

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 124-11-18 Vtec

All Star Group, LLC SD Denial

**ENTRY REGARDING MOTION**

Title: Motion for Summary Judgment (Motion 1)

Filer: Appellant/Applicant All Star Group, LLC

Attorney: John M. Mazzuchi

Filed Date: February 15, 2019

Response in Opposition filed on 03/13/2019 by Cindy E. Hill, Attorney for the Tn of New Haven

Response in Opposition filed on 03/13/2019 by Navah C. Spero, Attorney for Cross Appellants  
Jeffry Glassberg, Amanda Bodell, and the Glassberg and Bodell Family, LLC

Replies in Support, filed on 04/26/2019 by John M. Mazzuchi, Attorney for All Star Group, LLC

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Title: Motion for Partial Summary Judgment (Motion 2)

Filer: Jeffry Glassberg, Amanda Bodell, and the Glassberg and Bodell Family, LLC

Attorney: Navah C. Spero

Filed Date: March 13, 2019

Response in Opposition, filed on 04/29/2019 by John M. Mazzuchi, Attorney for  
Appellant/Applicant All Star Group, LLC

Reply in Support of Motion filed on 05/20/2019 by Attorney Navah C. Spero for Cross Cross-  
Appellants Jeffry Glassberg, Amanda Bodell, and the Glassberg and Bodell Family, LLC

**The motions are MOOT.**

All Star Group LLC ("Applicant") seeks to subdivide property located at 1451 Hallock Road in New Haven, Vermont ("the Property") into two lots abutting Hallock Road. The Town of New Haven Development Review Board ("DRB") denied the application, which Applicant subsequently appealed to this Court. A group of neighbors ("Neighbors") cross-appealed.<sup>1</sup> While the

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<sup>1</sup> Neighbors include Jeffry Glassberg, Amanda Bodell, and Glassberg and Bodell Family, LLC.

substantive dispute before the Court concerns the RA-2 and RA-10 zoning district boundaries, the issue presently before the Court concerns the sufficiency of procedural notice.

As noted in this Court's prior Entry Order, a municipal panel must hold a publicly noticed hearing before it approves a subdivision plat and a "copy of the notice shall be sent to the clerk of an adjacent municipality, in the case of a plat located within 500 feet of a municipal boundary, at least 15 days prior to the public hearing." 24 V.S.A. § 4463(a); In re All Star Group, LLC., No. 124-11-18, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Aug. 7, 2019) (Durkin, J.). The record clearly indicates that the Town of Waltham ("Waltham") is an adjacent municipality within 500 feet of Applicant's property. Waltham did not receive formal notice of the DRB hearings pursuant to § 4463(a). Consequently, this Court directed the parties to, absent timely objection, formally notify Waltham of the present appeal and "inquire as to whether Waltham objects to the appeal continuing before this Court." In re All Star Group, LLC., No. 124-11-18, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Jul. 5, 2019) (Durkin, J.).

The Neighbors timely objected, asserting that providing notice to Waltham now would deprive Neighbors of the opportunity to present four questions in their Statement of Questions. Applicant responded, stating notification would efficiently cure the procedural deficiency. We concluded Neighbors lacked standing to assert a procedural notice injury on Waltham's behalf because Neighbors' interests were not affected. Therefore, this Court dismissed Questions 1 through 4 of Neighbors Statement of Questions and directed Applicant to provide immediate formal notice to Waltham of the pending application.

In this Court's August 22, 2019 Entry Order, we noted that should Waltham assert an interest in pursuing its rights, the Court must reassess its jurisdiction. In re All Star Group, LLC., No. 124-11-18, slip op. at 4 n. 4 (Vt. Super. Ct. Envtl. Div. Aug. 22, 2019) (Durkin, J.).<sup>2</sup> On September 17, 2019, Waltham responded to Applicant's formal notice stating that it does not intend to engage counsel to challenge the lack of notice, supports the New Haven DRB's decision, and noted that "if [Waltham] had received proper notice, [Waltham] would have discussed the application and provided feedback regarding [their] position as a neighboring town, specifically [on] compatibility of land use." Waltham's Response to Notice, Filed Sept. 18, 2019. Waltham then proceeded to offer information on Waltham's town plan and zoning ordinance, contending that Applicant's proposed development is incompatible with its Plan and Ordinance. Id. We interpret this letter as an indication that Waltham would have been interested in participating in the pending matter, had it received proper notice.

Waltham's representations cause this Court to revisit the question of whether this Court should remand for lack of subject matter jurisdiction, since a town that was not provided adequate notice pursuant to 24 V.S.A. §4463(a) has now indicated its interest in participating. When it "appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." V.R.C.P. 12(h)(3); see Gerdel v. Gerdel, 132

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<sup>2</sup> At the time, this Court asserted that the Court's jurisdiction is "limited to those actual cases or controversies that are immediately before it." Id. at 4 n. 4, citing In re Investigation into Programmatic Adjustments to Standard-Of-Fer Program, 2018 VT 52, ¶ 13 and In re Constitutionality of House Bill 88, 115 Vt. 524, 529 (1949); see also In re Regan Subdivision Permit, No. 188-9-09 Vtec, slip op. at 5 (Vt. Super. Ct. Envtl. Div. June 18, 2013) (Durkin, J.) (citing In re Appeal of 232511 Invs., Ltd., 2006 VT 27, ¶¶ 18-19, 179 Vt. 409).

Vt. 58, 65 (1973) (“[A] court will dismiss a cause at any stage, whether moved by the party or not, when it is discovered that it has no jurisdiction.”).

Pursuant to 24 V.S.A. § 4418, a municipality that adopts subdivision bylaws must provide standards and procedures for approval, modification, and disapproval of plats in order to “guide community settlement patterns and to ensure the efficient extension of services, utilities and facilities[.]” In furtherance of this goal, a municipality’s subdivision bylaws shall contain “procedures and requirements for design, submission, and processing of plats[.]” § 4418(1)(A).

One such procedure is at issue here, which requires a public hearing and 15 days prior notice to the clerk of an adjacent municipality when a plat is located within 500 feet of a municipal boundary. § 4463(a). The statute asserts that “no defect in form or substance . . . shall invalidate the action of the appropriate municipal panel where reasonable efforts are made to provide adequate posting and notice.” § 4464(a)(5). The statute also states “[i]f an action is ruled to be invalid by the Environmental Division or by the municipal panel itself, the [application] shall be remanded to the applicable municipal panel to provide new posting and notice, hold a new hearing, and take a new action.” *Id.*

Here, it is undisputed that Waltham received no notice and no efforts were made to notify Waltham, until so ordered by this Court. *In re All Star Group, LLC*, No. 124-11-18, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Jul. 5, 2019) (Durkin, J.). In addition, Waltham has expressly notified the Court that it would have participated, had it received prior notice of the proceedings before the DRB. Waltham specifically stated a definitive position in opposition to the pending application that references Waltham’s Town Plan and Zoning Ordinance. Waltham’s Response to Notice, Filed Sept. 18, 2019.<sup>1</sup>

As a court of appellate jurisdiction, this Court’s consideration of such materials is limited to issues specifically predicated within the appeal. *In re Crescent Beach Association*, 125 Vt. 321, 324 (1965). While we review municipal panels’ decisions de novo, the scope of our review, and thus our subject matter jurisdiction, is confined to those issues the municipal panel below had the authority to address when considering the original application. See *In re Transtar LLC*, No. 46-3-11 Vtec, slip op. at 4 (Vt. Super. Ct. Envtl. Div. May 24, 2012) (Durkin, J.); *In re All Metals Recycling, Inc.*, No. 171-11-11 Vtec, slip op. at 9–10 (Vt. Super. Ct. Envtl. Div. Apr. 23, 2012) (Walsh, J.) (citations omitted). Therefore, we conclude that Waltham’s participation at the municipal level must occur first, and that the DRB’s review may enhance this Court’s consideration of issues on subsequent appeal.

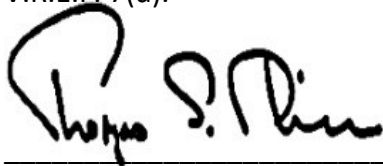
As it stands, there exists a fatal procedural deficiency because a necessary party received no notice. This defect requires that Waltham be provided with an opportunity to assert its interests on the compatibility of land use as outlined in their Town Plan and zoning ordinances at the DRB level. This would serve the purpose of 24 V.S.A. § 4418 in “guid[ing] community settlement patterns.” The inherent purpose of § 4464(a)(5) is to encourage the involvement of bordering municipalities and enable a more comprehensive consideration of the issues on appeal.

Therefore, we conclude that the pending application must be **REMANDED** to the New Haven Development Review Board for a determination on the merits that allows for Waltham’s

participation, after receiving proper notice of the DRB proceedings. Consequently, the pending motions by Neighbors for partial summary judgment and Applicant for partial summary judgment are **MOOT**.

**So Ordered.**

Electronically signed on November 22, 2019 at South Royalton, 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:

James C. Foley (ERN 1980), Attorney for Appellant All Star Group, LLC

Cindy E. Hill (ERN 5390) and John M. Mazzuchi (ERN 9917), Attys. for the Town of New Haven

Navah C. Spero (ERN 4585) and Celeste E. Laramie (ERN 8852), Attorneys for Cross Cross-Appellants Jeffry Glassberg, Amanda Bodell, and Glassberg and Bodell Family, LLC