

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 6-1-18 Vtec

Hollow Road 9-Lot PUD

ENTRY REGARDING MOTION

Count 1, Municipal DRB Planned Unit Development (6-1-18 Vtec)

Title: Motion to Determine Party Status (2nd) (Motion 2)

Filer: Daniel Bouthillette

Attorney: Michael S. Gawne

Filed Date: July 12, 2018

Response in Opposition filed on 07/17/2018 by Attorney Edward G. Adrian for Interested Person Town of Swanton

Reply filed on 07/18/2018 by Attorney Michael S. Gawne for Appellant Daniel Bouthillette

The motion is DENIED.

This is an appeal from a Town of Swanton Development Review Board (DRB) decision denying Daniel Bouthillette's (Appellant) application for preliminary and possible final plat approval to create a major 9-lot subdivision/Planned Unit Development (PUD) on a parcel located at 17, 19, and 21 Sweet Hollow Road in Swanton, Vermont.

Presently before the Court is Appellant's motion to determine party status. Appellant argues that the Town of Swanton (Town) does not have party status to appear in this appeal because it failed to participate in the proceedings below. See 24 V.S.A. § 4471(a) ("An interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision . . . to the environmental court."). For sure, participation is a prerequisite to a party filing an appeal. That is not the action the Town is taking. Rather, the Town is appearing in Appellant's appeal as an interested party.

A party may intervene in a pending appeal as an interested party if they are a party by right. 10 V.S.A. § 8504(n)(2). A party by right includes "the municipality in which the project is located, and the municipal and regional planning commissions for that municipality." 10 V.S.A. § 8502(5)(C).¹

¹ Appellant argues § 8502(n)(2) is inapplicable to the present appeal. In support, Appellant cites 10 V.S.A. § 8501 to support their assertion that that Title 10, Chapter 220 only applies to municipal actions that are consolidated with appeals from decisions from the Secretary of Natural Resources, a district environmental coordinator or a District Commission. We disagree with this interpretation, as Chapter 220 "shall govern all appeals arising under 24 V.S.A. chapter 117, the planning and zoning chapter." 10 V.S.A. § 8503(c).

The Town is the municipality in which the project is located. Therefore, the Town is a party by right and is permitted to intervene in this matter. For this reason, Appellant's motion is **DENIED**.

So ordered.

Electronically signed on July 20, 2018 at 11:44 AM pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Michael S. Gawne (ERN 2527), Attorney for Appellant Daniel Bouthillette
Interested Person Alan Bourbeau
Edward G. Adrian (ERN 4428), Attorney for Interested Person Town of Swanton