VERMONT SUPERIOR COURT
Environmental Division
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ENVIRONMENTAL DIVISION
Docket No. 20-ENV-00015

In re: Brownell/LaMarche Discretionary Permit	DECISION ON THE MERITS

Appellants Craig and Chiuho Sampson (Appellants) appeal the October 15, 2020 Town of Williston Development Review Board (DRB) decision approving a discretionary permit application submitted by Applicants Randee Brownell and Jo LaMarche (Applicants) for a 4-lot subdivision. The proposed development (the Project) would subdivide the property at 4354 South Brownell Road, Williston, VT, creating four lots, with three lots to be residential and one lot reserved as open space. Applicants propose to provide access to the new residential lots along Rosewood Drive. Appellants are residents of Rosewood Drive and oppose the Project, at least in part, because of concerns over the planned use of Rosewood Drive to access the Project.

Appellants are represented by Attorney Alexander J. LaRosa. Applicants are represented by Attorney Brian P. Hehir.

In their statement of questions, Appellants raise six (6) questions:

1. Do Applicants Randee Brownell and Jo LaMarche ("Applicants") satisfy Williston Zoning Bylaw Chapter 13 relevant to access, [which] generally requires that all "developments have safe, adequate, legal access to a public or private road?"

2. Do Applicants satisfy Williston Zoning Bylaw § 13.2.3.3 relevant to sight distances?

3. Do the Shelburne Zoning Regulations also apply to regulate access as the proposed access drive entrance to Route 116 is in Shelburne, not Williston?

4. Must the Applicants obtain Shelburne approval in order to establish that Applicant satisfies Chapter 13 of the Williston Zoning Bylaw relevant to access, with generally requires that all "developments have safe, adequate, legal access to a public or private road?"

5. Do the Applicants satisfy Williston Zoning Bylaw Chapter 15 related to on-site infrastructure when the application will result in a nonconformity under the Vermont Potable Water Supply rules related to the location of the driveway relative to Appellants' well?

6. Do the Applicants satisfy Williston Zoning Bylaw § 27.5 relevant to significant Wildlife Habitat Areas because the subject parcel is within a Significant Wildlife Habitat Area and is designated as both Core Habitat and Wildlife Travel Corridor as identified by Williston's "Significant Wildlife Habitat Areas" official map and may result in fragmentation of forests and habitat connectivity, encroachment on core habitat areas, and adverse impacts on the area?

In a pre-trial motion, Appellants sought judgment as a matter of law on Questions 1 and 2 regarding access to the Project from the intersection of State Route 116 and Rosewood Drive located within Shelburne, Vermont. Appellants argued that the Project fails to satisfy the Williston Unified Development Bylaw (Bylaw) because the existing sight distances for the access point on Rosewood Drive fall short of the minimum distance set by the Vermont Agency of Transportation (VTrans) in its Access Management Program Guidelines, and the Williston Bylaw mandates compliance with that minimum. In a November 1, 2021 decision, we denied Appellants' motion for summary judgment for failure to establish that the Williston Bylaw applies to the Shelburne intersection of Rosewood Drive and Route 116.

The Court conducted a one-day remote trial on February 8, 2022 using the WebEx platform. The Court completed a site visit on its own on April 5, 2022. Following trial and prior to the site visit, parties were allowed to file requests for the Court to observe certain aspects of the Project site and surrounding area. The Court made the observations as requested.

Findings of Fact

1. Appellants Craig and Chiuho Sampson own and reside on property located at 120 Rosewood Drive in Williston, VT.

2. Applicants Randee Brownell and Jo LaMarche own and reside on property located at 4354 South Brownell Road in Williston, VT (the Property).

3. The Property is about 51 acres and abuts Appellants' property to the north and east.

4. Applicants reside in an existing dwelling on the Property and access their residence through an existing driveway to South Brownell Road.

5. Applicants applied to the Town of Williston's Development Review Board for a discretionary permit to subdivide the Property into 4 lots, with three lots to be residential and one lot reserved as open space (the Project).

6. Applicants' residence would be located on new Lot 3 of 8.75 acres.

7. New Lot 1 is 2.2 acres, new lot 2 is 1.8 acres, and new Lot 4 is 38.4 acres.

8. Lots 1 and 2 are proposed as single family house sites.

9. Applicants propose access along Rosewood Drive to lots 1, 2 and 4 of the Project.

10. Rosewood Drive is a private, dead-end, access way that is only accessible from State Route 116. Rosewood Drive travels across the Shelburne-Williston town line.

11. While all of the proposed lots in the Project are in Williston, the intersection of Rosewood Drive and State Route 116 is in Shelburne.

12. This intersection is under VTrans jurisdiction.

13. Both Rosewood Drive and South Brownell Road intersect with State Route 116.

14. The speed limit on South Brownell Road is 40-mph.

15. The speed limit on State Route 116 at the intersection with Rosewood Drive is 50-mph.

16. The sight distance at the intersection of Rosewood Drive and State Route 116 when looking west is 353 feet. When looking east, the sight distance at the intersection is 533 feet.

17. The VTrans Access Management Guidelines list 555 feet as the minimum intersection sight distance for a 50-mph highway.

18. VTrans Access Management Guidelines allow for non-compliant site distances through mitigation measures.

19. In a "Jurisdictional Opinion" from VTrans on March 19, 2020, Permit Coordinator James Clancy stated that the "access meets VTrans minimum standards" and the "safety concern of for [sic] inadequate corner sight distance looking west is mitigated by a warning sign." Applicants' Exhibit 2. From the site visit, it appears that there is a sign on Route 116 warning of hidden driveways as one approaches Rosewood Drive from the East, but there is not a similar sign as one approaches Rosewood Drive from the West.

20. Rosewood Drive intersects with State Route 116 in a section of the state highway that contains a hill sloping downward from west to east and trees that can obscure the view of State Route 116.

21. The 10-years crash history for this section of roadway has no accidents.

22. Mr. Sampson recalled a single car accident on Route 116 near Rosewood Drive more than 10 years ago.

23. Improvements are proposed for sections of Rosewood Drive not immediately adjacent to Route 116, including widening in places and creating a new emergency vehicle pull-off. This work will take place at the time when houses are constructed on Lot 1 and/or Lot 2.

24. Rosewood Drive will not be altered in close proximity to its intersection with Route 116.

25. Rosewood Drive currently has three (3) existing dwellings using the drive for access, with two (2) located past the Sampson well when traveling from Route 116.

26. Rosewood Drive is a gravel surfaced road with a width that varies from 10 feet to 14 feet wide.

27. Currently, the traveled portion of Rosewood Drive is approximately 18 feet from the Sampsons' domestic drinking water well.

28. The Vermont Wastewater System and Potable Water Supply Rules establish 25 feet as the minimum safe distance from a driveway serving three or more residences to a potable water supply source.

29. The right-of-way for Rosewood Drive is 60 feet wide so there is room within the limits of the right-of-way to widen and/or relocate the traveled portion of the road.

30. Applicants' engineer estimated that, in the area of the Sampson well, the distance from the current western edge of Rosewood Drive to the western edge of the Right of Way, which is also the Beecher property line, is 16 feet.

31. During trial, Applicants offered up two conditions:

a. First, that there be no further subdivision of Lot four (4); it shall remain undivided and conserved as open space in perpetuity.

b. Second, that the traveled portion of Rosewood Drive would be relocated to accommodate the minimum 25-foot isolation distance from the Sampson water supply well. This relocation will take place when the first residence is built on Lots 1 or 2.

32. Claire, James and Jeremiah Beecher own the property and reside at 4987 Route 116, Williston, Vermont. This property is adjacent to a portion of Rosewood Drive but does not have access to it.

33. The Beechers have concerns over the traveled way of Rosewood Drive being as close as 8 to 9 feet to the Beechers' property line at its closest location. Pursuant to the application and evidence, the road may be widened in this area by one (1) foot.

34. The Beechers are also concerned about relocating a section of Rosewood Drive closer to their property to move it further from the Sampson well.

35. Lot 4 contains some public trails. The proposed subdivision will not alter these trails.

36. New Lots 1 and 2 will not encroach into core wildlife habitat.

37. Lot 2 has been modified and now includes limits of clearing so there will be less clearing thereby lessening potential impact to core wildlife habitat.

38. The Town of Williston's Development Review Board issued a Notice of Decision approving Applicants' discretionary permit on October 15, 2020.

Conclusions of Law

1. Do Applicants Randee Brownell and Jo LaMarche ("Applicants") satisfy Williston Zoning Bylaw Chapter 13 relevant to access, [which] generally requires that all "developments have safe, adequate, legal access to a public or private road?"
2. Do Applicants satisfy Williston Zoning Bylaw § 13.2.3.3 relevant to sight distances?

The Town of Williston requires proposed subdivisions to satisfy the requirements of Chapter 13 of the Bylaw, which concerns traffic safety and access. The "basic requirement" of that chapter is "[t]hat all developments and all lots, uses, and structures within developments have safe, adequate, legal access to a public or private road." Bylaw § 13.1.1.

The new lots created by the Project will be accessible only by Rosewood Drive, which intersects with Route 116. The intersection is located within the Town of Shelburne, not the Town of Williston. Appellants challenge the safety of this access way, specifically for what they contend is inadequate corner site distance at the intersection of Rosewood Drive and Route 116. Appellants argue that the Project fails to satisfy the Williston Bylaw because the existing sight distances for the access point on Rosewood Drive fall short of the minimum distance set by VTrans in the Access Management Program Guidelines and the Williston Bylaw mandates compliance with that minimum.

In our November 1, 2021 Decision on Motion, we denied Appellants' motion for summary judgment on this issue for failure to establish that the Williston Bylaw applies to the Shelburne intersection of Rosewood Drive and Route 116. At trial, as within their motion for summary judgment, Appellants focused their evidence on the proposed access point, attempting to demonstrate the ways in which it does not comply with Williston Bylaw. There is no legal support for the Town of Williston having jurisdiction over an intersection outside its town line. We have considered this issue closely.

We are a court of limited jurisdiction. The scope of our subject matter jurisdiction, and our de novo review is confined to those issues the municipal panel below addressed or had the authority to address when considering the original application. *See, e.g.*, In re Torres, 154 Vt. 233, 235 (1990). ("The reach of the superior court in zoning appeals is as broad as the powers of

a zoning board of adjustment or a planning commission, but it is not broader."). We may rule on the safety of this intersection only if the Williston DRB, sitting in review of this application, had the authority to do so.

Our analysis of the Williston DRB's powers, in turn, starts from the fact that Vermont follows Dillon's rule and "a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate[,] or necessary to the exercise thereof." Hinesburg Sand & Gravel Co. v. Town of Hinesburg, 135 Vt. 484, 486 (1977). This general principle extends to the land-use context: A "municipality has zoning authority only in accordance with, and subject to, the terms and conditions imposed by the state in making the power grant" contained generally in Title 24, chapter 117 of the Vermont Statutes. In re Richards, 174 Vt. 416, 422 (2002) (quoting Flanders Lumber & Building Supply Co. v. Town of Milton, 128 Vt. 38, 45 (1969)); *see also* In re 15-17 Weston St. NOV, 2021 VT 85, ¶ 13 ("This broad municipal power [over land use] may be exercised only within the scope of the delegation by the state, and not in a manner that conflicts with state law governing zoning.") (citing State v. Sanguinetti, 141 Vt. 349, 353 (1982)).

It is important then to be clear about the precise contours of the grant of powers from the state to municipalities to regulate land use, which are subtle. The enabling statutes allow towns to create municipal plans and subsequently to create land development regulations to implement those plans (including, principally, zoning and subdivision bylaws, *see* In re Taft Corners Assocs., Inc., 171 Vt. 135, 137 (2000)). We have termed this ordinarily a "permissive scheme which does not require municipalities to regulate" land use. Capitol Plaza 2-Lot Subdivision, No. 3-1-19 Vtec, slip op. at 9 (Vt. Super. Ct. Envtl. Div. Feb. 10, 2020) (Walsh, J.). Nevertheless, if a town does elect to establish land use regulations, there are certain provisions and standards that the enabling statutes direct that the town *must* incorporate into those bylaws. *See generally* 24 V.S.A. § 4412; *see also, e.g.*, 24 V.S.A. §§ 4414(3)(A), 4416(b), 4418(1). The statutes also prohibit certain types of provisions, however, either directly or by virtue of their effects. *See generally* 24 V.S.A. §§ 4412, 4413.

It is well-accepted that the enabling statutes grant a municipality the power to regulate land-use only within that municipality's borders. *See, e.g.*, 24 V.S.A § 4381 (authorizing a municipality to "prepare, maintain, and implement a [municipal development] plan *within its jurisdiction*") (emphasis added); In re Jackson Subdivision ROW Access, No. 195-9-07 Vtec, slip op. at 11 (Vt. Envtl. Ct. July 8, 2008) (referring to "the general authority of Vermont municipalities to regulate land uses *within their borders*"); *cf.* Valcour v. Vill. Of Morrisville, 104 Vt. 119 (1932) ("the defendant has no legislative authority, express or implied, for the general distribution of electric current to parties outside its corporate limits") (emphasis added).

Issues in interpreting this general jurisdictional principle arise when proposed developments are located near a town's borders. At least two categories of interpretive problems arise. The first, and more common, involves whether a town may and/or must consider impacts from the project that are felt in a neighboring municipality. The second is whether a town, in determining whether the project meets the town's standards, may examine and ultimately regulate features related to the project physically sited in a neighboring municipality. Questions 1 and 2 of Appellants' Statement of Questions raise the second class of interpretive problem. The Williston Bylaw requires that all developments, including subdivisions, have "safe, adequate, legal access to a public or private road."[1] Bylaw § 13.1.3. More specifically, the Bylaw requires that the point of access to such a public or private road have sight distances that match or exceed "those provided by [VTrans's] Access Management Program Guidelines." Id. at §

[1] The status of Rosewood Drive may be important in considering whether this standard can be met even without looking at the intersection with highway 116. The application submitted to the DRB states "Access to lots 1 and 2 will be via an extension of Rosewood Drive, *a private gravel road* accessed off Vt. Route 116 in Shelburne." (emphasis added). At multiple points during trial, however, Rosewood Drive was referred to as a shared driveway. It appears from the site plan that Applicants own the land underlying that portion of Rosewood Drive extending from near the Shelburne town line to the area where the proposed new lots will be site. It also came out at trial that the Sampsons have contributed or even had primary responsibility for the maintenance of this section of Rosewood Drive for some time. If Rosewood Drive is but a shared driveway, then the intersection with 116 is the first point of access with a public or private road; if it is a private road, then the first point of access may be where the short additional drive for each of lots 1 and 2 intersects with Rosewood Drive (even in that case, the intersection with 116 may be further relevant as the first intersection with an arterial road). We proceed under the assumption that Rosewood Drive is a shared driveway, as it dead ends (and will continue to do so) at lots 1 and 2, and appears to be less than 1320 feet in length and to be between 12 and 16 feet in width. *See* Bylaw § 13.2.6 (establishing these standards for residential driveways).

13.2.3.2. Here, the nearest public road is Highway 116, a state highway, but the point of intersection between the drive serving the properties and Highway 116 is in the neighboring town of Shelburne. The question is essentially whether the Town of Williston may apply its regulations to that intersection, by considering whether it is "safe, adequate, and legal" and determining whether there are adequate sight distances there.

One way of re-phrasing that question is to ask whether reaching a determination on the safety and adequacy of the intersection would constitute "regulation," which a municipality may not undertake outside its boundaries. Consideration of the statutory scheme shows that such a determination would be a quintessentially regulatory decision. The determination would involve a government actor applying substantive standards to facts on the ground and could have lasting consequences for a private citizen. *See also* Capitol Plaza 2-Lot Subdivision, No. 3-1-19 Vtec at 6 (Feb. 10, 2020) ("While subdivision review may not regulate land use in the narrow sense, since it 'is not intended to police prospective uses,' it does fall under the broader category of 'land development' regulation as defined by state statute and [local] bylaws.") (quoting In re Taft Corners Assocs., Inc., 171 Vt. at 141, 138). Moreover, the town's usual responses to a determination that an intersection did not provide safe access would very likely be to require mitigation, if feasible, or otherwise withhold approval. Williston does not have the power to order physical changes at the intersection in Shelburne.

Furthermore, if Williston had the power to opine on the safety of the intersection there is potential for conflicts with the town of Shelburne, which may at some point be called upon to reach its own determination regarding the safety of this intersection. This observation raises the difference between "horizontal" and "vertical" limits on a Town's jurisdiction. The vertical limits result from the state also having regulatory authority over land use and the ultimate authority to grant powers to municipalities. Due to this overlapping jurisdiction, as already discussed, there are clear rules in place governing the permissible reach of municipal zoning ordinances. Moreover, the enabling statute contains a means of resolving conflicts where state and local regulations both apply to a feature of a project: in some cases specifying that a town may impose less restrictive conditions, *see, e.g.* 24 V.S.A. § 4412(2)(C) ("Nothing in this subdivision . . . shall

be construed to prohibit a bylaw that is less restrictive of development of existing small lots"), but otherwise, establishing the general rule that in a case where a town and state regulation conflict, the town must apply the more stringent or restrictive regulation. *See* § 4413(c).

In contrast, the horizontal jurisdictional limits are spatial; they come from other municipal actors having their own grant of power to regulate land within their territories. There are no equivalent rules in the enabling statute governing conflicts between municipalities regulating land use. The absence of such rules suggests that a "bright-line" jurisdictional rule that helps to avoid such conflicts is appropriate and in keeping with the legislative intent for the enabling statutes. *See* In re Tyler Self-Storage Unit Permits, 2011 VT 66, ¶ 13, 190 Vt. 132 ("[W]e construe a zoning ordinance to determine and give effect to the intent of the drafters . . . legislative intent is most truly derived from a consideration of not only the particular statutory language, but from the entire enactment, its reason, purpose and consequences.") (internal quotation marks omitted).

We examined how other jurisdictions have handled very similar issues, involving an access road in one town for a subdivision located in another. We found two cases directly on point, one from Maine, and one from Massachusetts.

The Maine statute empowering towns to adopt zoning has a section dealing with proposed subdivisions that cross municipal boundaries. It reads, "If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality," unless the two municipalities agree in writing to waive that requirement. ME. REV. STAT. ANN. Tit. 30-A, § 4403(1-A). The statute also mandates that before granting approval, the reviewing municipal body or bodies must determine that "[f]or any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located." Id. § 4404(19)

In Johansen v. City of Bath, No. SAGSC-AP-10-002, 2011 WL 1748535 (Me. Super. July 30, 2010), the Maine Superior Court confronted a situation where almost the entirety of a proposed

subdivision was located in the City of West Bath, except for a portion of the access road, which lay in the City of Bath. West Bath and Bath chose to waive the requirement that the application be considered jointly, pursuant to § 4403(1-A). The West Bath planning authorities undertook their own review for the bulk of the subdivision that lay within their boundaries. The City of Bath Planning Board separately reviewed and approved that portion of the subdivision—namely construction of the access road—that lay within its boundaries. Opponents of the project appealed the Bath approval. In part, they argued that the Bath Planning Board erred when it concluded that it did not need to determine the compatibility of the access road with certain subdivision approval criteria. The court, citing to an earlier Maine Supreme Court decision, Town of N. Yarmouth v. Moulton, 1998 ME 96, ¶ 9, agreed with the appellants on this point. It held that the Bath Planning Board must apply its subdivision criteria to that portion of the access road within city limits.

The appellants further argued, however, that the City of Bath was required to review the entirety of the subdivision, including those portions lying in the town of West Bath and here, the court disagreed. Noting that in Moulton, the Maine Supreme Court had explicitly left open the precise scope of review for a municipality considering only a portion of a subdivision crossing municipal borders, the court stated, "Bath Planning Board's review of the subdivision should be limited to the portion of the subdivision within the City of Bath." Id. Yet given that the "review criteria, with few exceptions, require the reviewing municipality to consider the impacts of a proposed subdivision *wherever* they occur," id. (emphasis added), the Court held that Bath must consider under the statutory criteria the impacts of the access road, whether felt in Bath, West Bath, or elsewhere. The Court elaborated, "It is noteworthy that the statutory provision regarding subdivisions located in two municipalities calls for joint meetings unless waived (as occurred here) . . . but does not call for joint decisions on the same parts of the subdivision, *nor does it expand the jurisdiction of either reviewing authority*." Id. (emphasis added).

In other words, using the dichotomy between types of extraterritorial questions set out earlier, the Court held that as to the first category of question—considering impacts outside its borders—a town could consider those impacts and in fact, under the statute, was generally

required to do so. As to the second category of question—reviewing related parts of a project outside its borders—the Court found that a town could not independently do this, as to do so would be to expand its jurisdiction.

The Maine decision is obviously guided by the Maine statutes cited earlier. There are no analogs in the Vermont enabling statute to the requirements of joint consideration of cross-municipal subdivisions or consideration of traffic impacts from such subdivisions on neighboring towns. The closest the Vermont enabling statute comes is requiring a town to give notice of a proposed subdivision located within 500 feet of a municipal boundary to the adjacent municipality. 24 V.S.A. § 4463. Yet even under the Maine statutes, it appeared evident to the Maine court, as it does to us, that a town's jurisdiction is limited to reviewing those portions of a development physically within its borders.

The Massachusetts Land Court case of Eliades v. Callahan, No. 287351 (CWT), 2009 WL 96966 (Mass. Land Ct. Jan. 15, 2009) presents similar facts, although that case may be the exception that proves the rule. In Eliades, the Town of Ayer's Planning Board had disapproved of a proposed subdivision. The proposal called for extending a public road from the neighboring town of Groton across the border into Ayer, where it would serve as the sole access to and terminate at the subdivision. Ayer had a regulation that limited the maximum length of a road ending in a dead end. On appeal, the applicant challenged whether Ayer could even measure the portion of the road in Groton to decide whether the access road complied with the regulations. The court wrote, "plaintiff misconstrues the nature of the Planning Board's decision in the instant case. Here, the board simply took measurement of the proposed Culver Road extension from its terminus in Ayer to the nearest intersection with a through-street, which happens to be with Smith Street in the Town of Groton. The Planning Board's decision in no way subjects plaintiff to the regulation of the Town of Groton, *nor does it attempt to regulate in that municipality*. The board merely measured the length of that road in order to determine whether it was within the limitations for a dead-end street allowable in the Town of Ayer." Id. (emphasis added).

In distinguishing between mere measurement of the length of a road in a neighboring town and regulating in that town, the court accepted that regulation in an adjoining territory is forbidden. Similarly, we conclude here that if Williston were to apply its Bylaw provisions on the safety of an access point to an access point solely in Shelburne, that would constitute impermissible extraterritorial regulation.

Our decision is not driven by the fact that VTrans also has jurisdiction to review the safety of this intersection. Ordinarily, such overlapping jurisdiction would not prevent Williston from reviewing an access point to a state highway within its boundaries,.Instead, it is the fact that the intersection lies in Shelburne that prevents Williston's review.

In summation, it is unnecessary for the Court to consider Appellants' arguments, nor Applicants' opposition to them, regarding the intersection's compliance with Williston regulations which do not apply. The only access roads to the subdivision over which Williston has jurisdiction are the portion of Rosewood Drive lying in Williston and the driveway to the existing residence at 4354 South Brownell Road. No new development is planned as part of this subdivision at the existing 4354 South Brownell Road residence, so the safety of the latter driveway is not considered. The uncontradicted evidence presented at trial supports the conclusion that the Williston portion of Rosewood Drive, as modified by the planned changes (which include widening and relocation in places and construction of new turnouts for emergency vehicles) will provide safe, adequate, and legal access to the new Lots 1, 2, and 4. We therefore answer Questions 1 and 2 in the affirmative.

3. Do the Shelburne Zoning Regulations also apply to regulate access as the proposed access drive entrance to Route 116 is in Shelburne, not Williston?
4. Must the Applicants obtain Shelburne approval in order to establish that Applicant satisfies Chapter 13 of the Williston Zoning Bylaw relevant to access, with generally requires that all "developments have safe, adequate, legal access to a public or private road.?"

The only application before the Court is Randee Brownell and Jo LaMarche's application for a discretionary permit for a 4-lot subdivision, which was approved by the Williston DRB's

Notice of Decision dated October 15, 2020. In this de novo appeal, the Court sits as though it is the Williston DRB, and may act on that application only as the DRB could have done. In re Torres, 154 Vt. 233, 235 (1990) ("The reach of the superior court in zoning appeals is as broad as the powers of a zoning board of adjustment or a planning commission, but it is not broader."); *see also* Simendinger v. City of Barre, 171 Vt. 648, 652 (2001) ("[T]he environmental court exceeded its authority in purporting to consider issues relating to the conditional use applications that the board—under the ordinance—could not, and did not, address."). As such, we have no jurisdiction over land outside of Williston. *See* discussion, *supra*, on Questions 1 & 2. Additionally, we may only apply Williston ordinances. In re Couture Subdivision, No. 53-4-14 Vtec, slip op. at 4 (Vt. Super. Ct. Envtl. Div. Feb. 23, 2015) (Durkin, J.) ("The [Ferrisburgh] Planning Commission's review of the application was limited to the Town of Ferrisburgh Subdivision Regulations."). Lastly, Williston, and this Court on appeal of a Williston decision, does not have jurisdiction to opine on the applicability of Shelburne regulations or to declare whether any Shelburne approval is necessary.[2] Cf. In re Werner Conditional Use, No. 44-4-16 Vtec, slip op. at 8 (Vt. Super. Ct. Envtl. Div. Aug. 31, 2016) (Durkin, J.) ("The DRB has no authority to declare that a shoreland permit is or is not necessary, and we therefore lack the authority to consider the issue in this appeal."). The Williston Bylaw's requirement that access to a public road be "legal," referenced in Question 4, does not bootstrap jurisdiction to opine on the necessity of approval from neighboring towns. Since the Williston DRB would lack jurisdiction to answer this question, we do as well in this de novo appeal.

[2] The DRB Decision, of which we were provided with only a two page excerpt in Applicants' response to an earlier motion for summary judgment, and which we need not defer to, stated that "the applicant has been in contact with the Town of Shelburne regarding potential permitting requirements for the proposed development," and quoted from an alleged legal opinion issued by the Shelburne town's attorney to the effect that Williston had no authority to regulate an intersection in Shelburne. The quoted opinion also stated "The applicant should be filing an application with Shelburne." No copy of that legal opinion is in evidence, and the import of the legal opinion for the DRB's approval of the project is not clear from the excerpt of the decision which were provided. Iin any case, in this *de novo* appeal we reach our own legal conclusions. We cite to these portions of the DRB decision here purely for information purposes.

Since we lack jurisdiction to entertain these Questions, we must, and do **DISMISS** them. *See* V.R.C.P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

5. Do the Applicants satisfy Williston Zoning Bylaw Chapter 15 related to on-site infrastructure when the application will result in a nonconformity under the Vermont Potable Water Supply rules related to the location of the driveway relative to Appellants' well?

Currently, the traveled portion of Rosewood Drive is approximately 18 feet from the Sampsons' domestic drinking water well. Rosewood Drive past this point currently serves 2 residences. If this subdivision is approved, Rosewood Drive past this point will serve 3 or more residences.

Vermont's Wastewater System and Potable Water Supply Rules require 10 feet separation between potable water sources and driveways serving fewer than three residences. Vermont Agency of Natural Resources, Environmental Protection Rules, Chapter 1: Wastewater System and Potable Water Supply Rules Table 11-1. For driveways servicing three or more residences, there must be more than 25 feet from the road to a well. Id.[3]

Rosewood Drive is a gravel surfaced road with a width that varies from 10 feet to 14 feet wide. The right-of-way for Rosewood Drive is 60 feet wide so there is room within the limits of the right-of-way to relocate the traveled portion of the road. We note that the Beechers are concerned that any road relocation be carried out without impeding upon their property.

During trial, Applicants offered up a condition requiring that Rosewood Drive be relocated so that the traveled portion of the road is at least twenty-five (25) feet from the Sampson well, which Appellants stated would satisfy their concerns. This relocation is required at the time the

[3] Prior to reaching the well, Rosewood Drive also serves a property identified as the Quinlan Residence, that has not been inhabited for the past decade, according to an affidavit from Jo LaMarche. Whether because they are not including this vacant property, or because they have concluded that the isolation distances are calculated based on the number of properties that a drive serves *past* the potable water source, the parties appear to agree that Rosewood Drive is presently in compliance but will no longer be, unless reconfigured, once an additional residence on Lot 1 or 2 of this proposed subdivision is built.

first zoning permit is issued for a house to be constructed on one or both of Lots 1 and 2. The expense of relocation is the responsibility of Applicants or their successors in interest.

With this condition, Applicants satisfy Williston Zoning Bylaw, Chapter 15.

6. Do the Applicants satisfy Williston Zoning Bylaw § 27.5 relevant to significant Wildlife Habitat Areas because the subject parcel is within a Significant Wildlife Habitat Area and is designated as both Core Habitat and Wildlife Travel Corridor as identified by Williston's "Significant Wildlife Habitat Areas" official map and may result in fragmentation of forests and habitat connectivity, encroachment on core habitat areas, and adverse impacts on the area?

Lot 4 of the proposed subdivision is approximately 38.4 acres and is described within the application as open space. Lot 4 contains public trails. The proposed subdivision will not alter these trails. According to the habitat disturbance assessment conducted by the Applicant's consultants, as testified to at trial, the areas of significant wildlife habitat on the subject parcel, and certainly those constituting "core habitat areas", are all within Lot 4.

New Lots 1 and 2 are proposed as residential lots and will not encroach into core wildlife habitat. The building sites in Lots 1 and 2 are almost entirely within an existing cleared meadow, with some limited clearing of immature forest surrounding the residence on Lot 2 proposed. The design of Lot 2 has been modified since the earliest stages of project planning and now includes less clearing, thereby lessening any potential impact to neighboring core wildlife habitat.

At trial, Applicants offered a condition that Lot 4 be permanently conserved as open space. During trial, Appellants stated they would be satisfied as to compliance with the Bylaw section with the condition as offered.

Based on the evidence and the offered condition on Lot 4, the Project complies with Williston Zoning Bylaw § 27.5 relevant to significant wildlife habitat areas.

Conclusion

We conclude that Questions 3 and 4 of the Appellants' Statement of Questions raise issues outside the scope of our jurisdiction and so we **DISMISS** those questions. We answer

Questions 1 and 2 in the affirmative: on that portion of Rosewood Drive within the Town of Williston, the only segment of access to the new Lots 1, 2, & 4 that is within our jurisdiction, the access satisfies the requirements of Chapter 13 of the Williston Bylaws. Furthermore, imposing the following conditions offered up by the applicant at trial, we answer Questions 5 and 6 in the affirmative as well: the application satisfies Chapter 15 of the Williston Bylaw concerning infrastructure and § 27.5 of the Bylaw concerning significant wildlife habitat areas.

Conditions:

1. Rosewood Drive will be relocated so that the traveled portion of the road is at least twenty-five (25) feet from the Sampson well. This relocation is required at the time the first zoning permit is issued for a house to be constructed on one or both of Lots 1 and 2. The expense of relocation is the responsibility of Applicants or their successors in interest.
2. Lot 4 will be permanently conserved as open space.

A Judgment Order is issued concurrently with this decision. This concludes the matter before the Court.

Electronically Signed: 4/15/2022 1:19 PM pursuant to V.R.E.F. 9(d).

Thomas G. Walsh, Judge
Superior Court, Environmental Division