

The Town of German Flatts participates in the federal National Flood Insurance Program (NFIP) that makes federally-subsidized flood insurance available to property owners located in areas of special flood hazard. To participate in the program the town is required to adopt and administer a floodplain development permit program to regulate construction in floodways and floodplains. Administration of that law not only protects the property of people seeking to build in flood-prone areas, but reduces the impacts of inappropriate development and reduces damage from flood events both upstream and downstream. FEMA administers the NFIP and regularly audits the town's administration of the program. If the town fails to properly administer its flood law, the town can lose the ability to participate in the NFIP.

For several years the town has been attempting to fulfill its obligation under the NFIP to administer and enforce the floodplain development law with respect to the Creekside Mobile Home Park owned by Mr. and Mrs. Jaquish. Mr. and Mrs. Jaquish constructed a wall in the floodway, added significant amounts of fill and located several structures in the floodway and floodplain without permits from the Town and in violation of Stop Work Orders. Mr. and Mrs. Jaquish were provided an opportunity to apply for an after-the-fact floodplain permit if they could demonstrate that their actions met the requirements of the law. The Jaquishes' application was reviewed by independent engineers retained by the town who determined that the Jaquishes had failed to provide sufficient technical data to justify leaving the illegal rock, fill and structures in place. As a result, the Town Board denied the permit to build in the floodplain and also denied the renewal permit application for the mobile home park.

As was their right, the Jaquishes challenged the Town Board's decision in court. They only challenged the denial of the floodplain development permit. They did not challenge the denial of the mobile home park permit. The court reviewed the arguments by the Jaquishes and ultimately decided that the town's decision was not arbitrary or capricious and was supported by substantial evidence. The Jaquishes were ordered to have the tenants vacate the park and to restore the site as directed by the Town. The Jaquishes sought to appeal that decision to the Appellate Division. However, they did not vacate the park or begin the work and took virtually no effort to pursue the appeal. If a party is ordered by a court to take an action it must do so. An appeal does not excuse compliance with a court order unless the party is granted a stay of that order from a court. The Jaquishes never requested a stay. Eventually the court found the Jaquishes in contempt, ordered them to pay the town's attorney fees and vacate the park. The court allowed the Jaquishes to delay doing the remedial work until 45 days after the appellate court ruled, assuming that the lower court ruling was upheld. In April of this year, the Appellate Division upheld the lower court ruling.

Since that time the town has tried to work with the Jaquishes to get the work completed. Since there was still a window of opportunity to use DEC funds to purchase the property and do the work, the town offered to purchase the property and undertake the work itself. The Jaquishes refused. Over the course of the summer and into the Fall, the parties worked with the judge to finalize a new order that specified the exact work that needed to be done and a time for completion. The town tried to be reasonable and agreed to accept somewhat less of the originally planned restoration in order to focus on the important features in the floodway. The Jaquishes kept attempting to re-argue the case they had

lost before the town board, the lower court and the appellate court. The court correctly rejected those attempts. Court decisions are final and parties cannot attempt to re-argue a case forever. On October 25th, the court ordered the Jaquishes to undertake the work and to have it completed by December 1st.

Instead of complying with the order or beginning the work with due diligence to comply with the order, the Jaquishes have continued to try and avoid their obligation. When FEMA representatives were recently in town as a follow-up to their previous visit, the Jaquishes argued to FEMA that the boundaries of the floodway and floodplain were inaccurate. Recognizing that everyone has a right to submit information for their consideration, FEMA said they would review any technical data the Jaquishes have to support their argument. Despite FEMA telling them that FEMA supported the town's actions regarding Creekside, the Jaquishes misrepresented the nature of their discussion and told that court that FEMA was likely to revisit the flood boundaries and not require remediation. That statement was untrue and on December 10th FEMA wrote to the town both an email and a letter. The email specifically refuted the Jaquishes' misrepresentations, noted that the Jaquishes had not submitted any new information and the letter, which summarizes some other deficiencies the town has in administering the flood law (which the town is correcting), noted that FEMA fully supported the town's enforcement efforts against Creekside.

Instead of seeking to comply with the order, the Jaquishes have continued to pursue litigation, wasting time and forcing the town to incur unnecessary legal expenses. The Jaquishes have filed a Notice of Appeal of the October 25th Order, however they have not identified what legal grounds they are appealing on, they have not pursued the appeal and again have not sought any stay from a court from complying with the order. Just this week the Jaquishes have commenced another lawsuit against the town. The lawsuit has various claims, but essentially the Jaquishes want the court to order the Town Board to grant a floodplain development permit that does not require them to do the work that was already required and they want the town to issue a mobile home park permit. When the Jaquishes requested those permits in November the town responded, through its attorney that it would not consider a new floodplain permit because the original application was denied and the Jaquishes must comply with the order. With regards to the mobile home park permit, the town made it clear that the Jaquishes could apply once the work was completed, because only once the work was done, could a proper application be submitted showing the layout of the park and how it met all legal requirements.

The Town Board is issuing this statement to set the record straight. Some people have argued that the town is being unfair to the Jaquishes and wasting town resources in litigation. That is simply untrue. The Jaquishes undertook significant work without a permit and then failed to prove that the work they did could qualify for a permit. They have delayed complying with numerous court orders and they have been rebuffed by FEMA and DEC as they try to avoid their responsibility.

The Town is not engaged in any kind of political vendetta against the Jaquishes. The town has a responsibility to uphold the law and assure that activities in the floodway do not endanger public health and safety. The selfish actions of the Jaquishes not only jeopardize the health and safety of the citizens of the town, but also the village. If the town did not enforce the law, it could lose the benefit of the flood insurance program. The court has scheduled a conference on January 10th. The town board

sincerely hopes that the Jaquishes will have completed the work by that time. However, if they continue to refuse to comply and insist on bringing frivolous litigation, the town board will take all appropriate action to protect the interests of all the town residents. The Jaquishes have been given every opportunity to make their case and have lost at each stage. They must now comply. No person is above the law.