

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-473

MAY TERM, 2002

	}	APPEALED FROM:
	}	
	}	Environmental Court
Town of Hartford	}	
	}	
v.	}	DOCKET NOS. 37-2-00 Vtec, 72-3-00, 91-
	}	5-00, 102-5-00 Vtec, 150-4-00 Wrcv &
Marc and Susan Wood	}	219-5-00 Wrcv
	}	
	}	Trial Judge: Merideth Wright

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

This appeal arises out of several consolidated proceedings before the Environmental Court and the Windsor Superior Court relating to defendants' development of a diner, private club, gas station, and convenience store in the Town of Hartford. The sole question presented is whether the Town's approval of defendants' project included permission to build a retaining wall on property owned by the Town's fire department. The Environmental Court determined that the Town had not approved defendants' planned retaining wall. We find no error in that determination, and affirm.

In the spring of 1999, Hartford's zoning board of adjustment and planning commission approved defendants' proposed project. One approval condition required defendants to obtain an easement for ingress and egress over, and the stockpiling of snow on, the Town's fire department property in the westerly portion of the project. Defendants subsequently obtained a non-exclusive easement from the Town for the purpose of ingress and egress to their property. The easement also permits defendants to stockpile snow along the eastern boundary of the easement area so long as it does not block the Town's access to the property. Although the easement allows defendants to make any improvements necessary for ingress and egress, it states that any further improvements require advance Town approval, and the easement may not be used for any other purpose.

The approved site plan for the project shows an unidentified line running diagonally across the fire department property. Defendants contend that the unidentified line represents the foot of their proposed retaining wall. The Environmental Court took evidence on the matter in the course of the parties' litigation of various consolidated actions related to defendants' construction, including the Town's complaint for injunctive relief requiring defendants to build the project in conformance with the approved plans, the zoning board of adjustment's decision upholding the zoning administrator's notice of violation for failure to construct the project in compliance with the approved plans, and a public nuisance action the Town filed against defendants. After hearing the evidence and considering the parties' arguments, the Environmental Court determined that the unidentified line could not be "reasonably interpreted as the foot of a retaining wall, both because the plan does not identify it as such, and because Defendant-Appellants did not seek to have the later-acquired easement include the placement of a retaining wall on Fire Department property." Defendants appeal that ruling, arguing that no evidence in the record supports it. By implication, the court's decision means that defendants did not obtain proper approval to construct the wall.

We review the Environmental Court's findings and conclusions under our familiar standard. Findings will be upheld if any credible evidence exists to support them, even if contrary evidence appears in the record. Agency of Natural Resources v. Towns, ___ Vt. ___, ___, 790 A.2d 450, 453 (2001) (mem.). We will affirm the court's conclusions if the findings support them. Id. Moreover, we defer to the trial court's credibility and evidentiary weight determinations because it is in the best position to make them. Landmark Trust (USA), Inc. v. Goodhue, ___ Vt. ___, ___, 782 A.2d

1219, 1226 (2001). Applying those standards to this case leads us to conclude that the court did not err.

The court heard testimony from the Town's zoning administrator, defendant Mark Wood, an engineer engaged by the Town, and defendants' project engineer. The zoning administrator testified that she did not understand the unidentified line to depict a retaining wall. She explained that she first became aware of the plan to construct the wall in April 2000 during an appeal defendants filed relative to another phase of their project. The engineer who testified on the Town's behalf stated that he would not expect someone working under his direction to understand that the unidentified line was a retaining wall because it was not called out as a retaining wall on the site plan. The legend on the site plan admitted into evidence does not include a notation concerning defendants' proposed retaining wall. That evidence, in conjunction with the language in the easement document which does not make any specific reference to the wall, was sufficient to sustain the court's findings and conclusion on this issue.

Affirmed.

BY THE COURT:

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice