

# STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 106-10-18 Vtec

Punderson 2-Lot Subdivision
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## ENTRY REGARDING MOTION

Count 1, Municipal DRB Subdivision (106-10-18 Vtec)

Title: Motion to Withdraw Permit #18-02 (Motion 4)

Filer: Frank Punderson

Attorney: Ebenezer Punderson

Filed Date: September 3, 2019

No response filed

**The motion is GRANTED.**

Mary Anne Sullivan, Martha Sullivan,<sup>1</sup> and the Lois Sullivan Revocable Trust, hereinafter referred to as Appellants, have challenged two land use determinations in this single appeal. Their first challenge concerns the approval of a two-lot subdivision of the 41.39± acre parcel (Parcel No. 0705029), located on Upper Plains Road in the Town of Salisbury ("Town") owned by Appellee/Applicant Frank Punderson ("Applicant"). Appellants appealed the Town of Salisbury Development Review Board ("DRB") approval of that subdivision (Permit #18-02) and the July 20, 2018 DRB denial of Appellants' request for reconsideration. Appellants also, in this same appeal, challenge the DRB dismissal of their appeal of the zoning permit (Permit #18-15) issued on June 19, 2018, authorizing Appellant to construct a single-family home on one of the subdivided lots.

Presently before the Court is Applicant's motion to withdraw his subdivision application and the resulting Permit #18-02. With this withdrawal, the DRB approval and dismissal of Appellants' appeal would be voided and that portion of the appeal before this Court would no

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<sup>1</sup> The Court has been made aware that, during the pendency of this appeal, Co-Appellant Martha Sullivan has passed. The undersigned extends his sympathies to Ms. Sullivan's family.

Upon a formal motion pursuant to V.R.C.P. 25(2), the Court will remove Martha Sullivan from this action as a listed Appellant and will allow the appeal to proceed in the name of the surviving Appellants. We provided a similar suggestion in a footnote to our March 29, 2019 Entry Order. No such motion has been filed to date; we therefore continue to list Ms. Sullivan as an Appellant in this matter.

longer be of any effect. Appellants have chosen not to respond to this motion to withdraw the subdivision application and Permit #18-02.

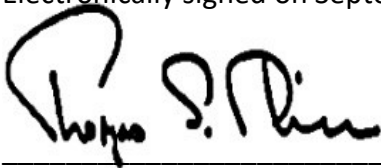
With no reasons offered as to why this Court should reject Applicant's withdrawal request, we conclude that it must be **GRANTED**. In appeals such as this, an applicant, even when not the appellant, carries the initial burden of production and the ultimate burden of persuasion on the general legal issue of whether their application conforms to the applicable land use regulations. See In re Transtar, LLC, No. 46-3-11 Vtec., slip op. at 1–2 (Vt. Env'tl. Ct. Sept. 15, 2011)(Durkin, J.) (clarifying that the burden of production and persuasion rest with the applicant and once fulfilled, the evidentiary burden shifts to the opposing party to offer refuting evidence). We do not believe it appropriate to compel an applicant to prosecute an application that they wish to withdraw that application. We choose not to do so here.

Our decision here leaves the remaining challenge that Appellants present from the approval of Applicant's construction application, Permit #18-15. We note that we have today issued a companion Entry Order, granting in part Appellants' motion to enforce the automatic stay of Permit #18-15.

As noted in our Entry Order concerning the stay enforcement request, we request that our Court Operations Manager set this matter for a status conference so that the undersigned may discuss final trial preparations with the parties.

**So Ordered.**

Electronically signed on September 27, 2019 at Burlington, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Superior Judge  
Environmental Division

Notifications:

Alexander J. LaRosa (ERN 5814), Attorney for Appellants Mary Anne Sullivan, Martha Sullivan, and the Lois Sullivan Revocable Trust

Ebenezer Punderson (ERN 3701), Attorney for Appellee/Applicant Frank Punderson

James F. Carroll (ERN 1907), Attorney for the Town of Salisbury