

**State of Vermont
Superior Court—Environmental Division**

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ENTRY REGARDING MOTION

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In re Lawrence Site Plan Approval

Docket No. 166-10-10 Vtec

(Appeal from Town of Brattleboro Development Review Board decision)

Title: Motion to Dismiss (Filing No. 11)

Filed: June 7, 2011

Filed By: Appellee Stephen Lawrence

Response in opposition filed on 6/21/11 by Appellant Susan Rockwell

☐ Granted

☒ Denied

☐ Other

By motion, Appellee Stephen Lawrence requests dismissal of Susan Rockwell's appeal. In his motion Mr. Lawrence lists a number of reasons he believes dismissal is justified, reasons that chiefly speak to Ms. Rockwell's behavior in this proceeding and the prejudices he has allegedly suffered due to Ms. Rockwell's purported delays.

We have considered the arguments that Mr. Lawrence puts forward and conclude that, even if we were to assume the accuracy of his allegations, we would not have before us a reason to dismiss Ms. Rockwell's appeal. We remind the parties that dismissal is viewed as the "ultimate sanction" and should only be issued in extreme circumstances. See, e.g., State v. Howe Cleaners, Inc., 2010 Vt. 70, ¶ 18. Mr. Lawrence's allegations do not establish that such extreme circumstances exist here. Consequently, we must **DENY** his motion to dismiss.

We further note that all terms contained in the initial Scheduling Order (filed January 19, 2011) have now expired. It appears that the only remaining procedural step in this on-the-record appeal is for the parties to file their legal briefs, so that the Court may consider the merits of this appeal. We remind the parties that the Court is not allowed to consider new evidence or conduct a trial in this on-the-record appeal. See V.R.E.C.P. 5(h)(1). Rather, our task is to consider the record made before the DRB and determine whether the DRB's factual findings are supported by "substantial evidence" present in the record. In re Stowe Highlands Resort PUD and PRD Application, 2009 VT 76, ¶ 7, 186 Vt. 568 (citation omitted).

So as to fulfill these procedural requirements, we hereby direct Appellant Rockwell to file her legal brief no later than **Monday, August 29, 2011** and the Town of Brattleboro and Appellee Lawrence to file their respective legal briefs no later than **Monday, September 19, 2011**.

Thomas S. Durkin, Judge

July 27, 2011

Date

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Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

Appellant Susan Rockwell, Esq., Pro Se

Jodi P. French, Attorney for Interested Person Town of Brattleboro

Appellee Stephen Lawrence, Pro Se