

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 22-ENV-00092

Wheeler Parcel Act 250 Determination

DECISION ON MOTION TO DISMISS

Title: Motion to Amend or Alter (Motion: 14)
Filer: James Leas
Filed Date: July 21, 2023

Memorandum in Opposition filed by Christopher D. Roy, Attorney for Blackrock Construction, LLC.

The motion is DENIED.

This appeal was filed on September 22, 2022. The matter challenges an Act 250 permit approval issued by the District 4 Environmental Commission (District Commission) to Blackrock Construction, LLC (Blackrock) for the development of a 32-unit residential project at the intersection of Dorset Street and Park Road in South Burlington, Vermont (the Project). Inverness Homeowners' Association, Glen Eagles Homeowners' Association, Villas at Water Town Hill Homeowners' Association, Neighbor's Committee to Stope Neighborhood Blasting, and James Leas (together, Appellants) have appealed the District Commission's decision to this Court.

In an April 11, 2023 Decision on Motion, this Court considered Appellants' originally filed Statement of Questions. In re Wheeler Parcel, No. 22-ENV-00092, slip op. at 9—12 (Vt. Super. Ct. Envtl. Div. Apr. 11, 2023) (Walsh, J.). Appellants original Statement of Questions was filed on November 27, 2022 and was 12 pages long and contained 26 Questions, many of which with multiple subparts. In the April 11 Decision on Motion, the Court denied Blackrock's motion to strike questions, and granted Blackrock's motion for clarification of the questions. In so doing, the Court provided Appellants with guidance as to the purpose and function of statements of questions as well as outlining general shortcomings of the questions as written. The Court

ordered Appellants to file a restated Statement of Questions by May 12, 2023, with direction that the statement of questions be short and concise, without redundant and immaterial statements or arguments.

Appellants filed their revised Questions on May 9, 2023. The revised Statement of Questions is 8 pages long and contains 27 Questions. The revised Questions remained very lengthy with many Questions having multiple sub-parts. The revised Questions do not conform to this Court's practice or procedure or the requirement that a Statement of Questions be a short, concise statement.¹

In a July 12, 2023 Entry Order, this Court struck Appellants Revised Statement of Questions, dated May 9, 2023, and replaced them with the following 5 restated Questions:

1. Does the Project comply with Act 250 Criterion 1 (air) with respect to noise, particulates, exhaust, and chemicals?
2. Does the Project comply with Act 250 Criterion 5A with respect to traffic?
3. Does the Project comply with Act 250 Criterion 8 for aesthetics?
4. Does the Project comply with Act 250 Criterion 8 for noise?
5. Does the Project comply with Act 250 Criterion 10 with respect to the relevant municipal and regional plans?

Wheeler Parcel, No. 22-ENV-00092, slip op. at 3 (Jul. 12, 2023). In doing so, this Court granted Appellants leave to move to amend or alter the restated Questions. The pending motion is such a motion.

Appellants have now been afforded two opportunities to bring forward Questions consistent with the Court's practice and procedure and applicable law. They have failed to do so. At present, Appellants ask this Court to reinstate their May 9 Questions in full. In doing this, they point to no question, factual or legal, that was explicitly included within their previously filed

¹ In the Court's April 11 Decision on Motion, the Court stated "'it appears possible for Appellants to revise their Questions" in a manner that strikes a balance between clarity and specificity." Wheeler Parcel, No. 22-ENV-00092, slip op. at 11 (Apr. 11, 2023). This directive was repeated in the Court's July 12, 2023 Entry Order. Wheeler Parcel, No. 22-ENV-00092, slip op. at 2 (Jul. 12, 2023).

Statement of Questions that is not implicitly included in the Court's restated 5 questions.² Appellants' motion is **DENIED**.³ The revised Questions as set forth in the Court's July 12 Entry Order stand.

This matter is set for a status conference for Monday, August 7, 2023. This conference was originally set as a remote conference using the WebEx platform allowing parties to appear remotely. This conference is modified to require **IN-PERSON** appearances. See the Court's new notice.

During the August 7 status conference, the Court will review the following pre-trial schedule with the parties. This schedule is established considering this Court's Disposition Guidelines for Act 250 de novo appeals. The Court proposed schedule considers this matter as a "complex appeal" which would lead to a trial in April 2024. The proposed schedule is as follows:

1. By January 5, 2024, the parties shall notify the court, in writing, of their UNAVAILABLE dates for a ____-day trial in April 2024.
2. All written discovery, including but not limited to Interrogators, Requests for Production, and Requests to Admit, shall be served by September 8, 2024. Responses to any discovery request shall be served in accordance with the V.R.C.P.
3. All expert disclosures shall be completed by December 1, 2024. The Court recognizes that supplementing expert disclosures may be necessary following depositions. Supplementation shall be done in a timely manner to accommodate time for additional depositions and ultimately conform with the completion of discovery deadline.
5. All discovery shall be completed by January 19, 2024.

² This Court's review must include analysis and determination of those matters that are intrinsic to the legal issues raised in a party's Statement of Questions. See In re Atwood Planned Unit Dev., 2017 VT 16, ¶ 17, 204 Vt. 301 (citing In re Jolley Assocs., 2006 VT 132, ¶ 9, 181 Vt. 190; In re LaBerge NOV, 2016 VT 99, ¶ 16).

³ In any action, this Court may on its own initiative direct the attorneys for the parties to appear before it for a conference to consider the simplification of the issues. V.R.C.P. Rule 16(1).

6. At the present time, the Court encourages the parties to undertake formal mediation, however, the Court defers ordering mediation and may consider such an order at a later date.

7. Any pretrial motions, including motions for summary judgment, shall be filed by February 9, 2024. Parties are warned that should any party cross-move for summary judgment in response to a motion for summary judgment filed close in time to this deadline, there may not be sufficient time for a decision in advance of trial. The trial date will not be extended if this occurs.

8. The matter shall be ready for trial by April 1, 2024.

9. The length of trial will be ____ days, shared evenly by the parties.

Electronically signed August 3, 2023 pursuant to V.R.E.F. 9(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