

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 60-5-17 Vtec

Highridge/Ridgetop PUD Renewal

**ENTRY REGARDING MOTION**

Title: Motion to Clarify SoQ #1 (Motion 2)  
Filer: Killington/Pico Ski Resort Partners, LLC  
Attorney: Andrew H. Maass  
Filed Date: December 7, 2017

Response in Opposition filed on 12/22/2017 by Attorney Judith L. Dillon for Appellant Highridge Condominium Owners' Association

**The motion is GRANTED.**

The present appeal is of an April 26, 2017 decision, by the Town of Killington Planning Commission (“Planning Commission”) approving an application submitted by Ridgetop Land Owners’ Association and Killington/Pico Resort Partners, LLC (“Applicants”) to renew a planned unit development (“PUD”) application for four years. The matter currently pending before the Court is Applicants’ motion to clarify Highridge Condominium Owners’ Association’s (“Appellant”) Question 1 in their Statement of Questions pursuant to V.R.E.C.P. 5(f) and V.R.C.P. 12(e).

Question 1 asks “[w]hether the PUD application 17- 003 is in conformance with the Killington Zoning Regulations?”

Applicants argue Question 1 fails to identify specific provisions of the Killington Zoning Regulations (“Regulations”) that Appellant alleges the application does not comply with and, therefore, is overly broad. Appellant opposes the motion, arguing that the motion is untimely because it was not raised at the appeal’s initial conference pursuant to V.R.E.C.P. 2(d)(iv) and that clarification is unnecessary, because clarification was gained through the discovery process.

As a preliminary matter, this Court has rejected a contention similar to that presented by Appellant here that a party will be time-barred from moving for clarification if it fails to do so at initial conference. In re Rivers Dev., LLC, Nos. 7-1-05 Vtec, 68-3-07 Vtec, slip op. at 14 (Vt. Env’tl. Ct. Jan. 8, 2008) (Durkin, J.). We therefore conclude that the motion is not untimely filed.

The Statement of Questions limits the scope of review to the specific issues raised on appeal. V.R.E.C.P. 5(f). The Statement of Questions performs a function similar to that of a civil complaint and requires only a “short, concise and plain statement that will establish the scope of

appeal, and ultimately, the scope of the issues for trial.” Rivers Dev., LLC, Nos. 7-1-05 Vtec, 68-3-07 Vtec at 14 (Jan. 8, 2008).

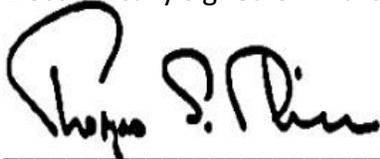
The questions must be sufficiently clear to give both the Court and the other parties notice of the grounds on which an appellant’s claims rest. Reporter’s Notes, V.R.C.P. 8(a) (citing Conley v. Gibson, 355 U.S. 41, 47 (1957)). The parties and the Court “are entitled to a statement of questions that is not vague or ambiguous, but is sufficiently definite so that they are able to know what issues to prepare for trial.” In re Unified Buddhist Church, Inc., Indirect Discharge Permit, No. 253-10-06 Vtec, slip op. at 5 (Vt. Env’tl. Ct. May 11, 2007) (Wright, J.).

With this clarification in mind, we conclude that Question 1 as stated is overly broad. The Question fails to identify specific provisions of the Regulations that are at issue in this present action. The Court notes that, while not admitting that Question 1 is overly broad or unclear, Appellant presented some clarification of Question 1 in their Opposition to Applicant’s motion. Appellant contends that Question 1 was clarified by a response that they submitted to an interrogatory in which they identified specific sections of the Regulations that they allege the application fails to comply with.<sup>1</sup>

The Court appreciates Appellant’s aid in providing this context. However, a clearer statement of Question 1 is required to clarify the issues to be addressed at a merits hearing. Applicant’s motion for clarification of Question 1 is therefore **GRANTED**. Appellants are directed to file an amended Question 1 of their Statement of Questions within **21** days (i.e.: by no later than **Monday, April 16, 2018**).

**So Ordered.**

Electronically signed on March 26, 2018 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).



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Thomas S. Durkin, Superior Judge  
Environmental Division

Notifications:

Judith L. Dillon (ERN 5040), Attorney for Appellant Highridge Condominium Owners' Association  
Kevin E. Brown (ERN 3578), Attorney for Interested Person Town of Killington  
Interested Person Ridgetop Landowners Association  
For Informational Purposes Only Ely A. Kirschner  
Andrew H. Maass (ERN 1076), Attorney for Interested Person Killington/Pico Ski Resort Prtnr  
Erin Gilmore (ERN 1593), Attorney for party 6 Co-counsel

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<sup>1</sup> Appellants responded that they allege the application at issue in this appeal fails to comply with the requirements of Sections 240, 505 of the Regulations. We note that the response to the interrogatory also included an objection to the interrogatory itself.