



Ranney Dairy Farm, LLC Major Subdivision Appeal

ENTRY REGARDING MOTION

Title: Motion to Reconsider (Motion: 5)
Filer: Fletcher D. Proctor
Filed Date: September 27, 2022

The motion is GRANTED.

DECISION ON MOTION TO RECONSIDER

Ranney Dairy Farm, LLC (Applicant) seeks permission to subdivide a parcel it owns in the Town of Westminster (Town). In a January 3, 2022, decision, the Town Development Review Board (DRB) granted approval with conditions. Subsequently, adjacent property owners (Neighbors) appealed the DRB's decision to our Court. Presently before the Court is Neighbors' Motion to Reconsider the Court's decision regarding Neighbors' Motion to Amend Question 15 of their Statement of Questions.

Procedural History

The procedural history most relevant to Neighbors' motion to reconsider is as follows:

January 28, 2022: Neighbors filed their notice of appeal to the Environmental Division.

February 22, 2022: Neighbors filed their Statement of Questions.

April 1, 2022: Applicant filed a Motion to Dismiss all but Question 6.

April 11, 2022: The Court held the initial conference with the parties.

April 25, 2022: Neighbors opposed the Applicant's Motion to Dismiss.

May 31, 2022: The Court granted in part and denied in part Applicant's Motion to Dismiss.

The Court ordered:

For all the reasons stated above, we **PARTIALLY GRANT** Applicant's motion to dismiss the Statement of Questions. Questions 7, 8, 9, 11, and 12 are dismissed. Further, we order Neighbors to clarify Questions 10, 13, and 14 by **Friday, June 17, 2022**, in a manner that reflects that this is a *de novo* appeal; if they do not clarify those Questions by that time, we will dismiss them as well. The motion is **Denied** as to Questions 1–5 and Questions 15–16, although we order Questions 15 and 16 to be restated as phrased above.

Ranney Dairy Farm, LLC Major Subdivision Appeal, No. 22-ENV-00018, slip op. at 7 (Vt. Super. Ct. Envtl. Div. May 31, 2022) (Walsh, J.).

June 17, 2022: Neighbors failed to file an Amended Statement of Questions restating Questions 10, 13, and 14 by this deadline.

July 25, 2022: The Court held a status conference with the parties. On the record, the Court dismissed Questions 10, 13 and 14, in accordance with its decision on May 31st. Additionally, in response to the Neighbors' request to broaden Question 15 and over the objection of Applicant, the Court ordered verbally from the bench:

On or before August 5th, which is a week from Friday, the Appellant may restate Question 15. I suggest, Attorney Proctor, that when you have 15 restated, a draft of it, you share it with Attorney Angell and Attorney Slason, and the three of you might perfect how it should read. If you can't reach an agreement, then file your suggestion, and Attorney Angell can respond to it if he has a disagreement with what is stated.

July 25 Status Conference at 9:51, Ranney Dairy Farm, LLC Major Subdivision Appeal, No. 22-ENV-00018 (Vt. Super. Ct. Envtl. Div. July 25, 2022) (Walsh, J.).

August 5, 2022: Neighbors failed to file an Amended Statement of Questions restating Question 15 by this deadline.

August 13, 2022: Neighbors filed a motion to amend Question 15.

August 15, 2022: Applicant opposed the motion to amend.

August 18, 2022: Neighbors replied with exhibits.

September 19, 2022: The Court denied Neighbor's motion to amend and dismissed Questions 15 and 16.

September 27, 2022: Neighbors moved for the Court to reconsider its decision.

Discussion

Vermont Rules of Civil Procedure 59(e) governs motions to alter or amend judgments. Those rules apply to appeals before this Court under Vermont Rules of Environmental Court Proceedings 5(a)(2). The Court is not required to “address motions to alter or reconsider our decisions on either pretrial motions that do not conclude a case or on post-trial motions” In re Benoit Conversion Application, Nos. 143-7-08 Vtec, 148-8-04 Vtec, and 126-7-04 Vtec, slip op. at 5 (Vt. Super. Ct. Env'tl. Div. Oct. 14, 2021) (Durkin, J.) (“[W]e have historically treated [motions to reconsider] as motions filed in accordance with V.R.C.P. 59(e).”). The Court grants motions to reconsider “guardedly and only in extraordinary circumstances” Id. (quoting Miller v. Miller, 2008 VT 86, ¶ 27, 184 Vt. 464). “It is ultimately within the Court's discretion whether to grant motions under 59(e), and we have identified four basic grounds for doing so: (1) to ‘correct manifest errors of law or fact upon which the judgment is based’; (2) to allow a moving party to ‘present newly discovered or previously unavailable evidence’; (3) to ‘prevent manifest injustice’; and (4) to respond to an ‘intervening change in the controlling law.’” Id. (quoting In re Lathrop Ltd. P’ship I, Nos. 122-7-04 Vtec, 210-9-08 Vtec, and 136-8-10 Vtec, slip op. at 10 (Vt. Super. Ct. Env'tl. Div. Apr. 12, 2011) (Durkin, J.)).

In its September 19 decision, the Court denied Neighbors’ motion to amend Question 15 and dismissed Questions 15 and 16. The Court cited Neighbors’ failure to meet two deadlines without good cause. Upon review of the decision, subsequent motion, and the record, the Court discovered the initial deadline cited—June 17—pertained only to Questions 10, 13, and 14. The second deadline cited—August 5—applied to Neighbors’ request to restate Question 15. In sum, Neighbors failed to comply with the Courts’ deadline relating to Question 15. This additional deadline was afforded to Neighbors at the discretion of the Court in an attempt to allow a full and fair opportunity to offer their opposition to the Project. Failure to comply with a deadline such as this typically results in a stern and adverse ruling. To “prevent manifest injustice” for the Neighbors, the Court **GRANTS** Neighbors’ motion to reconsider the denial of their motion to amend Question 15. See Id. The Court does not take this situation lightly as it is aware that it is adverse to the Applicant who has complied with Court directives. The Court **GRANTS** Neighbors’ motion to amend Question 15. The Question will read as follows:

15. Has Applicant consulted with or obtained approval from the Vermont Department of Fish and Wildlife for development within an identified deer wintering area, and has the Applicant demonstrated that the remainder of the deer wintering area owned by the Applicant will be managed in a manner compatible with the continued viability of the deer wintering area?

Additionally, the Court discovered that neither the parties nor the Court further addressed restated Question 16 following the May 31st decision. To “correct [a] manifest error[] of law,” the Court **GRANTS** Neighbors’ motion to reconsider the dismissal of Question 16. Id. In accordance with the May 31st decision, the Question will read:

16. Is there adequate access to the development sites by emergency services such as fire, rescue, and police as required by the Westminster zoning and subdivision bylaws?

Conclusion

For all the reasons stated above, we **GRANT** Neighbors' motion to reconsider the Court's September 19th decision. We **GRANT** Neighbors' motion to amend Question 15. We also reverse our dismissal of Question 16 and **ORDER** the Question read as stated in the May 31st decision.

Moving forward with this matter, we caution the parties to mind deadlines and orders from the Court, regardless of whether they are stated in writing or on the record. The Court is required to "ensure summary and expedited proceedings consistent with a full and fair determination in every matter coming before the court." V.R.E.C.P. 1. Further, the Vermont Rules of Professional Conduct require attorneys to "make reasonable efforts to expedite litigation consistent with the interests of the client" and "act with reasonable diligence and promptness in representing a client." V.R.Prof.C. 3.2, 1.3. The Court takes its responsibility, and that of the legal profession, seriously. We ask the parties to do the same.

Pending before the Court is Applicant's second motion for summary judgment which the Court is currently reviewing. The Court intends to set this matter for trial promptly following its decision on this motion should any questions remain. The parties are directed to use the present time to complete any pre-trial work.

Electronically signed October 28, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division