



The Bradford Motel, LLC Site Plan Denial

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 4)
Filer: Charles L. Merriman
Filed Date: August 03, 2022

The motion is GRANTED IN PART and DENIED IN PART.

The Bradford Motel, LLC, through Laila Lakshamair and Rajbir Dhamrait (Applicants), seeks permission to operate three additional lodging units in two buildings located on its property in the Town of Bradford (Town). Applicants installed and commenced operations in the two buildings before the Town Planning Commission (Commission) reviewed Applicants' proposed site plan. The Commission denied Applicants' permit application and Applicants appealed the decision to our Court. Presently before the Court is the Town's motion to dismiss the appeal.

Discussion

The Town alleges Applicants' conduct warrants dismissal pursuant to Vermont Rules of Environmental Court Proceedings (V.R.E.C.P.) Rule 2(d)(1) for failure to attend a scheduled conference and Vermont Rules of Civil Procedure (V.R.C.P.) Rule 41(b)(2) for failure to prosecute. The Town fails to meet its burden under these rules. We therefore **DENY** the Town's motion to dismiss this matter in total.

V.R.E.C.P. Rule 1 requires this Court to "ensure summary and expedited proceedings consistent with a full and fair determination in every matter[.]" To advance this docket, we take this opportunity, sua sponte, to review the latest and fourth amendment to Appellants' Statement of Question.

This Court operates within a “limited jurisdiction.” City of Newport v. Jennison, No. 21-ENV-00099, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Mar. 10, 2022) (Walsh, J.). We review appeals de novo, but we are limited “to consideration of the matters properly warned as before the local board.” In re Maple Tree Place, 156 Vt. 494, 500 (1991). We frequently note, “a de novo trial is one where the case is heard as though no action whatever has been held prior thereto.” Burton Corp. Site Work Approval, No. 15-2-20 Vtec, slip op. at 10 (Vt. Super. Ct. Envtl. Div. June 25, 2021) (Durkin, J.) (quoting Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989)). Thus, “this Court generally does not consider the previous decisions or proceedings below; ‘rather, we review the application anew as to the specific issues raised in the statement of questions.’” Id. (quoting In re Whiteyville Props., LLC, No. 179-12-11 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Dec. 13, 2012) (Durkin, J.)).

The Vermont Supreme Court holds, “Courts are not authorized to issue advisory opinions because they exceed the constitutional mandate to decide only actual cases and controversies.” In re Snowstone, LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28. Issues presented on appeal “must be a necessary part of the final disposition of the case to which it pertains.” Baker v. Town of Goshen, 169 Vt. 145, 151–52 (1999) (citing Wood v. Wood, 135 Vt. 119, 121 (1977)). Further, courts cannot respond to requests for “legal advice in anticipation of issues.” Id. at 152.

This Court has “an independent obligation to determine whether subject matter jurisdiction exists.” In re Charron 13-Lot PUD Preliminary Plat, No. 24-3-19 Vtec, slip op. at 1 n.1 (Vt. Super. Ct. Envtl. Div. June 7, 2009) (Durkin, J.) (quoting Argbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006)). As such, this Court may sua sponte dismiss Questions under V.R.C.P. Rule 12(b)(6) for lack of subject matter jurisdiction. See In re Town Highway 26, Town of Underhill, No. 2014-386, 2015 WL 2383677, at 2 (Vt. May 14, 2015) (unpublished mem.); see also Gould v. Town of Monkton, 2016 VT 84, ¶ 6, 202 Vt. 535.

Applicants inquire about the content of the Commission’s denial of the proposed site plan in Questions 3–4, 27, 31–32, 36, and 38–39. The Court reviews this appeal de novo and cannot consider “previous decisions or proceedings below.” Burton Corp. Site Work Approval, No. 15-2-20 Vtec. at 10. We therefore **DISMISS** Questions 3–4, 27, 31–32, 36, and 38–39 pursuant to V.R.C.P. Rule 12(b)(6) for lack of subject matter jurisdiction.

Applicants discuss general municipal procedures in Questions 1–2, 5–8, 10–11, 14, 23–24, 26, 28, and 42. Similarly, Applicants ask about previous payments accepted, and future fees required, by the Town in Questions 9, 12–13, 33–34 and 41. Separately, Applicants challenge the approval of an unrelated project by the Commission through Question 37. The Court is limited to “the matters properly warned” before the Commission. In re Maple Tree Place, 156

Vt. at 500. These Questions fall outside the scope of the Commission’s initial review. We therefore **DISMISS** Questions 1–2, 5–14, 24, 26, 28, 33–34, 37, and 41–42 for lack of subject matter jurisdiction.

Applicants allege the Town failed to provide them with a list of interested persons in this matter in Question 43. Applicants allude to V.R.E.C.P. Rule 5(b)(4)(A) but misapply the rule. We therefore **DISMISS** Question 43 for lack of subject matter jurisdiction.

Applicants challenge the need for several municipal and state permits and inspections in Questions 15, 17–19, 21–22, 29–30, and 40. The Court cannot postulate whether certain permits and inspections are required for approval. Further, the Court cannot respond to requests for “legal advice in anticipation of issues.” Baker, 169 Vt. at 152. We therefore **DISMISS** Questions 15, 17–19, 21–22, 29–30, and 40 for lack of subject matter jurisdiction.

The Court’s de novo review is limited to the issues raised in the Statement of Questions. V.R.E.C.P. Rule 5(f) (“The appellant may not raise any question on appeal not presented in the statement as filed[.]”) The Court “may consider matters that are intrinsic to the statement of questions, even if they are not literally stated in the statement of questions.” In re LaBerge NOV, 2016 VT 99, ¶ 15, 203 Vt. 98. Thus, if a question may plausibly be read in a manner consistent with our de novo review, we will do so in the interests of judicial efficiency and resolution on the merits. See e.g., Farmer Mold & Machine Works, Inc., No. 15-2-14 Vtec, slip op. at 3 n. 1 (Vt. Super Ct. Env’tl. Div. Jan. 7, 2015) (Walsh, J.); see also Desjarlais v. Gilman, 143 Vt. 154, 158–59 (1983) (noting “the desirability of resolving litigation on the merits, to the end that fairness and justice are served”).

The Court reads Questions 16, 20, 25, and 35 to raise issues pertinent to our de novo review. We therefore restate these Questions as follows:

16. Do the two buildings meet the height required by the Zoning Bylaws?

20. Do the two buildings qualify for a variance under the Zoning Bylaws?

25. Do the two buildings pose risks to surrounding properties?

35. Do the two buildings qualify for an exemption under Section 1.7 of the Zoning Bylaws?

We will proceed with this matter through these Questions.

We note that the Commission denied Applicants’ proposed site plan for incompleteness, specifically citing Applicants’ failure to provide evidence of a wastewater permit for the two buildings. This Court cannot consider issues outside the scope of Applicants’ Statement of Questions. Applicants do not raise this issue, nor can we reasonably read the issue into any

other question.¹ We warn Applicants that, even with Questions 16, 20, 25, and 35 answered in their favor, we cannot approve the permit without evidence supporting judgment in Applicants' favor on the topic of wastewater permitting.

Conclusion

For the reasons stated above, we **DENY** the Town's motion to dismiss this matter in total. Additionally, we **DISMISS** Questions 1–15, 17–19, 21–24, 26–34, and 36–43. Further, we order Questions 16, 20, 25, and 35 restated as phrased above. We order that on or before Friday, October 28, 2022, the parties submit dates of UNAVAILABILITY for a one-day trial in January and February 2023. Failure to reply with dates or appear before the Court for status conferences, hearings, or trial will result in dismissal.

Electronically signed October 11, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" and the last name "Walsh" written in a cursive-like script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

¹ Applicants ask in Question 34, "If Appellee is talking about a wastewater permit does the Town of Bradford waste water department or Town appellee reach and ask a certain amount by phone call or written letter to Appellant owed to the Town of Bradford waste water department ?" We reasonably interpret this Question to inquire about fees paid to the Town—not the existence of a wastewater permit.