

FILED

Vermont Superior Court
Environmental Division

MAR 9 2011

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ENTRY REGARDING MOTION

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VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

In re Musty Zoning Permit

Docket No. 174-10-10 Vtec

Project: Construction of single family dwelling on previously-subdivided lot.

Applicant: Sherrill Musty

(Appeal from DRB denial of appeal from Zoning Administrator's permit determination)

Title: Revised Statement of Questions and Reconsideration Requests (Filing No. 6)

Filed: March 9, 2011

Filed By: Appellant Frederick P. Tiballi

Response: None

☐ Granted

☐ Denied

☒ Other

By its Entry Orders issued on February 24, 2011, this Court either dismissed or entered summary judgment against Applicant Frederick P. Tiballi ("Appellant") on Questions 1, 3, 5(g), 6-15, 18-20, 27-32, 34-42, and 47 from Appellant's Statement of Questions. During the subsequent pre-trial conference, held on February 28, 2011, the Court requested that Appellant file a revised Statement of Questions; the explained purpose was to summarize the Questions remaining for review at trial, now scheduled for March 15 and 16, 2011 at the Costello Courthouse in Burlington.

In response, Appellant, on March 4, 2011, filed a document entitled as follows:

APPELLANTS' [sic] REMAINING STATEMENT OF QUESTIONS
RESTATED AND CLARIFIED
AND

Motion For Reconsideration as to Dismissal of Statement of Question 5(g)
Renewed Motion in re Summary Judgment — Statement of Questions Remaining.
Associated Memorandum, Legal Analysis in Support (Demonstrative Exhibit B)

(Capitalization, highlight, punctuation, and formatting in the original).

In the first paragraph of this filing, Appellant gives notice of his new desire to withdraw his Questions 16(a) and 16(b). We therefore **DISMISS** those Questions from our planned consideration at trial.

Appellant uses the rest of the next ten pages of his twenty-one-page filing to provide explanation for his former Question 5(g), subparts (i) through (xviii), and why the Court should reconsider and reverse its prior dismissal of that Question and its subparts. The Court strained to follow the arguments expressed in this first part of Appellant's filing, and in the remainder of the filing. Appellant only begins to address the first Question remaining for consideration at trial—Appellant's Question 2—at the bottom of page 10 of his recent filing.

The remainder of Appellant's filing, addressing Questions 2, 4, 5, 16(a) (now dismissed), 17, 21, 22(A)-(P), 23-26,¹ and 43-46, is confusing and difficult to follow for two reasons. First, it is


¹ Applicant's recent filing does not address the duplicate Questions 23-26 contained in his original Statement of Questions. See In re Musty Zoning Permit, No. 174-10-10 Vtec, slip op. at 2 n.2 (Vt. Super. Ct. Feb. 2, 2011) (Durkin, J.).

presented in a tracked changes format, although the replaced and added text seem identical. Second, his Questions are accompanied by legal argument. Such legal argument can be helpful, but is more often provided in a separate legal memoranda or trial brief. A statement of questions merely serves as notice of the legal issues that an appellant preserves for review on appeal; it does not need to contain legal argument and an opposing party is neither obligated nor allowed to file a responsive pleading. V.R.E.C.P. 5(h).

We find Appellant's filing wholly unresponsive to the Court's request that he file a revised Statement of Questions. We therefore **STRIKE** Appellant's filing from the Court docket and direct that Appellant file a corrected Revised Statement of Questions, no later than **Noon on Monday, March 14, 2011**. Due to the shortness of time between now and the scheduled trial, Appellant may make his filing by facsimile or other electronic transmission; service upon all parties of record shall be accomplished in the same manner.

Appellant's corrected Revised Statement of Questions shall not include any legal arguments, either in support of the remaining Questions or in support of the Questions that the Court previously dismissed, and shall not be in a tracked changes format.

The Court has also reviewed the arguments Appellant offers for reconsideration of its prior dismissal and summary judgment Orders. Appellant offers no new arguments in support of his reconsideration request, but has merely restated his prior arguments and expressed his respectful disagreement with the Court's prior conclusions. Reconsideration is not afforded in such instances. See V.R.C.P. 59(e); Appeal of Berezniak, No. 171-9-03 Vtec, slip op. at 3 (Vt. Env'tl. Ct. Apr. 6, 2007) (Wright, J.).


Thomas S. Durkin, Judge

March 9, 2011

Date

Date copies sent to:

3-9-11

Clerk's Initials

MT

Copies sent to:

Appellant Frederick P. Tiballi	
Kimberlee J. Sturtevant, Attorney for the City of Burlington	
Liam L. Murphy, Attorney for Appellee/Applicant Sherrill N. Musty	
Interested Person Lynne Tiballi	Interested Person Sue Ellen Strang
Interested Person Phyllis P. Rose	Interested Person Alexander H. Rose
Interested Person Colin Trevorrow	Interested Person Isabelle Trevorrow
Interested Person Lewis R. First	Interested Person Sandra L. First
Interested Person Rachel First	Interested Person Daniel L. Lustgarden
Interested Person Charles Bookwalter	Interested Person Carol S. Bookwalter
Interested Person Jurij Homziak	Interested Person Callie Fortin
Interested Person Mary Trexler	Interested Person Ann Vivian
Interested Person Robert G. Openheimer	Interested Person Wendy D. Oppenheimer
Interested Person Eugene P. Cenci	Interested Person Ann K. Cenci Family Trust
Interested Person Rita Carlile	Interested Person Paul Carlile