

NOV 17 2009

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-356

SEPTEMBER TERM, 2009

In re Dodge Farm Community, LLC } APPEALED FROM:
 }
 } Environmental Court
 }
 } DOCKET NO. 155-7-07 Vtec

 } Trial Judge: Merideth Wright

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

Adjoining landowners appeal the Environmental Court's decision upholding the Town of Berlin development review board's Concept Plan Approval of appellee developer's proposal for a planned unit development (PUD) on the subject property. Appellants argue that the board and court erred by ruling that the local zoning ordinance allows PUDs as a conditional use in the zoning districts in which the subject property is situated. On October 29, 2009, this Court issued an entry order directing the parties to show cause why this interlocutory appeal should not be dismissed as moot or improvidently granted. Appellants have not responded to the show-cause order, but appellee has filed a memorandum taking the position that the appeal is not moot and was not improvidently granted. We dismiss the appeal as moot.

Appellee acknowledges that its application requested Concept Plan Approval for a PUD proposing two sets of clustered developments, with thirty to thirty-five dwellings and related structures each, on opposite ends of an approximately 300-acre parcel separated by two roads. The proposal was to concentrate the residences into two relatively small, separated areas and to preserve as much farm and woodland as possible in the large tract. Appellee acknowledges that in the summer of 2009, while this appeal was pending, the following events took place: (1) appellee requested and obtained approval for a nine-lot subdivision of the subject property; (2) Lot 1 of the subdivision, consisting of sixty-two acres, was sold to a development company; (3) Lot 2 of the subdivision, consisting of 180 acres, was sold to other purchasers; (3) appellee retained Lots 3 through 9, which may be further subdivided in the future; and (4) the sixty-three-acre retained parcel is approved by the Town of Berlin as seven separate, rectangular lots, each of which conforms to minimum lot size. According to appellee, notwithstanding these recent developments, it "believes that it remains feasible" to develop this land as a PUD, and the only issue on appeal is the legal question of whether PUDs are allowed in the applicable districts.

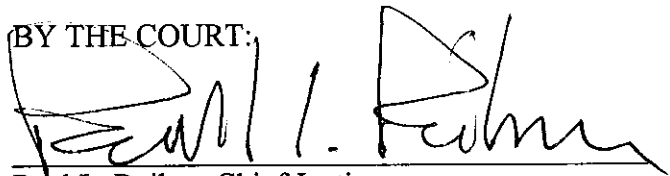
"In general, a case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." Houston v. Town of Waitsfield, 2007 VT 135, ¶ 5, 183 Vt. 543, 944 A.2d 260 (mem.) (quotations omitted). "The mootness doctrine derives its force from the Vermont Constitution, which, like its federal counterpart, limits the authority of the courts to the determination of actual, live controversies between adverse litigants." Id.


(quotations omitted); see Wood v. Wood, 135 Vt. 119, 120, 370 A.2d 191, 192 (1977) (noting that most basic constitutional limitation on this Court “is the prohibition against advisory opinions”). “Even if a case originally presented an actual controversy in the trial court, the case must remain live throughout the appellate process for us to examine the issues.” Houston, 2007 VT 135, ¶ 5. “Thus, a change in facts or circumstances can render a case moot if this Court can no longer grant effective relief.” Id. (quotations omitted).

In this case, recent developments demonstrate that appellee’s proposed PUD cannot proceed, and thus there is no live controversy. The only reason for this Court to address this appeal at this juncture would be to resolve a legal question no longer tied to a live controversy and thus to render an advisory opinion to the parties. This we cannot do. Appellee’s speculation that another, different PUD proposal is still feasible in the future with respect to the smaller retained parcel does not sustain a live controversy in this matter.

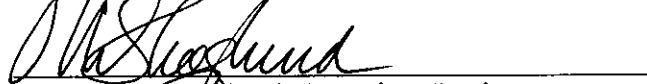
Appeal dismissed as moot.


BY THE COURT:


Paul L. Reiber, Chief Justice


John A. Dooley, Associate Justice


Denise R. Johnson, Associate Justice


Marilyn S. Skoglund, Associate Justice


Brian L. Burgess, Associate Justice

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Do Not Publish