

STATE OF VERMONT
ENVIRONMENTAL COURT

	}	
In re: Belisle Planned Unit Development	}	
Conditional Use and Site Plan	}	Docket Nos. 60-4-08 Vtec and
(Appeals of Belisle)	}	81-4-08 Vtec
	}	

Decision and Order on Motions relating to Party Status

Appellant Travis Belisle appealed in Docket No. 60-4-08 Vtec from certain conditions imposed by the Zoning Board of Adjustment (ZBA) of the Town of Bakersfield in its grant of conditional use approval for a Planned Unit Development (PUD), and in Docket No. 81-4-08 Vtec appealed from a decision of the Planning Commission denying approval of the PUD site plan. Appellant is represented by Thomas Walsh, Esq.; the Town of Bakersfield has entered an appearance and has appointed David Ovitt as its representative.

In Docket No. 60-4-08 Vtec fourteen unrepresented persons have filed letters with the Court requesting party status. Stephanie G. Kossman filed a letter stating in full “[p]lease accept this as my notice to appear.” The following persons each filed letters requesting “to participate as an individual interested party:” Gregory J. Popa, James F. Rice, Nancy K. Hunt, Gary A. Foote, Alice B. Foote, Martha Hyne, John A. Hyne, Deanna M. Smith, and Charles P. Smith. Thomas Kontos, Kathleen Kontos, Patrick Evans, and Sharon Evans filed written requests “[a]s an interested party opposing” these appeals, requesting “to participate¹ in whatever hearings are held.” A total of ten of the persons entering their appearance in Docket No. 60-4-08 (all except the Evans and the Hynes) have also returned their forms for entry of appearance as an unrepresented party.

¹ It is not necessary to qualify for party status in order to be called to testify as a witness by a party. All testimony is held to the rules of evidence, whether presented by a party or a non-party witness.

In Docket No. 81-4-08 Vtec eleven unrepresented persons have filed letters or form entries of appearance requesting party status. Kathleen Kontos, Patrick Evans, and Sharon Evans filed written requests in both docket numbers “[a]s an interested party opposing” these appeals, requesting “to participate in whatever hearings are held.” The following persons each simply filed the form entries of appearance in Docket No. 81-4-08 Vtec: Robert J. Fanning, Carrie L. Fanning, Thomas Kontos, Stephanie Kossman, Gregory J. Popa, James F. Rice, Gary A. Foote, and Alice B. Foote.

Nancy K. Hunt, Martha Hyne, John A. Hyne, Deanna M. Smith, and Charles P. Smith did not file an entry of appearance in Docket No. 81-4-08 Vtec. Robert J. Fanning and Carrie L. Fanning did not file an entry of appearance in Docket No. 60-4-08 Vtec.

The Court issued a scheduling order after the May 19, 2008 conference, specifying deadlines of May 30, 2008 in each case for the potential “interested parties” to enter their appearances, to file the unrepresented party (“pro se”) forms, and to specify whether they were claiming party status as individuals or as a group in either case. A copy of the scheduling order is attached, and compare 24 V.S.A. § 4465(b)(3) and (b)(4), which were also attached to the scheduling order.

On June 12, 2008 Appellant moved to deny party status as individuals (that is, under § 4465(b)(3)) to Alice B. Foote, Gary A. Foote, Stephanie Kossman, Nancy K. Hunt, Gregory J. Popa, James F. Rice, Charles P. Smith, and Deanna M. Smith. Those individuals plus Thomas and Kathleen Kontos filed an opposition to that motion.

The opposition to individual party status does not dispute any of the facts asserted in Appellant’s motion, either as to the distances of the property owned or occupied by those individuals from the project tract of land, or as to the lack of potential for a particularized physical or environmental impact on their interests from the project. While it is not necessary to be an adjoining neighbor in order to show such an effect on one’s interests, none of the eight individuals asserted such an interest in opposition to the

motion. Accordingly, based on the foregoing, it is hereby ORDERED and ADJUDGED that Appellant's motion to deny party status to the listed eight persons as individual interested parties under 24 V.S.A. §4465(b)(3) is GRANTED; they are hereby dismissed as individual interested parties.

On June 24, 2008, Alice B. Foote, Gary A. Foote, Stephanie Kossman, Nancy K. Hunt, Gregory J. Popa, James F. Rice, Charles P. Smith, Deanna M. Smith, Thomas Kontos and Kathleen Kontos moved for the Court to recognize their group as having group party status (that is, under § 4465(b)(4)). Appellant filed an opposition to that motion. However, the persons requesting group party status under § 4465(b)(4) did not in their request address any of the requirements of 24 V.S.A. §4465(b)(4). In particular, they did not show that the group had existed as a group at the time of the municipal proceedings or had filed the required petition with the ZBA or Planning Commission. To the contrary, most of the persons now seeking standing as a group had specifically requested "individual interested party" status in the present appeals.

Accordingly, based on the foregoing, it is hereby ORDERED and ADJUDGED that the motion for party status as a group under 24 V.S.A. §4465(b)(4) is DENIED.

As of the disposition of these motions, Thomas Kontos, Kathleen Kontos, Sharon L. Evans and Patrick H. Evans remain as individual interested parties in both cases; Martha Hyne and John A. Hyne remain as individual interested parties in Docket No. 60-4-08 Vtec; and Robert J. Fanning and Carrie L. Fanning remain as individual interested parties in Docket No. 81-4-08 Vtec. Pursuant to the May 22, 2008 scheduling order this matter shall proceed to mediation.

Done at Berlin, Vermont, this 26th day of June, 2008.

Merideth Wright
Environmental Judge