

STATE OF VERMONT

SUPERIOR COURT
Vermont Unit

ENVIRONMENTAL DIVISION
Docket No. 91-7-15 Vtec

Camp Abnaki Sign

ENTRY REGARDING MOTION AND JUDGMENT ORDER

Title: Motion to Dismiss (Motion 1)
Filer: Town of North Hero
Attorney: Paul S. Gillies
Filed Date: August 10, 2015

Response in opposition filed on 08/12/2015 by Brady Baker, Appellant

The motion is GRANTED.

This matter relates to Camp Abnaki's newly erected sign at the intersection of South End Road and Abnaki Road in the town of North Hero, Vermont (Town). This sign replaced a preexisting sign that had been in that location for approximately 20 years. Although somewhat different in shape from the preexisting sign, the new sign has the same wording and square footage.

By letter dated July 27, 2015 and following a telephone conversation with Appellant Brady Baker, the Town of North Hero Zoning Administrator (ZA) declined to initiate an action requiring removal of the sign. In the letter, the ZA determined that the sign is exempt under the Town of North Hero Development Regulations § 7.9(B)(2), which allows non-advertising signs placed for directional and safety purposes.

On July 29, 2015 Mr. Baker appealed the ZA's decision to this Court. The Town now moves to dismiss the appeal, arguing that the proper venue to challenge the ZA's decision is by an appeal to the North Hero Development Review Board (DRB). In response to the Town's motion, Mr. Baker request that the appeal go forward because "this issue is not within the jurisdiction of the North Hero Development Review Board but within the jurisdiction of the State." Rather, Mr. Baker argues that the issue is governed by Title 10, Chapter 21 (titled Tourist Information Services) of the Vermont Statutes Annotated, 10 V.S.A. §§ 481–506.

Pursuant to 24 V.S.A. § 4465(a), "[a]n interested person may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the board of adjustment or development review board of that municipality or with the clerk of that municipality if no such secretary has been elected." 24 V.S.A. § 4465(a). This appeal to the appropriate municipal panel is "the exclusive remedy of an interested person with

respect to any decision or act taken, or any failure to act” by the administrative officer. 24 V.S.A. § 4472(a).

Further, the scope of an appeal before this Court is defined by the powers of the municipal panel below, and thus this Court’s review is limited by the substantive standards applicable in the proceeding before the ZA and the DRB on appeal. 10 V.S.A. § 8504(h); V.R.E.C.P. 5(g); In re Torres, 154 Vt. 233, 235 (1990) (“The reach of the superior court in zoning appeals is as broad as the powers of a zoning board of adjustment or a planning commission, but it is not broader.”). The ZA’s review of the issue was limited to the Town of North Hero Development Regulations, and does not include 10 V.S.A. §§ 481–506. As the ZA was without authority to address the legal issues presented by Mr. Baker’s Questions, this Court is without the authority to address such issues as well. The Court notes, however, that the Town’s decision that the sign is “exempt” from the permit requirement does not mean that the Town lacks jurisdiction over the issue. The Development Review Board has the legal authority to review the ZA’s decision that the sign is exempt.

As argued by the Town and pursuant to 24 V.S.A. §§ 4465(a) and 4472(a) the sole venue for Mr. Baker’s appeal is to the DRB and not this Court. For these reasons, we **GRANT** the Town’s motion to dismiss the appeal. This concludes the matter now before the Court. This Order is intended to satisfy the Court’s obligation under Vermont Rule for Civil Procedure 58.

Electronically signed on August 13, 2015 at 01:30 PM pursuant to V.R.E.F. 7(d).

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

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Appellant Brady Baker

Paul S. Gillies (ERN 3786), Attorney for Interested Person Town of North Hero