

THE STATE OF NEW HAMPSHIRE

CARROLL COUNTY

SUPERIOR COURT

WESTWARD SHORES PLAINTIFFS

C/O
JONATHAN KINNEY & MICHAEL PACINI
28 Cranberry Street 25 Norwood Road
Pepperell, MA 01463 Salem, NH 03079

v.

NORTHGATE OSSIPEE, LLC
C/O Northgate Resorts
401 Hall Street, SW Suite 385
Grand Rapids, MI 49501

NORTHGATE OSSIPEE LESSEE, LLC
C/O Northgate Resorts
401 Hall Street, SW Suite 385
Grand Rapids, MI 49501

&

TOWN OF OSSIPEE
55 Main Street
Center Ossipee, NH 03814

&

JOAN BRASSIL
2321 Masterpiece Way
Palm Beach Gardens, Florida, 33410

ANTHONY J. AVERSA
111 Loudon Road
Concord, New Hampshire, 03301

Case No.: 212-2018-CV-00150

**REQUEST FOR PRELIMINARY INJUNCTION, DECLARATORY JUDGEMENT &
OTHER RELIEF AVAILABLE UNDER RSA 205-A:21 AND RSA 358-A**

NOW COME the Westward Shores Plaintiffs, c/o Jonathan Kinney & Michael Pacini pursuant to the Motion Requesting Court Approval of Class Pursuant to Rule 16 attached as Exhibit A ("Westward Shore Plaintiffs" or "Plaintiffs"), by and through their counsel, Panciocco

Law, LLC and submit this Request for Preliminary Injunction, Declaratory Judgment and Other Relief available under RSA 205-A:21 & RSA 358-A:10 and in support state as follows:

PARTIES

1. The Westward Shores Plaintiffs are individuals who own and occupy certain campsite improvements (“Improvements”) located within a section of the camping resort now known as “Westward Shores Cottages and RV Resort” located at 110 Nichols Road in the Town of Ossipee, New Hampshire (“Westward Shores”). Exhibit B.
2. Northgate Ossipee, LLC and Northgate Ossipee Lessee, LLC are New Hampshire limited liability companies formed on June 16, 2015 having a physical mailing address C/O Northgate Resorts, 401 Hall Street SW, Suite 385, Grand Rapids, Michigan 49501 (collectively “Northgate”) which acquired Westward Shores on December 21, 2015.
3. The Town of Ossipee (“Town”) is a municipal corporation with a mailing address of 55 Main Street, Center Ossipee, New Hampshire 03814.
4. Joan Brassill is a natural person with a mailing address of 2321 Masterpiece Way, Palm Beach Gardens, Florida 33410, but upon information and belief spends her summers at Campsite #12 within Westward Shores. Ms. Brassill is one of the two (2) manager/members of JB & TA Enterprises, LLC and Aversa-Brassill Enterprises, LLC (“JB & TA Entities”) who sold Westward Shores to Northgate on December 21, 2015. Both JB & TA Entities were administratively dissolved by the N.H. Secretary of State on September 29, 2017.
5. Anthony J. Aversa, M.D. is a natural person and the second manager/member of the JB & TA Entities, and has a mailing address of 111 Loudon Road in the City of Concord, New Hampshire 03301.

PROPERTY

6. Westward Shores includes more than 200 acres of land having an address of 110 Nichols Road in West Ossipee, New Hampshire 03890, having partial frontage along Bear Camp River and Ossipee Lake and marketed by Northgate under the trade name of “Westward Shores Cottages and RV Resort” (“Westward Shores”).
7. Northgate purchased Westward Shores from the JB and TA Entities for \$7,130,000.00 on December 21, 2015 which included approximately 267 existing and approved campsites.
8. The JB & TA Entities acquired Westward Shores from W.W.S. Campground L.L.C. and Laguna Bay Marine, L.L.C. on October 29, 2012, whose owner/members were Charles H. Smith¹ and Anthony J. Aversa.

JURISDICTION & VENUE

9. This Court has exclusive jurisdiction over this matter because the subject matter of this case relates to the real estate known as Westward Shores located in the Town of Ossipee, Carroll County, New Hampshire and because the damages claimed by the Plaintiffs exceed the jurisdictional limits of the district court.
10. Venue is proper because Westward Shores is located in the Town of Ossipee, Carroll County, New Hampshire.

BACKGROUND

11. Documents retrieved from the Town of Ossipee confirm Westward Shores opened on or about 1980 after its Planning Board signed the plans recorded at Book 683, Pages 41-42 in the Carroll County Registry of Deeds (“Registry”).
12. On April 1, 1985, Westward Shores was transferred to the Picard family who had arranged to expand the approved number of campsites by acquiring additional land from abutter Brooks.

¹ Charles Smith is reportedly deceased.

The Planning Board approved the Brooks plan² on May 7, 1985, allowing that land to be transferred to Westward Shores for that express purpose.

13. In early 1988, the Town adopted its first zoning ordinance, although to date the earliest version found or made available is dated 1992/1993 (“1992 ZO”).

14. The 1992 ZO does not define the terms: “*recreational vehicle*”; “*trailer*” or “*camper*” but it does define a “*campground*” as: “[L]and rented for temporary occupancy by tents, tent trailers, campers or sleeping quarters of any kind, except dwellings and mobile homes for recreational purposes according to the standards in Article XV”³.

15. The 1992 ZO states a “*manufactured or mobile home*” is: “Any structure, transportable in one (1) or more sections, which in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on the site, is 320 square feet or more, ... is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical”. (emphasis supplied).

16. A “*manufactured home*” is defined in the 1992 ZO Floodplain Development Ordinance effective as of June 17, 1991 as “a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term ‘manufactured home’ includes park trailers, travel trailers, and other similar vehicles placed on the site for greater than 180 days.” (emphasis supplied).

² Registry Plan Book 75, Page 33.

³ Article XV is entitled “Recreation Camping Park Performance Standards”.

17. In light of the definitions found in the 1992 ZO and based upon copies of older tax assessment cards received from the Town dating back to 1990-1994, there is no doubt the Town was aware of the numerous manufactured homes located within Westward Shores.
18. The tax cards include diagrams of those structures which ranged in size from 384 square feet up to 1,157 square feet, but averaging approximately 650 square feet.
19. Most of those tax cards also include photographs of those structures permanently affixed to the ground year-round.
20. All the campsite improvements currently owned by the Plaintiffs ("Improvements"): (a) exceed 320 square feet; (b) include either stick-built rooms, durabuilt/silvertop rooms, sheds, carports, decks, porches and/or stick- built roofs; (c) have electricity and plumbing and some even have heating systems used for winter camping season; (d) are permanently affixed to the earth; and (e) continue to be taxed as real estate.
21. Many of the Plaintiffs who vacationed at Westward Shores as children now vacation there with their own families.
22. Many of those Plaintiffs can recount numerous instances in which they, or another similarly situated Improvement owner would improve or enlarge their accommodations by simply obtaining permission from the owner of Westward Shores to do so.
23. Depending upon the size and nature of the improvements to be made, an owner approval was sometimes conditioned upon the hiring the "*park approved builder*", Rick Drew.
24. While the owners told certain Plaintiffs no building permit, some of the Plaintiffs actually went to the Town to apply for a building permit but were told no permit was required because they "*surely would not be spending more than \$2,500.00 ("wink...wink"⁴)*".

⁴ This response was described by a number of the Plaintiffs.

25. Another routine practice within Westward Shores described by the Plaintiffs was that if you wanted to sell your Improvements, you were required to advertise and sell through Westward Shores for which they charged a 15% commission payable at the closing.

26. By 2007, the ALTA⁵ plans recorded at Plan Book 218, Pages 1-3 in the Registry confirmed there were 267 campsites in Westward Shores, all of which were located within the flood plain.

27. No records of enforcement action taken by the Town or FEMA relative to the Improvements have ever been found, nor have there been complaints to the Town about the Improvements being a zoning violation.

28. When certain of the Plaintiffs who have owned Improvements for a long time learned the JB & TA Entities had sold Westward Shores to Northgate in early 2016, they were shocked because they had asked Ms. Brassill if she knew who was inspecting Westward Shores during the 2015 camping season and whether she was selling Westward Shores and she told them “no”.

29. In fact, certain JB & TA Entities, employees have since confirmed they were expressly told by Ms. Brassill to not tell anyone that Westward Shores was being sold to Northgate.

30. The first public disclosure of Northgate’s acquisition was on December 15, 2015 (before the closing), when SFC Engineering, Inc. (“SFC”), Northgate’s civil engineer, appeared before the Town of Ossipee Planning Board (“Planning Board”) to introduce a proposed expansion of Westward Shores to include 629 additional campsites, which was later reduced to 522 sites.

Exhibit C.

31. During its presentation, SFC presented detailed plans, described the completed due diligence and told the Planning Board it hoped to be before the Ossipee Zoning Board of Adjustment (“ZBA”) for a public hearing regarding its special exception in February, further confirming Northgate’s acquisition had been in process for some time.

⁵ Alta plans are very detailed plans required by title insurers when they provide additional coverages.

32. After title transferred to Northgate on December 21, 2015, it immediately placed all listings for the Westward Shores Improvements on its website which its staff continued to sell and assess a 15% commission.
33. During the public hearing in February before the ZBA, numerous environmental groups, the Town of Freedom and the Town of Effingham Conservation Commission expressed serious concerns about a tripling of the number of “campsites” within Westward Shores within the floodplain because all the existing Improvements were at or below base flood elevation.
34. During both the February and March public hearings, Northgate responded to these concerns by stating they planned to “*phase out*” the older Improvements and the ZBA granted its special exception.
35. As the land use approval process continued at the local level, on or about May of 2016, Jennifer Gilbert of the N.H. Office of Strategic Initiatives (“Gilbert”) received an e-mail from a local environmental group reporting about Northgate’s planned expansion and how in addition to the existing Improvements, the expansion would impact Ossipee Lake.
36. In the Fall of 2016, someone forwarded Gilbert a copy of the Jones & Beach report which it completed as the Town’s outside engineering consultant. The report detailed serious shortcomings with Northgate’s proposed plan and prompted Gilbert to contact FEMA who recommended she request copies of the Towns old building permits.
37. In the meantime, Northgate appeared for a public hearing before the Planning Board in June 2016 where a lengthy discussion took place about how the Improvements within Westward Shores would be relocated if there was a flood event.
38. Northgate told the Board that although they would try to help, each owner is responsible for their own Improvements and they planned to “*phase out*” the older Improvements soon.

39. Since taking over at Westward Shores, Northgate has never disclosed any of the concerns raised by Town Boards to the Improvement owners, nor have they ever disclosed them to prospective purchasers.
40. In the alternative, Northgate continued to advertise the Improvements on its website, had its sales staff show prospects those improvements and facilitated their transfer to new owners on which they collected a 15% commission while they and SFC simultaneously represented to Town Boards that improvements located at Westward Shores for more than 6 months [*which includes all of the Plaintiffs' Improvements because they are permanently affixed to the earth*] would be raised above the floodplain, be road ready or "*phased out*".
41. Northgate's sale staff also affirmatively represented to prospective purchasers that the Improvements being offered for sale were, in many cases, better because they were "*grandfathered*" because permits for structures so close to the water are no longer allowed.
42. At least 23 members of the Westward Shores Plaintiffs, none of whom live in Ossipee, were told the Improvements they agreed to purchase were "*grandfathered*" but no one told them about the concerns raised by various abutters or the representations being made by Northgate to Town Boards.
43. It is also important to note that at least five (5) of the Westward Shores Plaintiffs have mortgages on their Improvements.
44. On September 20, 2016, and because the existing Improvements within Westward Shores had become an ongoing topic of discussion, the Planning Board engaged in a lengthy debate as to whether they were "*recreational vehicles*" or "*manufactured homes*", immediately prompting the Town of Freedom to send its September 30, 2016 letter which unequivocally stated the Improvements were more like "*camping cabins or park model RV's*" and were not "*recreational vehicles*".

45. After the Planning Board approved Northgate's plan, and Freedom and Effingham appealed, the Court remanded for further rehearing before the ZBA, at which time Freedom's expert testified that the existing Improvements did not fit the definition of recreational vehicle and where manufactured homes because they were not transportable and remain in place all year.

46. In an attempt toward rebuttal, Northgate's attorney defended Northgate and claimed his client inherited this "*problem*" which was not part of its special exception application, arguing the Improvements were "*grandfathered*" but that Northgate planned to "*phase them out*".

47. On June 19, 2017, Gilbert and FEMA visited Westward Shores after Gilbert had received copies of only six (6) building permits from the Town, which had been issued since 2012.

48. After its inspection of Westward Shores of June 19, 2017, FEMA sent a letter notifying the Town it must enforce its Flood Plain Ordinance for its residents to remain qualified for flood insurance at a reasonable rate, and that it had determined the Improvements within Westward Shores were "*structures*" and must be elevated for NFIP purposes - not "*recreational vehicles*."

49. On July 24, 2017, the Board of Selectmen held a telephonic work session with Northgate to discuss the issues raised by FEMA which concluded with the Town and Northgate agreeing to collaborate on a letter to the Plaintiff group describing what must be done to bring their site into compliance with FEMA's requirements.

50. It took approximately three (3) months to generate the letter sent out in November of 2017 which demanded the Plaintiffs remove all stick-built structures, porches, roofs, decks and other improvements and/or elevate their Improvements above the base flood elevation and by this time, the Town had determined Northgate would need to sign off on those permits.

51. Until the letter was actually sent, Northgate continued to advertise and transfer listed Improvements on its website with all commission checks made payable to Westward Shores or Northgate

52. When they received the letter, the Plaintiffs were shocked especially those who had just purchased their Improvements although all persons who received the letter had made payments toward their 2018 seasonal rent which ranges from \$4,700.00⁶ to \$9,000.00 per year.

53. After receiving numerous complaints, Northgate scheduled a meeting at Westward Shores on May 19, 2018, immediately after the season opened, for the stated purpose of answering questions about the letter to which the Town was not invited.

54. When asked how Northgate could continue to market and sell the Improvements and not disclose what she knew about the FEMA related issues, Ms. Bossenbroek claimed she was not responsible for those issues or for any losses those owners found themselves facing.

55. Certain Plaintiffs also asked Ms. Bossenbroek why Northgate would not sign off on their building permit applications in order for them to make the required modifications to bring their Improvements into zoning compliance.

56. Ms. Bossenbroek stated Northgate could not sign off on permits for “*stick-built*” structures because doing so would violate Northgate’s “*special exception*” and turn Westward Shores into a manufactured home park⁷.

57. During this meeting, Ms. Bossenbroek confirmed Northgate learned of FEMA’s and Gilberts’ concerns in July of 2017 and the meeting ended with Northgate promising to schedule group meeting with the Town present which it has never done.

58. After the meeting, the Town continued to vacillate between its earlier desire to “*work with people*” to bring their Improvements into compliance, keeping Town residents calm about their flood insurance premiums and openly blaming the former owners of Westward Shores for the

⁶This fee includes winter storage which every owner is charged because their Improvements are immobile and remain onsite year-round.

⁷ By this time, Northgate had tried to evict Shane Norton, who owns Improvements with approximately 750 square feet in Westward Shores with a 7-day notice and no due process. See Carroll County Docket No. 212-2016-CV-00194.

overall dilemma despite it having found only six (6) building permits issued for Improvements within Westward Shores.

59. Gilbert and FEMA in the alternative have stated they will work with people and accept any reasonable means to elevate the Improvements to which the Town has not objected.

60. Northgate continued to blame the Plaintiffs, some of whom had been the source of recent commission income, and the Town for not enforcing its zoning for these issues but Northgate continues to insist it has a better solution, without providing one.

61. Northgate's complaints fly in the face of it having invested \$7,130,000 to acquire Westward Shores and then racing immediately to the Planning Board to triple its size even before the deal closed because the existence of the Improvements is blatantly obvious as is the consistent revenue stream they produce for the owner of Westward Shores.

62. Notwithstanding, the Plaintiffs have found themselves being bounced back and forth between Northgate and the Town for months as they try to preserve their investments, wondering whether the Town will initiate enforcement action against them (through Northgate) or whether Northgate will try to evict them, unreasonably increase their rent or just "*phase them out*" by not renewing their annual leases.

63. The above circumstances and the conflicting views of those holding the power have left the Westward Shores Plaintiffs with no other option other than to request assistance from this honorable court.

COUNT 1 – PRELIMINARY INJUNCTIVE RELIEF AGAINST NORTHGATE.

64. Each member of the Westward Shores Plaintiff group owns and has made a substantial investment in their Improvements within Westward Shores.

65. With the exception of a few, those Improvements are not moveable or transportable without the Plaintiffs incurring substantial cost and/or damage.

66. The Plaintiffs pay Northgate annual seasonal rent with a winter storage fee in the amount of \$4,700.00 for non-water frontage sites known as the Woodlands; up to \$9,000.00 for water frontage sites.

67. Upon information and belief, all payments toward seasonal rent generally begin at the end of the season which runs from on or about May 15, until the middle of October, which allows all payments to be received before the season opens.

68. The Improvements owned by each Plaintiff are all affixed to the earth; constructed on concrete slabs, piers or cement blocks, and internally wired and plumbed.

69. These Improvements predate Northgate acquiring Westward Shores as well as the Town's adoption of zoning and Northgate cannot deny they existed prior to their purchase.

70. More recently, Northgate has substantially revised its seasonal contracts to require the Plaintiffs make certain admissions relative to the occupancy of their Improvements.

71. Due to the nature and character of their Improvements, the Plaintiffs were not in a position to argue with the terms set out in those forms.

72. Until the court issues guidance in this matter, the Plaintiffs hereby request the Court issue a preliminary injunction against Northgate and the Town to prevent: (a) any retaliatory or enforcement type action by Northgate or the Town against the Plaintiffs provided they continue to abide by the terms of their leases; (b) any eviction not consistent with the framework which applies to manufactured homes; (c) the non-renewal of the Plaintiffs' leases and its enjoyment; or (d) any unreasonable rent increase without a valid basis.

COUNT 2 – DECLARATORY JUDGMENT – MANUFACTURED HOMES

73. The Westward Shores Plaintiffs incorporate and re-allege all facts stated above and request the Court to issue an order confirming the Improvements best fit the definition of "*manufactured home*" due to their nature, character and size.

74. The Plaintiffs Improvements exceeded the 320 square foot limit imposed on a “recreational vehicle”.

75. The Plaintiffs Improvements are permanently affixed to the earth and many are on foundations, piers or cement blocks.

76. The Town of Freedom and its expert stated the Improvements are manufactured homes.

77. The only persons who have alleged the Improvements are not manufactured homes are the Town and Northgate because doing so is in their best interests.

78. The Plaintiffs request the Court make this determination from which the Plaintiffs rights flow.

COUNT 3 – DECLARATORY JUDGMENT -ENFORCEMENT BY TOWN OF OSS�PEE

79. The Plaintiffs’ reincorporate and restate all facts plead above.

80. The Westward Shores Plaintiffs request the Court determine whether their Improvements are preexisting nonconforming uses under the Town of Ossipee Zoning Ordinance.

81. Westward Shores opened on or about 1980 and expanded to 276 sites by 2007.

82. The Town’s assessment records confirm the Improvements existed prior to 1991.

83. The existence of the Improvements predates the Town’s adoption of zoning as well as its Flood Plain Ordinance.

84. The Town has been assessing taxes on the Improvements since prior to 1991.

85. Plaintiffs who asked for building permits at the Town were told none were required.

86. The Plaintiffs relied upon the Town’s response to construct the Improvements with no permits.

87. There is no record the Town has ever complained about, nor taken enforcement action against, the Improvements since Westward Shores opened.

88. The Town is estopped from requiring the Improvements be removed building permits now or that structure conform with zoning.

89. The existence of the Improvements predates the Town's adoption of zoning, which includes its Flood Plain Ordinance.

90. The Plaintiffs request the Court declare the Improvements are preexisting nonconforming uses which predate zoning and the Town has no basis to enforce its zoning against the Plaintiffs.

COUNT 4 – VIOLATION OF RSA 205-A:21 BY JOAN BRASSILL & ANTHONY J. AVERSA

91. The Plaintiffs' reincorporate and restate all facts plead above.

92. The Improvements within Westward Shores owned by the Plaintiffs best fit the definition of a manufactured home.

93. As manufactured homes, RSA 205-A:21 required Brassill and Aversa to notify the Plaintiffs of Northgate's offer and its specific terms, within sixty (60) days of its receipt.

94. The purpose of this requirement recognizes the risks associated with owning and improving leased land by providing the owners of structures located on leased land an opportunity to acquire the land on which their improvements are located by providing them this written notice.

95. Neither Brassill nor Aversa provided notice to the 77 Plaintiffs who owned Improvements at the time Northgate's offer was received ("77 Plaintiffs"), but in the alternative directed their employees to not disclose their receipt of Northgate's offer.

96. The Plaintiffs request the Court assess Brassill and Aversa the penalty due under RSA 205-A:22 for failing to notify the 77 Plaintiffs of the proposed sale to Northgate which denied them an opportunity to acquire the land on which their Improvements are located.

COUNT 5 – CONSUMER PROTECTION ACT – NORTHGATE

97. The Plaintiffs' reincorporate and restate all facts plead above.

98. Pursuant to RSA 358-A:10-a, a class approved by the court may pursue an action under the New Hampshire Consumer Protection Act if an unlawful act or practice has caused a similar injury.

99. The Westward Shores Plaintiffs have requested the court approve them as a class with similar injuries, but Northgate brokered and earned a 15% commission on Improvement sales to at least 23 of those Plaintiffs (“23 Plaintiffs”).

100. RSA 358-A:2 states it shall be unlawful for any person to engage in any unfair or deceptive act or practice in the conduct of trade or commerce within the State of New Hampshire.

101. Deceptive acts include holding a product for sale out to be something it is not, which in this case may be that a structure affixed to the earth was “*grandfathered*” from all regulatory frameworks, should the Court disagree.

102. A deceptive act most surely is not offering a product for sale when in an alternative forum, i.e. public hearings before the Town of Ossipee, representing those products will soon be “*phased out*”, essentially leaving that product with little or no value.

103. Not only did its sales representative make selected favorable representations to certain of the Plaintiffs prior to them making purchase decision, Northgate intentionally chose to not disclose other facts which would surely have been material to those purchase decisions and the collected a 15% commission for doing so.

104. Northgate willfully and knowingly engaged in an unfair and deceptive practice rises to the level of rascality identified by the N.H. Supreme Court as covered by the N.H. Consumer Protection Act for which 23 Plaintiffs are owed damages and attorney fees pursuant to RSA 358-A:10(I).

WHEREFORE, the Westward Shores Plaintiffs request the Court:

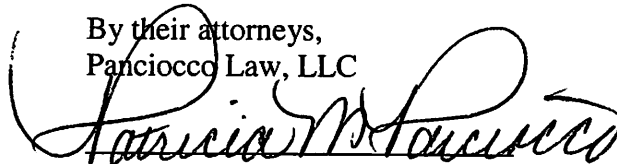
- A. Grant a preliminary injunction against Northgate as described above to maintain the status quo;

- B. Hold the Plaintiffs Improvements are best defined as seasonal manufactured homes and should be protected accordingly;
- C. Hold the Town is estopped from enforcing its zoning ordinance against the Plaintiffs' Improvements;
- D. Hold Brassill and Aversa, the individual member/managers of the dissolved JB & TA Entities violated RSA 205-A:21 by intentionally avoiding notice to the 77 Plaintiffs within the Westward Shores Plaintiff group and award them damages pursuant to RSA 205-A:22;
- E. Award the 23 Plaintiffs who purchased Improvements after Northgate acquired Westward Shores damages and attorney fees pursuant to RSA 358-A due to Northgate's failure to disclose all known facts regarding the Improvements prior selling them to the 23 Plaintiffs; and
- F. Grant such other and further relief as may be just.

Respectfully submitted,

WESTWARD SHORES PLAINTIFFS

By their attorneys,
Panciocco Law, LLC



Patricia M. Panciocco (Bar #15872)
One Club Acre Lane
Bedford, New Hampshire 03110
Phone: (603) 518-5370
E-mail: Pat@panciocolaw.com

Date: August 28, 2018