

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-340

MARCH TERM, 2007

Main Street Landing, Co.

v.

Lake Street Associates

} APPEALED FROM:

} Chittenden Superior Court

} DOCKET NO. S0786-06CnC

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

The appeal is dismissed on grounds of mootness.

**DOOLEY, J. dissenting.** I disagree that the appeal is moot. By way of background, this is one of two appeals arising from a conflict between the parties—both commercial property owners—over parking spaces in downtown Burlington. In short, Lake Street Associates (LSA) sued Main Street Landing (MSL) to enforce its right, granted by deed, to a certain number of parking spaces on MSL’s property. The superior court decided in favor of MSL (dismissing the suit on grounds of res judicata), and LSA appealed. While that appeal was pending, however, MSL went ahead and obtained permits for the parking spaces sought by LSA. Accordingly, because LSA no longer had a stake in the outcome of that suit, we dismissed the appeal on grounds of mootness.

As part of the permitting process, however, MSL sought and obtained an injunction prohibiting LSA from participating in the proceedings, based on language in the parties’ deed. LSA challenged the injunction through a motion for extraordinary relief, which we denied, and now challenges it through the instant appeal. Again, in the meantime, the permitting proceeding has come to an end, and MSL argues that this appeal is moot as well.

The right of a party to participate in a regulatory review proceeding is an important issue, with relevance both to those directly involved in the dispute as well as the public in general. The parties here are in an adversarial posture to the point that LSA could bring a declaratory judgment to determine its rights. Rather than require LSA to pursue that option, it would be more efficient for us to review this issue presented in the context of an actual—rather than a hypothetical—proceeding affected by the language of the deed. Finally, the superior court has rendered a decision and therefore it is possible for us to review its reasoning on the merits of the issue. Thus, even if the issue is technically moot, the controversy between the parties is not.

FOR THE COURT:

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice