

Environmental Court of Vermont
State of Vermont

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E N T R Y R E G A R D I N G M O T I O N

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Wood Certificate of Occupancy
(Appeal from denial of COO)

Docket No. 176-8-07 Vtec

Title: Motion to Compel & Exact Sanctions on Appellee, No 8
Filed: February 20, 2009
Filed By: Appellants Marc & Susan Wood

Response filed: February 23, 2009
Filed By: Town of Hartford.

Reply Filed: February 23, 2009
Filed By: Appellants Marc & Susan Wood

☐ Granted ☒ Denied ☐ Other

It remains unclear to the Court what material relevance could be gleaned from Appellant's July 19, 1999 letter to the Town, which the Town now certifies that it does not have. In fact, the Town has further certified, through its attorney's representations, that the Town has no record of ever receiving the requested letter. In fact, the Town and its attorney now suspect the requested letter never was received.

In any event, Appellants' assertion now is that a letter from Mr. Wood, sent prior to the ZBA's approval of Phase I of his project, somehow should govern or be relied upon for his assertion that he was entitled to a certificate of occupancy before his project was completed. The actual ZBA approvals of his project provide for no such authority to issue a certificate of occupancy prior to completion of a portion of his project. We know of no legal authority for a ZBA in the first instance, or this Court on appeal, to rely upon an applicant letter for a permit condition not contained in the permit itself. We are therefore unable to determine the relevancy of the document Appellants now seek.

No party to litigation should be subject to sanctions or an order to compel delivery of a document for which they have diligently searched and have been unable to locate. We therefore decline to enter the requested order and sanctions against the Town or its attorney.

Thomas S. Durkin, Judge

June 10, 2009
Date

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Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

Appellant Marc & Susan Wood
Attorney William F. Ellis for Appellee Town of Hartford