Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-189

FEBRUARY TERM, 2005

In re Appeal of West	}	APPEALED FROM:
	}	
	}	
	}	Environmental Court
	}	
	}	
	}	DOCKET NO. 74-5-03 Vtec
		Trial Judge: Merideth Wright

In the above-entitled cause, the Clerk will enter:

In this appeal from a summary judgment in favor of Greg West, the City of Vergennes and two of West's neighbors claim that the Environmental Court misconstrued an unappealed zoning permit as authority for West to resume an abandoned conditional use. We reverse and remand for entry of judgment in favor of appellants.

Because the court entered judgment pursuant to V.R.C.P. 56(c)(3), we review appellants' claims under the same standard. Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 616 (2000) (mem.). That standard allows entry of summary judgment if the record shows no genuine issue of material fact and any party is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(c)(3).

The following facts are undisputed. In 2002, West purchased the property at issue, located at 70 Green Street in Vergennes, from Blanche LaFrance. LaFrance lived in one of the building's two apartments from 1969 to July 1999. From 1970 through sometime in 1995, LaFrance rented the upstairs unit to a succession of tenants. In 1995, she stopped offering the unit for rent because she could not afford to maintain the property. After a wind storm damaged the chimney to the upstairs unit, LaFrance hired a carpenter to level the chimney and cap it. This repair left the upstairs apartment without a source of heat. Thus, between 1995 and 2002, the upstairs unit was not used as a separate residence. LaFrance moved out of the building in 1999, listed it for sale, and rented the lower unit to tenants in 2000.

In January 2002, West applied for a zoning permit to remove and replace an exterior porch and stairway. The application noted that West proposed to use the property as a two-unit dwelling. Only the first floor was rented at the time of application because the upstairs apartment was not habitable. In February 2002, the zoning administrator approved the application and issued a permit. The permit describes the project as "renovate and replace [the] front porch." **PC 22** Similarly, the permit identifies the proposed use as "[r]econstruction of front porch area." **PC 21** No appeal was taken from the permit. Later that same month, the administrator, at West's request, issued a certificate of compliance stating that the 70 Green Street property conformed to the City's zoning bylaws then in effect. Like the zoning permit, the certificate of compliance was not appealed.

The present dispute arose after neighbors noticed a second family moving into the 70 Green Street property. Neighbors wrote the zoning administrator and alleged that West was violating the City's zoning ordinance by using the building as a two-family dwelling. Two-family dwellings require conditional use approval by the City's development review board following notice and a public hearing. The zoning administrator rejected neighbors' contention and

declined to issue a notice of violation. Neighbors appealed the zoning administrator's decision to the development review board (DRB). After hearing evidence and conferring on the matter, the DRB reversed the zoning administrator. The DRB concluded that use of 70 Green Street as a two-family home was a grandfathered use because it preexisted the City's adoption of zoning. Nevertheless, pursuant to the zoning ordinance's abandonment provision, LaFrance had abandoned the use by not offering the upstairs unit for rent for more than six months. A conditional use permit was necessary to resume using the upstairs apartment as a rental unit.

West appealed the DRB's decision to the environmental court. In ruling for West on the parties' cross motions for summary judgment, the environmental court agreed that LaFrance had ceased using 70 Green Street as a two-unit rental for more than six months, thereby meeting the criteria for legal abandonment under the City's zoning ordinance. The court also concluded, however, that despite West's non-conforming use of the property and his lack of a conditional use permit, West was entitled to continue renting out both units. The court reasoned that the zoning permit authorizing West to renovate and replace the front porch also granted him authority to use the building as a two-family dwelling because West's application for the permit stated that he intended to use the building for that purpose. The court explained that the zoning decision became final after the time for appeal had lapsed and that the permit could not be collaterally attacked later. Following the court's entry of judgment for West, the City and neighbors filed the present appeal.

On appeal, the City and neighbors argue that the environmental court misconstrued West's zoning permit. They claim that the permit authorized West to renovate the front porch but did not authorize him to use the property as a two-family residence. In addition, the City argues that because neighbors challenged the permit's scope and not its validity, the environmental court's concern about the finality of the permit was unwarranted. We agree.

Zoning permits, like conditions in a land-use permit, must be construed using the ordinary rules of statutory interpretation. See Agency of Nat. Resources v. Weston, 2003 VT 58, ¶ 16, 175 Vt. 573 (mem.) (explaining that Court relies on normal rules of statutory construction when construing conditions in a land-use permit). We will give effect to the plain language of the permit to implement the intent of the draftsperson. Id. Here, the plain language of West's zoning permit allows for renovation and reconstruction of the front porch of the 70 Green Street property. The permit contains no reference or wording indicating that the permit authorized West to rent out two separate and complete living units on the property. The environmental court erred by relying on West's permit application to interpret the permit's scope instead of interpreting the language used in the permit itself.

We are also persuaded by the City's argument that finality of the permit was irrelevant because the proceeding arose from neighbors complaint about West's use of the property. The full Court considered a related issue in In re Charlotte Farm & Mills, 172 Vt. 607 (2001) (mem.). In that case, the landowner received a permit for forestry and agricultural operations on his property. He intended to use the property as a sawmill, processing timber originating off site. Addressing a jurisdictional argument the landowner presented, the Court explained:

> the finality and exclusivity doctrines embodied in § 4472(d) do not preclude an interested person from taking action to ensure compliance with the terms of a zoning permit. Thus, the fact that no one timely appealed the initial permit granted to Charlotte Farm did not preclude neighboring property owners from later seeking review of the zoning administrator's decision that Charlotte Farm's activities were within the scope of its permit.

Id. at 608. The case before us arose because neighbors complained about a second family moving into the 70 Green Street building. Like the neighbors in Charlotte Farm & Mills, neighbors here were concerned that West's zoning permit did not authorize the use to which the property was put. Therefore, irrespective of the finality of the zoning permit, the question for the DRB, and the environmental court thereafter, was whether the permit allowed West to operate a two-family home on his property. The DRB answered the question correctly because the plain language of the permit allowed West to renovate and replace the front porch only.

West argues that the Certificate of Compliance, while not forming the basis of the environmental court's decision, is additional evidence that the City considered his application consistent with the applicable zoning regulations. At oral

argument, West emphasized the importance of the Certificate in light of the Court's 1997 decision in the case of Bianchi v. Lorenz. See 166 Vt. 555, 556 (1997) (holding that an encumbrance on title exists "when the seller can determine from municipal records that the property is in violation of local zoning law at the time of conveyance and the violation substantially impairs the purchaser's use and enjoyment of the property"). The Certificate of Compliance has no legal significance on the issue of conditional use because the zoning administrator who issued it has no authority to approve conditional use requests. See 24 V.S.A. § 4464(a)(1) (permitting municipalities to regulate conditional uses through their boards of adjustment or development review board after notice and a public hearing). Moreover, the zoning administrator issued the Certificate of Compliance before West closed on the property, before he started reconstruction of the front porch, and before the upstairs apartment was reoccupied. West's reliance on the Certificate of Compliance is, therefore, unavailing.

Finally, no party appealed the environmental court's ruling that LaFrance had abandoned the otherwise grandfathered use of the 70 Green Street property by not offering it for rent for more than six months. In light of that fact, and considering the limited scope of the zoning permit, summary judgment for the City and neighbors is proper. West must obtain a conditional use permit to operate the 70 Green Street property as a two-unit dwelling.

The judgment is reversed, and the matter is remanded for entry of judgment in favor of appellants.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned