

STATE OF VERMONT

SUPERIOR COURT
Vermont Unit

ENVIRONMENTAL DIVISION
Docket No. 117-8-13 Vtec

City of Burlington v. Muir

ENTRY REGARDING MOTION

Title: Motion to Continue 8/29 Hearing (Motion 4)
Filer: Timothy A. Muir and Frances D. Muir
Attorney: Pro se
Filed Date: July 7, 2014

Response in Opposition filed on 07/22/2014 by Attorney Kimberlee J. Sturtevant for Plaintiff
City of Burlington

Now pending before the Court is a motion filed by Timothy A. Muir and Frances D. Muir (Defendants) to further continue the hearing in this matter set for August 29, 2014. The City of Burlington (City) has filed a response in opposition to Defendants' motion.

This matter relates to the City's August 23, 2013 Complaint and Motion for Preliminary and Permanent Injunctive Relief (Complaint) filed in this Court, alleging that Timothy A. Muir and Frances D. Muir (Defendants) have multiple zoning violations on their properties at 52 North Cove Road and 68 North Cove Road in the City of Burlington, Vermont. The City notified Defendants of the alleged violations in an August 24, 2012 Notice of Violation related to 52 North Cove Road and a September 14, 2012 Notice of Violation related to 68 North Cove Road. The Complaint alleges that Defendants have not remedied any of the multiple violations noticed by the City and that they did not appeal the notices of violation.

On November 22, 2013, after Defendants failed to timely answer the Complaint, this Court granted the City's Motion for Default Judgment and sent notice to all parties for a December 23, 2013 hearing to determine the appropriate remedies and penalties for the violations (remedies hearing). The remedies hearing was rescheduled for January 10, 2014 due to inclement weather, and a telephonic status conference was held instead on December 23. Defendants participated in the December 23 conference. Defendants filed a motion seeking to respond to the Complaint on January 6, 2014 and further argued for setting aside the default judgment during the January 10 hearing. The Court gave the City time to respond to Defendants' request and advised the parties that the remedies determination would be set for a hearing following the decision on the motion. On May 1, 2014, we denied Defendants' motion to set aside and shortly thereafter rescheduled the remedies hearing for May 30, 2014.

Defendant Timothy A. Muir appeared late at the May 30 remedies hearing. Shortly after his arrival, Mr. Muir requested a continuance to allow Defendants time to retain an attorney. On the record of the May 30 hearing, this Court advised Defendants that if they wished to be represented in this matter, they were to retain counsel and advise counsel to file an appearance with this Court by June 13, 2014, as well as to participate in a June 16, 2014 status conference to discuss rescheduling the remedies hearing. Defendants have not yet had an attorney file an appearance on their behalf.

On July 1, 2014, the Court set the remedies hearing for August 29, 2014. On July 7, 2014, Defendants filed the pending Motion for Continuance. In their motion, Defendants state:

On June 23, 2014, we received a positive response from the ACLU VT, and would like to be afforded the six weeks that is [sic] will take the ACLU to complete the initial review[] and possibly forward our complaint onto [sic] the ACLU 'Legal Advisory Panel'.

From May 30, the date of the remedies hearing at which Defendants requested additional time to retain counsel, to the rescheduled remedies hearing on August 29, Defendants will have had three months to identify and retain counsel. Furthermore, Defendants will have had well over six weeks for ACLU VT to review the matter; from the date Defendants apparently received a response from ACLU VT to the date of the rescheduled hearing.

This hearing has already been delayed multiple times, and this Court finds no reason to allow further delay. Defendants' motion to continue the August 29 hearing is therefore **DENIED**.

Defendants are directed to appear promptly at 9:00 a.m. on August 29, 2014 at the Costello Courthouse for the hearing to determine the appropriate remedies and penalties for the violations.

Electronically signed on July 23, 2014 at 04:00 PM pursuant to V.R.E.F. 7(d).

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

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Kimberlee J. Sturtevant (ERN 4778), Attorney for Plaintiff City of Burlington
Defendant Timothy A. Muir
Defendant Frances D. Muir