

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-482

MAY TERM, 2008

Vermont Natural Resources Council	}	APPEALED FROM:
	}	
	}	
v.	}	Expanded Downtown Board
	}	
Expanded Downtown Board	}	

In the above-entitled cause, the Clerk will enter:

The Vermont Natural Resources Council (VNRC) appeals under 3 V.S.A. § 815 from the Expanded Downtown Board’s approval of the Town of Williston’s application for growth center designation. The growth center designation process is employed when it is not feasible to concentrate development in historic downtowns and village centers, and it is designed to concentrate future growth in designated areas that have been planned by municipalities in accordance with smart growth principles and Vermont’s planning and development goals. 24 V.S.A. § 2790(d)(1). To this end, the Board’s approval of a growth center designation renders a municipality eligible for a variety of development incentives and benefits. See *id.* § 2793c(i). The State argues that a growth center designation is not appealable under 3 V.S.A. § 815. We agree, and we therefore grant the State’s motion to dismiss this appeal for lack of jurisdiction.

Section 815 provides a right of appeal only to those who are aggrieved by a final decision in a “contested case,” and the Board’s process for designating a growth center under 24 V.S.A. § 2793c does not fit within the definition of a contested case. See 3 V.S.A. § 801(b)(2) (defining contested case as a “proceeding . . . in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing”). The Board is not adjudicating the legal rights of any party in rendering its decision. See *Parker v. Town of Milton*, 169 Vt. 74, 81-82 (1998) (function of contested cases is to adjudicate legal rights of party to agency action). Far from a quasi-judicial proceeding, the statute plainly describes a relatively informal and collaborative process, with ongoing review of a growth center designation by the Board. See 24 V.S.A. § 2793c(e)(1), (e)(3).

The statutory command that there be “an opportunity for the public to be heard,” 24 V.S.A. § 2793c(e)(1), is most reasonably understood to call for notice to the public and for public comment, rather than an evidentiary hearing. See *Town of Killington v. State*, 172 Vt. 182, 188 (2001) (where meaning of statutory language is unambiguous, Court accepts the plain meaning of language as reflecting Legislature’s intent without looking further). Indeed, the proceedings below were not at all governed by the rules of evidence, nor did VNRC request that those rules be enforced under the Vermont Administrative Procedure Act, 3 V.S.A. § 810. The

fact that the public is provided an opportunity to comment on a municipality's application for a growth center designation in no way transforms the growth center designation process into a contested case proceeding. VNRC is not entitled to appeal under 3 V.S.A. § 815, and we therefore dismiss this case for lack of jurisdiction.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice