



12 Old Orchard Lane Administrative Action Appeal

ENTRY REGARDING MOTION And JUDGMENT ORDER

Title: Motion to Dismiss (Motion: 1)
Filer: Claudine C. Safar
Filed Date: June 30, 2022

The motion is GRANTED.

Before the Court are two related matters initiated by Jim Carroll and Ben Young (Applicants) relating to the property located at 12 Old Orchard Lane in Jericho, Vermont. First, Applicants request a conditional use permit (CUP) to establish a residence on their property (Project). The Town of Jericho's (Town) Development Review Board (DRB) granted approval with conditions, which Applicants appeal to this Court (CU Appeal). See 12 Old Orchard Lane CU and Site Plan Review, No. 21-ENV-00109, (Vt. Super. Ct. Env'tl. Div. Oct. 28, 2021) (pending with trial scheduled).

Second, Applicants requested a zoning permit from the Town for the Project while the first matter was pending before this Court. The Zoning Administrator (ZA) issued the permit, which Jon and Jean Asselin (Neighbors) appealed to the DRB. The DRB scheduled a hearing and provided notice to Applicants. At the hearing, the DRB postponed its review, noting the pending CU Appeal before our Court divests the Town of any jurisdiction over the Project. Applicants appeal the decision to postpone the hearing to this Court (Zoning Permit Appeal). See 12 Old Orchard Lane Admin. Action Appeal, No. 21-ENV-129, (Vt. Super. Ct. Env'tl. Div. Dec. 3, 2021). Presently before the Court is the Town's motion to dismiss the Zoning Permit Appeal and motion for judgement on the pleadings.

Pursuant to 4 V.S.A. § 34(b), this Court governs matters arising under 24 V.S.A. Chapter 117. Within 24 V.S.A. Chapter 117, interested persons may appeal decisions of municipal administrative officers and boards to this Court. 24 V.S.A. §§ 4465 and 4471. Interested persons may only appeal final decisions that "dispose of all matters before the municipal body that should or could be settled." In re Charron 13-Lot PUD Preliminary Plat, No. 24-2-19 Vtec, slip op. at 2 (Vt.

Super. Ct. Env'tl. Div. June 7, 2019) (citing Jordan v. State Agency of Transp., 166 Vt. 509, 513 (1997)). Upon properly filing a notice of appeal from a municipality's decision, jurisdiction is divested from the municipality and lies with this Court as to all matters within the scope of the appeal. In re Freimour & Menard Conditional Use Permit (Appeal of Pigeon), No. 59-4-11 Vtec, slip op. at 6-7 (Vt. Super. Ct. Env'tl. Div. June 6, 2012) (Durkin, J.). A decision made by the municipality relating to the matter on appeal is beyond its authority and therefore void ab initio. See id. at 7.

The CU Appeal divested the Town of their authority over the Project. The ZA acted beyond their authority by granting Applicants the zoning permit, making the permit void ab initio. The DRB did not have jurisdiction to review the appeal of the zoning permit. The DRB properly postponed reviewing and rendering a decision relating to the zoning permit as the town has no jurisdiction over the Project while the CU Appeal is pending before the Environmental Division. As the municipality lacked jurisdiction there is no final decision appealable to this Court. We therefore **DISMISS** this appeal pursuant to V.R.C.P. 12(b)(1) for lack of subject matter jurisdiction.¹

This completes the matter before the Court. This order is also a V.R.C.P. Rule 58 Judgment Order.

Electronically signed October 3, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

¹ We note the Town moves pursuant to 12(b)(6) and 12(c). Vermont Superior Courts may sua sponte dismiss actions 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.