

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 22-ENV-00069

2078 Jersey Street CU Reconsideration Denial

ENTRY REGARDING MOTION

Title: Ferrisburgh's Motion to Reconsider
Filer: Kevin L. Kite
Filed Date: April 11, 2023

Appellant's Response to Town of Ferrisburgh's Motion to Reconsider, filed April 24, 2023, by Attorney Liam L. Murphy

Reply Memorandum in Further Support of Motion to Reconsider, filed May 9, 2023, by Attorney Kevin L. Kite

The Motion is **DENIED**.

Kevin Sullivan and Sarah Stradtner (collectively Applicants) appeal the Town of Ferrisburgh's (Town) decision denying their conditional use application. Presently before the Court is the Town's Motion to Reconsider the Court's March 14, 2023 Decision denying the Town's motion to dismiss. The Town asserted that the appeal should be dismissed in full because the appeal was untimely, and therefore the Court lacks subject matter jurisdiction over the appeal. Applicants opposed the Motion, arguing that their request for reconsideration reset the clock for filing their notice of appeal, and as a result, their appeal was timely.

In these proceedings, attorney Kevin L. Kite represents the Town, and attorney Liam L. Murphy represents the Applicants.

Legal Standard

Reconsideration and amendment are “an ‘extraordinary’ remedy that should be used ‘sparingly.’” In re Bouldin Camp - Noble Road, No. 278-11-06 Vtec, slip op. at 1 (Vt. Envtl. Ct. Sept. 13, 2007) (Wright, J.). Disagreement between the moving parties and the Court is not grounds for amendment or reconsideration. In re Boutin PRD Amendment, No. 93-4-06 Vtec, slip op. at 2 (Vt. Envtl. Ct. May 18, 2007) (Wright, J.); Alpine Haven Property Owners v. Deptula, No. 124-3-13 FRCV, slip op. at 9 (Vt. Super. Apr. 12, 2019) (“The court does not believe motions for reconsideration are appropriate simply to rehash the original arguments or to express dissatisfaction with the court’s decision.”).

Motions to reconsider are treated the same as Rule 59 motions to amend or alter a judgment. See, e.g., Rubin v. Sterling Enters., 164 Vt. 582, 588 (1996). There is an “exacting standard” for granting a motion for reconsideration. VTRE Investments, LLC v. Montchilly, Inc., No. 126-7-17 LECV, slip op. at 2–3 (Vt. Super. Oct. 15, 2019) (citing Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (“[A] motion to reconsider should not be granted [when] the moving party seeks solely to relitigate an issued already decided.”)); Chefs Shoes, Inc. v. Kastner, 710 F. Supp. 2d 436, 454 (D. Vt. 2010) (Rule 59(e) motion should not be granted “where the moving party seeks to relitigate issues already considered thoroughly by the court”), aff’d, 449 F. App’x 37 (Fed. Cir. 2011).

The limited functions of such a motion are “to ‘correct manifest errors of law or fact’ on which the decision was based, to allow the moving party to present newly discovered or previously unavailable evidence, to prevent manifest injustice, or to respond to an intervening change in the controlling law.” In re Vanishing Brook Subdivision, No. 223-10-07 Vtec, slip op. at 4 (Vt. Envtl. Ct. July 10, 2008) (Wright, J.) (quoting 11 Wright, Miller, & Kane, Federal Practice and Procedure: Civil 2d § 2810.1). With the exacting and limited standards, motions to amend or reconsider are typically denied. In re S. Vill. Cmtys., LLC, No. 74-4-05 Vtec, slip op. at 2 (Vt. Envtl. Ct. Sept. 14, 2006) (citing 11 Wright, Miller, & Kane, Federal Practice and Procedure: Civil 2d § 2810.1).

Analysis

In reviewing the Town's motion and reply memorandum, we find no manifest error of law or fact, no newly discovered evidence, and no manifest injustice. Our conclusion within our March 14, 2023 decision that Applicants' request for reconsideration of the Town's Zoning Board of Adjustment's (ZBA) decision terminated the running of the appeal clock is correct. Applicants' time to file an appeal began to run, with a full 30 days, on July 11, 2022 when the ZBA declined to reconsider its decision. Applicants' July 15, 2022 notice of appeal was timely. Accordingly, Town's request for reconsideration is denied.

In addition to our analysis in our March 14, 2023 decision, we note that adopting the Town's analysis would create an awkward and inefficient land use system. An appeal of an Appropriate Municipal Panel (AMP) decision to the Superior Court, Environmental Division transfers jurisdiction over the project to the Environmental Division and divests the AMP of any power to further consider the project in issue. The Town's offered process would require a party to file a motion to reconsider with the AMP and then also file an appeal with the Environmental Division before the passing of the original 30 days following the AMP's decision. As the appeal divests the AMP of jurisdiction, for the AMP to consider and decide whether to reconsider or not, it would first have to ask for and receive a remand of the appeal from the Environmental Division. In this matter, if the ZBA had received a remand and then went on to deny the request to reconsider, a second appeal to the Environmental Division would have been required. We refuse to adopt such an awkward and inefficient process. See Punderson 2-Lot Subdivision, No. 106-10-18 Vtec, slip op. at 2 (Vt. Super. Ct. Env'tl. Div. Mar. 29, 2019).

CONCLUSION

For the reasons set forth in our March 14, 2023 decision and as further explained here, the Court **DENIES** the Town's motion to reconsider
Electronically signed May 10, 2023 pursuant to V.R.E.F. 9(D).



Thomas G. Walsh, Judge
Superior Court, Environmental Division