

Regulations § 2.4 and Table 1) would also mark the end of our analysis, since all of the sixteen lots Appellants propose for residential development do not conform to this minimum lot size. However, the Town of Hinesburg ("Town") has authorized the development of undersized lots, when those lots are part of a PRD. The purpose stated by the Town for PRD development is "to allow for innovative and flexible design and development that will promote the most appropriate use of land" Zoning Regulations § 4.5.1.

The presence of substantial factual disputes in these proceedings becomes apparent when we review the standards against which PRD's must be judged. Zoning Regulations § 4.5.1 establish five criteria for PRD review, some or all of which are fact specific and in dispute in this appeal. Similarly, the Town cites the Court to standards in the Subdivision Regulations² that call for the Court to render determinations on facts that the Town disputes, including the suitability of Appellants' land for the proposed subdivision and development and whether improper drainage, steep slopes or other topographical issues may impede development. On such issues, the Town offers the affidavit of the Town of Hinesburg Planning and Zoning Director, who expresses concerns about the density of the proposed project, particularly in light of the topography of this site and the surrounding neighborhood. The Planning and Zoning Director asserts that the proposed development is inappropriate, due to wet areas on the site and other drainage issues; he makes reference to a history of "low-yielding, problematic [water supply] wells" and offers the assertion that "Appellants' assumption of an adequate water supply is unsupported." All these factual assertions, supported by affidavit, lead to our conclusion that material facts are in dispute, thereby making a trial necessary to render judgment.

Applicants correctly note that municipal review of their project is at its earliest stage, and that all that is afforded an applicant who secures approval at the sketch plan stage, is the authority to submit a preliminary plat application. Subdivision Regulations § 3.1. But both the Subdivision and Zoning Regulations call for the DRB in the first instance, and this Court on appeal, to render factual determinations at the sketch plan stage. Due to the Town's presentation of factual representations in conflict with Appellants' factual representations, we must conduct a trial to resolve those factual disputes. The trial now set for Wednesday, October 14, 2009 shall remain as scheduled. The parties should be prepared to discuss whether a site visit is appropriate, prior to trial, when the Court convenes the final pre-trial telephone conference on Thursday, October 8th, at 4:00 PM.

Thomas S. Durkin, Judge
October 6, 2009
Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:
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² The parties have not yet provided the Court with a copy of the Subdivision Regulations; we expect that a copy will be offered into evidence at trial. For the purposes of the pending motion, we rely upon the accuracy of the Town's reference to the applicable provisions of the Subdivision Regulations.