



**Ranney Dairy Farm, LLC
Major Subdivision Appeal**

Decision on Motion

This is an appeal of a major subdivision permit issued by the Town of Westminster Development Review Board (DRB) to Ranney Dairy Farm, LLC (Applicant) for the subdivision of a parcel of land that it owns in the Town of Westminster, Vermont (Town). Neighboring property owners Daniel Deitz, Steven Goulas, Sr., Veronica Goulas, Trisha Kneeland, Martha Moscrip, Nancy Pike, Philip Ranney, Michael Sylvester, and Teresa Sylvester (collectively, Neighbors) are the appellants in this matter. Presently before the Court is Applicant's third motion for summary judgment on the remaining Questions of Neighbors' Statement of Questions: Questions 1, 5, 6, 15, and 16.¹ Neighbors oppose the motion.

In this proceeding, Applicant is represented by Samuel H. Angell, Esq. Neighbors are represented by Fletcher D. Proctor, Esq. The Town is represented by Lawrence G. Slason, Esq.

Statement of Questions

Applicant requests summary judgment on the remaining Questions before Court: Questions 1, 5, 6, 15, and 16. Those specific Questions are as follows:

1. Are the 2017 subdivision bylaws used by the Westminster Development Review Board ("DRB") in reviewing Applicant's permit application validly in force?

...

¹ This Court previously denied a motion for summary judgment filed by Applicant on Questions 5, 6, 15 and 16 due to deficiencies in the affidavits filed in support of said motion. See In re Ranney Dairy Farm, LLC Major Subdivision Appeal, No. 22-ENV-00018 (Vt. Super. Ct. Envtl. Div. Jan. 3, 2023) (Walsh, J.). After the Court issued its January 3, 2023 decision, this Court held a status conference during which Applicant expressed that it would re-file a motion for summary judgment. The pending motion is the resulting motion.

5. Did the Applicant demonstrate that the development will have access to a public road or class 4 town highway as required by 24 V.S.A. § 4412(3) and the Westminster zoning and subdivision bylaws?

6. Does the plot plan filed by the Applicant conform to the site plan review requirements of 24 V.S.A. § 4416 and Westminster zoning and subdivision bylaws?

...

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?

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?

Neighbor's Statement of Questions (filed Feb. 22, 2022) (as amended by Ranney Dairy Farm, LLC Major Subdivision Appeal, No. 22-ENV-00018, slip op. at 3–4 (Vt. Super. Ct. Envtl. Div. Oct. 28, 2022) (Walsh, J.)).

Legal Standard

"Summary judgment is appropriate only where the moving party establishes that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law." Samplid Enters., Inc. v. First Vt. Bank, 165 Vt. 22, 25 (1996). When considering a motion for summary judgment, the Court gives the nonmoving party the benefit of all reasonable doubts and inferences. Id.

For the purposes of these motions, the Court "will accept as true all allegations made in opposition to . . . summary judgment, so long as they are supported by affidavits or other evidentiary material." Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. As such, a party opposing a motion for summary judgment "cannot simply rely on mere allegations in the pleadings to rebut credible documentary evidence or affidavits . . . but must respond with specific facts that would justify submitting [their] claims to the factfinder." Id. (citing Gore v. Green Mtn. Lakes, Inc., 140 Vt. 262, 266 (1981); V.R.C.P. 56(e); State v. G.S. Blodgett CO., 163 Vt. 175, 180 (1995)).

Undisputed Material Facts

We recite the following factual background and procedural history, which we understand to be undisputed unless otherwise noted, based on the record now before us and for the purpose of deciding the pending motion. The following are not specific factual findings relevant outside the scope of this decision on the pending motion. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Frtizeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

1. Ranney Dairy Farm, LLC owns property located at 700 Westminster West Road in Westminster, Vermont (the Property).
2. The Property has 537 feet on frontage on Westminster West Road, 358 feet of frontage on McKinnon Road, and 3,020 feet of frontage on Old Codding Road.
3. Applicant proposes to subdivide the Property into two lots with a third retained lot (the Project).
4. The two new lots will be 6.8 and 13.53 acres, respectively, and the retained lot will be 141.27 acres.
5. The two new lots have 423 feet and 688 feet of frontage on Old Codding Road, respectively.
6. The lots are to be largely wooded, with proposed house sites set back from the road.
7. The lots are positioned such that proposed house sites are on relatively flat land.
8. Despite the inclusion of house sites, there is presently no physical development proposed through this Project.
9. Applicant consulted with the Vermont Department of Fish and Wildlife (DFW) concerning the Project's impact on existing deer yards and deer wintering areas.
10. DFW provided revisions to Applicant's proposed forest management plan (FMP) to allow for forestry management practices that would maintain the closed tree canopy supporting deer wintering habitat.
11. Applicant's FMP was approved by the Windham County Forester.
12. The lots are to be accessed by Old Codding Road.
13. Old Codding Road was, at one point, a Town highway.

14. Old Codding Road was discontinued by the Town in the 1800s by petition of local landowners.

15. The status of Old Codding Road as a public road, public way, or private road, is disputed.

16. The safety of Old Codding Road relative to access for emergency vehicles and personnel is disputed.

17. Twenty-two residents, including many Neighbors in this action, use Old Codding Road for access to their properties.

18. On June 3, 2021, Applicant submitted its application for the Project.

19. At the time of the application, the Zoning and Subdivision Bylaws, Town of Westminster Vermont approved June 12, 2017 and adopted July 12, 2017 were effective (the 2017 Bylaws).

20. Prior to the 2017 Bylaws' adoption, the Town had subdivision regulations separate from zoning regulations, with an effective date in 2001 (the 2001 Subdivision Regulations).

21. The 2001 Subdivision Regulations stated that they could be adopted, amended, or repealed by Australian ballot at a regular or special Town meeting pursuant to 24 V.S.A. §§ 4403, 4404.

22. On April 22, 2014, the subdivision regulations were incorporated into the then standalone zoning regulations, creating Interim Bylaws, as subsequently amended and adopted in the 2017 Bylaws.

23. There is no allegation that any action was filed challenging any procedural deficiency in repealing of the 2001 Subdivision Regulations, the adoption and approval of the 2014 Interim Bylaws, or the 2017 Bylaws.

24. On January 3, 2022, the Town DRB approved the Project.

25. Neighbors subsequently appealed that approval to this Court.

Conclusions of Law

Because each Question raises discrete legal issues, we address each Question in turn.

I. Question 1: the 2017 Bylaws

The Bylaws applicable to this application are dated as being adopted July 12, 2017. Neighbors dispute the validity of the 2017 Bylaws generally through Question 1. Question 1 asks: “[a]re the 2017 subdivision bylaws used by the Westminster Development Review Board (“DRB”)

in reviewing Applicant’s permit application validly in force?” Neighbors present the assertion that the 2017 Bylaws are not valid solely due to procedural deficiencies in the Town’s adoption of the 2017 Bylaws, along with the Interim Bylaws, and the repealing of the 2001 Subdivision Regulations. Neighbors do not appear to dispute that the Town Planning Commission approved the 2017 Bylaws on June 12, 2017 or that the Westminster Selectboard adopted the Bylaws on July 12, 2017. Instead, they take issue with the amendment process of the 2001 Subdivision Regulations and Interim Bylaws. Specifically, Neighbors present two arguments. First, Neighbors argue that there was a procedural deficiency in the way the 2001 Regulations were repealed and incorporated into the unified Interim Bylaws as they were not done by Australian ballot. Second, Neighbors argue that the adoption of the Interim Bylaws was procedural insufficient and because the Interim Bylaws expired prior to the adoption of the 2017 Bylaws, the adoption of the 2017 Bylaws was procedurally deficient. Thus, Neighbors’ challenge to the 2017 Bylaws is purely procedural in nature.

Pursuant to 24 V.S.A. § 4483(b), “[n]o person shall challenge for purported procedural defects the validity of any plan or bylaw as adopted, amended, or repealed . . . after two years following the day on which it would have taken effect if no defect had occurred.” Because the 2017 Bylaws were approved on July 12, 2017, they took effect 21 days after August 2, 2017. See 24 V.S.A. § 4442(c). The notice of appeal in this case was filed in 2022, long past the two-year statute of limitations to challenge the validity of the 2017 Bylaws on procedural grounds. Thus, even affording Neighbors the benefit of all reasonable doubts and inferences with respect to the alleged procedural deficiencies, the undisputed facts show that challenges to these deficiencies are time-barred pursuant to 24 V.S.A. § 4483(b).

Thus, the material facts are not in dispute and Applicant is entitled to judgment as a matter of law such that the Court **GRANTS** Applicant’s motion with respect to Question 1.

II. **Question 5: Old Coddington Road**

Question 5 asks: “[d]id the Applicant demonstrate that the development will have access to a public road or class 4 town highway as required by 24 V.S.A. § 4412(3) and the Westminster zoning and subdivision bylaws?”

Old Codding Road's status as public or private is material to this dispute as a subdivision applicant must show frontage on, and access to, a public road or way. The parties heavily dispute the status of Old Codding Road as a public road or town Highway. Thus, summary judgment is not appropriate at this time on this Question.

In reaching this conclusion, however, the Court notes that this is a Court of limited jurisdiction. 4 V.S.A. § 34. This Court's jurisdiction is limited to: "(1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220; (2) jurisdiction of matters arising under 24 V.S.A. chapter 61, subchapter 12 and chapter 117; and (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151." Id. To the extent that the parties dispute the status of Old Codding Road generally pursuant to Title 19, this Court is without jurisdiction to opine on that issue. Similarly, this Court is without jurisdiction to adjudicate private property rights that Applicant or Neighbors may have in Old Codding Road. In re Woodstock Cnty. Tr. & Hous. Vt. PRD, 2012 VT 87, ¶ 40, 192 Vt. 474. Should the parties seek a full declaration of the rights and responsibilities relative to Old Codding Road, they can seek one in the Civil Division. See 4 V.S.A. § 31.

When the Court is presented with an issue that involves the rights to property related to a development before it, the Court's analysis is constrained by its jurisdictional limits. As a result, we are only charged with determining whether Applicant has made a threshold burden of producing some evidence of a legal interest and right in the property to be used in connection with the Project. In re Leiter Subdivision Permit, No. 85-4-07 Vtec, slip op. at 4–5 (Vt. Envtl. Ct. Jan 2, 2008) (Durkin, J.). While Applicant has presented some evidence in support of its assertion that the Project has frontage on and access to a public way—here Old Codding Road—Neighbors have brought forth evidence sufficient to dispute that in the context of a motion for summary judgment.

Because the material facts are in dispute, summary judgment on Question 5 is **DENIED**.

III. Question 6: Conformance with Site Plan Review Criteria

Question 6 asks: "[d]oes the plot plan filed by the Applicant conform to the site plan review requirements of 24 V.S.A. § 4416 and Westminster zoning and subdivision bylaws?"

In reviewing an application for site plan review, this Court on appeal must consider the following criteria:

1. Traffic Access and safety of traffic between the site and the streets;
2. Safety and adequacy of traffic circulation within the development, including pedestrian safety, and parking and loading facilities[;]
3. Adequacy of landscaping, screening and setbacks to achieve greater compatibility and protection of adjacent property;
4. The utilization of renewable energy resources;
5. Adequacy of access for the use of emergency services, such as fire, rescue, and police;
6. Exterior lighting[;]
7. Whether the proposed development reflects the land's capability to support the intensity of the use given any constraints resulting from topography, soil types, geotechnical factors, drainage, and natural conditions; and
8. Other matters as specified in the bylaws, including but not limited to Article V Performance Standards, and Article VI, Special Regulations.

Bylaws § 311(b)(1)–(8).

Applicant moves for summary judgement on all criteria Neighbors dispute the status of Old Codding Road and its safety. For the reasons set forth herein, we conclude that these disputes are material and, to the extent that they impact this Court's conclusions with respect to Bylaws § 331(b)(1), (2)², and (5), summary judgment is inappropriate on these criteria at this time. Thus, Applicant's motion for summary judgment is **DENIED IN PART** with respect to these subsections. We next turn to the remaining portions of § 311(b).

Bylaws § 311(b)(3) addresses the “[a]dequacy of landscaping, screening and setbacks to achieve greater compatibility and protection of adjacent property.” Applicant asserts that the lots each exceed the minimum applicable lot size and the house sites are located away from neighboring properties. Neighbors do not present any dispute as to the Project's compliance with § 311(b)(3) and, therefore, we conclude that the Project complies with this subsection.

Bylaws § 311(b)(4) addresses the utilization of renewable energy resources. Bylaws § 311(b)(6) addresses exterior lighting. Applicant asserts that these subsections are irrelevant at

² Applicant disputes whether § 311(b)(2) impacts safety outside of the proposed lots. Given the disputes of fact, and affording Neighbors all reasonable doubts and inferences, we decline to reach a conclusion on this assertion at this time.

this time as the application is for subdivision alone. Neighbors do not dispute this assertion. Therefore, we conclude that the Project complies with § 311(b)(4) and (6).

Bylaws § 311(b)(7) addresses “[w]hether the proposed development reflects the land’s capability to support the intensity of the use given any constraints resulting from topography, soil types, geotechnical factors, drainage, and natural conditions.” Applicant asserts that the lots are above the minimum lot size requirement, with house sites in the woods on relatively flat land. Further, to the extent that this criterion addresses physical impacts to the land, such a consideration would be more appropriate when construction is proposed. Neighbors do not dispute either of these assertions. We therefore conclude that the Project complies with Bylaws § 311(b)(7).

Bylaws § 311(b)(8) is a catchall addressing “[o]ther matters as specified in the bylaws, including but not limited to Article V Performance Standards, and Article VI, Special Regulations.” Applicant asserts, and Neighbors do not dispute, that the Project does not impact any performance standard. Further, neither party directs us to any other matter within the Bylaws that would be relevant under a § 311(b)(8) analysis. Thus, we conclude that the Project complies with § 311(b)(8).

For these reasons, we **GRANT** Applicant’s motion with respect to Question 6 as it relates to Bylaws § 311(b)(3), (4), (6), (7), and (8). We **DENY** Applicant’s motion with respect to Bylaws §§ 311(b)(1), (2), and (5).

IV. Question 15: Deer Wintering Area

Question 15 asks:

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?

Bylaws § 842(D)(2) requires consultation with or approval from DFW relative to deer wintering areas when a subdivision involves or is adjacent to mapped deeryards. It further requires that subdivisions be “designed, sited and undertaken in a manner compatible with the continued viability of the deeryard.” Bylaws § 842(D)(2).

Applicant asserts that it provided a FMP to DFW. The DFW provided comments on the FMP to protect deer habitat, and Applicant incorporated those comments into the amended FMP that is presently part of the application for the Project. Neighbors do not legitimately dispute this. Instead, Neighbors assert that the review provided was not up to Neighbors' desired standard and did not amount to "serious consideration." Neighbors do not point to any requirement that DFW review relative to deer wintering areas must include certain activities or scopes. Thus, we conclude that Applicant has consulted with DFW with respect to deeryards as required by Bylaws § 842(D)(2).

Turning to Applicant's compliance with the remainder of § 842(D)(2), Neighbors point to no actual alleged deficiency in the FMP or the Project's incompatibility with deeryard viability. Instead, Neighbors point to documents that indicate that deer and their habitat are to be protected. This is undisputed. Neighbors' sole issue with respect to the Project's compliance with § 842(D)(2) is that they assert that DFW should have provided more review on the FMP. They point to no aspect of the FMP that they assert is deficient. Absent such an allegation, we conclude that the material facts are not in dispute and Applicant has complied with Bylaws § 842(D)(2). Thus, we **GRANT** Applicant's motion with respect to Question 15.

V. **Question 16: Emergency Access**

Question 16 asks: "[i]s 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?"

The parties dispute whether Old Codding Road is sufficient to support emergency services. Applicant provides an affidavit from the Town Fire Chief concluding that Old Codding Road is adequate for emergency services. Neighbors dispute the Fire Chief's affidavit with an affidavit of Mr. Daniel Deitz, an appellant here and resident of Old Codding Road, whereby he asserts that, in a previous emergency, Old Codding Road was difficult for emergency services and can generally be a difficult road to traverse. Affording Neighbors the benefit of all reasonable doubts and inferences, we conclude that there is a genuine dispute of material fact such that summary judgment on Question 16 is improper at this time. Thus, we **DENY** Applicant's motion with respect to Question 16.

Conclusion

For the forgoing reasons, the material facts are not in dispute and Applicant is entitled to judgment as a matter of law on Questions 1 and 15, in their entirety, and Question 6 as it relates to Bylaws § 311(b)(3), (4), (6), (7) and (8). Accordingly, we **GRANT IN PART** Applicant's motion in this regard. Material facts are in dispute such that we **DENY IN PART** Applicant's motion for summary judgment on Questions 5 and 16, in their entirety, and Question 6 as it relates to Bylaws § 311(b)(1), (2), and (5). Thus, the remaining Questions before the Court are Questions 5, parts of Question 6 as limited in scope by this Court's decision, and Question 16.

This Court will set this matter for a status conference to establish any further pre-trial activities and a trial ready deadline.

Electronically signed June 30, 2023 in Burlington, Vermont pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink, appearing to read "Tom Walsh".

Thomas G. Walsh, Judge
Superior Court, Environmental Division