the current law and crafting sensible amendments. Although my partner Richard Buck has primarily handled this matter, I did attend a meeting this summer when he was recuperating from a motorcycle accident. As I recall, there were comments about the current law now being enforced. I have also discussed this with Richard Buck as this matter has progressed. I think the town board and we agree that proper enforcement will require that the current ordinance be clarified.

As noted, comments have been made that Section 6.3 "has not been enforced." Section 6.3 currently reads as follows:

"Sec.6.3 Recreational Trailers or Campers in the R-C and R-2 Districts

A. Not more than one recreational trailer or camper used for shelter or living purposes can be parked on a lot for a maximum time of one year reckoned from the time of parking. By the end of that year, a permanent structure or a mobile home must be erected or established in accordance with this ordinance.

B. Not more than one recreational trailer or camper can be stored on a lot with a permanent structure. It may not be used for living purposes."

A few issues to note. First, nowhere in the ordinance is "shelter," or "living purposes" defined. However, as explained above, this section was not written as an absolute ban to forbid property owners from using more than one recreational vehicle or camper on their property or forbid property owners from letting others park a recreational vehicle or camper on their property. The ordinance was written to preclude people from living in a recreational vehicle or camper permanently or as a primary residence. If individuals were going to live in a mobile home or manufactured home (as opposed to an RV or camper), the standards were set forth in Definitions 63(A) and (B) of the 1986 amendment apply. As Mr. Buck and I understand it, these definitions consider the requirements of the federal regulations which were promulgated in 1976 as authorized by the Federal Manufactured Housing Act of 1974.

Next, Local Law No. 2 of 2013 vests the Code Enforcement Officer with broad enforcement discretion. Section 4 (a)(g)(2) provides: *The Code Enforcement Officer shall have discretion in determining which, if any, of the potential defendants to prosecute and discretion in determining whether to prosecute some of the potential defendants and not others. The Code Enforcement Officer shall exercise his discretion according to his or her sense of justice and fairness given the circumstances of the alleged violation and the manner in which it occurred.*

Taking into account the imprecise language and absence of comprehensive integration of the current law together with the historical insights of the former board members, it is reasonable to conclude that the Code Enforcement Officers have, at least in most instances, exercised the discretion the law gives them to not cite property owners who have more than one camper or RV on their property.

The issue before the town board is how to move forward and reconcile the community. In my judgement, this requires understanding the values and culture that created the existing code and understanding the values and culture of those demanding change. One's private property rights have traditionally been defended vigorously and given expansive meaning in this rural, conservative area of the state. This is the case currently and the spirit was even more so in 1975 and even into the 1990s as Mr. Abraszek has explained and I can attest to having practiced law in this area for over 40 years. Your own board member, Charlie Bliss, can speak to this, and has spoken to this, more directly. He has lived in Rushford for about 35 years.

You are relatively new to the Town, having only bought property here in October of 2012. You are from Rochester, not too far from the airport. The mentality and approach to land use and property ownership in that area of the state is very different from the view in Allegany County, and specifically in Rushford. The approach you and the Gleeds have articulated is not necessarily "wrong," per se, but it is different from our local traditional approach and the values and expectations which inform that approach. My hope is that your goal is to compromise between the anti-campers/build a permanent structure community members and the pro-camper/recreational vehicle community members.

Let me suggest a possibility that I believe would help resolve about 90% of the RV/Camper problem. This resolution can be best achieved if those who oppose the traditional

use of campers and RVs in the recreational district respect the community heritage on this issue and those who support campers and RVs accept a limit on the number of campers or RVs on their property and other reasonable conditions regulating tidiness and disposal of waste. Both sides will need to exercise common sense and emphasize community interest over self-interest. The other 10% of the problem is going to revolve around three issues: 1) agreeing how many RV trailers a property owner may have on his property during the season; 2) lifting the one-year time limit on RV trailers so they can be stored on the property after the season so long as no one is using them to live in; and 3) considering grandfathering certain individuals or properties who may have a number of RV trailers or campers on property that exceed the number agreed to in the amendment.

As Board Member Bliss suggested at a recent Board meeting, a starting point for how many campers or recreational vehicles an owner can have on their parcel is in Part 7, Subpart 7-3 of the New York State Department of Health Regulations. 7-3.1 defines a campground as "any parcel or tract of land including buildings or other structures, under the control of any person, where five or more campsites are available for temporary or seasonal overnight occupancy." Translated, this would mean that a land owner could have up to four recreational vehicles or campers on a lot before having to apply for a Special Use Permit for a campground. Additionally, the property owner will have to either provide a county-approved septic system or provide the town with proof that each camper has a contract with a vendor for pumping and waste removal if the camper is going to be parked for longer than a specified time. I believe Board Member Charlie Bliss previously provided suggested language for the Board's consideration. Might this be a place to begin discussions?

Once the board agrees to what number of trailers is appropriate, I also think it is reasonable that the town permit those trailers to be stored, not lived in, on that parcel beyond one year.

This can be accomplished without revising the Comprehensive Plan. The Comprehensive Plan in Section 5.1, 5.4 and 5.6 supports this approach.

Once the board drafts a proposed set of revisions, the procedure for amending the zoning ordinance is as follows:

1. The proposed zoning law or zoning law amendment must be introduced by a board member at a municipal board meeting or as otherwise prescribed by the board's rules of procedure. [MHRL §20 (4)]

2. A determination must be made, following the State Environmental Quality Review Act (SEQR) requirements, as to whether there are any significant environmental impacts associated with the adoption of the zoning law or amendment. This requires that the lead agency complete an Environmental Assessment Form (EAF) to determine the environmental significance or non-significance of such action. A determination of significance will require the preparation of an Environmental Impact Statement (EIS). [6 NYCRR Part 617].

3. The proposed zoning law or zoning law amendment must be referred to the county or regional planning agency for review and comment. If comments are received by the municipal board, it may then immediately act on such proposal, taking into consideration the

planning agency's comments. If no comments are made on the proposed zoning law or zoning law amendment within thirty days of the referral to the planning agency, the board has the right to proceed toward finalizing the law, although it must take county planning agency comments into consideration if it receives them at least two days prior to final action. [GML §239-m]

4. A resolution must be passed setting a date for a public hearing. The clerk must publish this notice in a local newspaper of general circulation and on the Town's website and bulletin board. The notice must be published at least five days prior to the public hearing, unless the Town has previously passed a local law prescribing a shorter notice period of at least 3 days. The notice must include the time, date and place of the hearing and the nature of the subject to be discussed. The notice must clearly inform the public of the action to be taken by the board.

5. A public hearing must be held.

6. If the municipal board determines that the proposal must be substantially changed following the public hearing, it may either make those changes itself or refer the proposal to the planning board or zoning commission for the appropriate changes. Where changes have been made, the adoption steps outlined above must be repeated. This process will continue until the proposal is no longer substantially changed.

7. The municipal board may vote on the proposed law at a meeting immediately following the public hearing or at a subsequent board meeting, but in either case only after all time and notice requirements have been satisfied:

- All notice requirements set forth above have been met;
- If the law was "upon the desks or table of the members at least seven calendar days, exclusive of Sunday, prior to its final passage," or
- If the law was "mailed to each of them [members of the municipal board] in postpaid properly addressed and securely close envelopes... or (c) e-mailed to the e-mail in-box of each of them in the Portable Document Format (PDF) at least ten calendar days, exclusive of Sunday, prior to its final passage, provided that (i) the local government has documented that each member of the legislative body has an e-mail address, (ii) the local government has published such e-mail address on the bulletin board of the local government clerk, and (iii) the legislative body has unanimously adopted a resolution authorizing such electronic delivery; unless the elective or appointive chief executive officer, if there be one, or otherwise the chairman of the board of supervisors, in the case of a county, the mayor in the case of a city or village or the supervisor in the case of a town shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of the total voting power of the legislative body at least ten calendar days, exclusive of Sunday, prior to its passage...[MHRL §20[4].

8. If the proposed law is contrary to the recommendations of the county planning Board, a majority of the board plus one is needed for passage. [GML §239-m (5)].

9. Within thirty days after the final action, the board must file a report of the final action it has taken [GML §239-m (6)]

10. The Town Clerk must file the law with the secretary of state within twenty days of the law being passed and one certified copy in the Town Clerk's office. [MRHL § 27].

I trust this has been at least informative, if not helpful. To save the Rushford taxpayers money, if the Town Supervisor wishes, Mr. Kay has authorized us to prepare a draft amendment for the Town Board's review and consideration.

If you or the Town Attorney have any questions or concerns, please call me or my partner Rich at the number above or email me or Rich at dpullen@rppclaw.com or rbuck@rppclaw.com.

Sincerely,

RICHARDSON & PULLEN, P.C.

By: David T. Pullen

cc: Michael Burke, Town Attorney, Town of Rushford
Mr. James Kay, Client