

STATE OF VERMONT

SUPERIOR COURT
Vermont Unit

ENVIRONMENTAL DIVISION
Docket No. 55-4-14 Vtec

Eagles Place, LLC Construction Application

ENTRY REGARDING MOTION

Title: Motion to Clarify Scope of Trial (Motion 4)
Filer: Ronald Wanamaker
Attorney: Pro Se
Filed Date: December 19, 2014

Response filed on 01/08/2015 by Attorney Mark G. Hall for Appellant Eagles Place, LLC
Response filed on 01/09/2015 by Attorney Kimberlee J. Sturtevant for Interested Person City of Burlington

Eagles Place, LLC (Applicant) applied for a permit from the City of Burlington Development Review Board (DRB) for redevelopment of the existing former Eagles Club building, located at 194 St. Paul Street, into a six-story apartment building, with ground-level commercial retail space. The DRB denied the application in a 31 page written decision issued on April 3, 2014. This decision contained a number of express positive findings, but ultimately denied the application based on a number of adverse findings. Applicant appealed that decision to this Court. Applicant has reached agreements resolving disputed issues with the City of Burlington and Allan S. Hunt and Frank Von Turkovich.

A group of 12 interested persons (Intervenors) intervened in the matter and generally oppose the issuance of a permit to Applicant. That group, through their designated spokesperson Ronald Wannamaker, now moves to clarify the scope of trial and requests an order from the Court allowing them to raise any issues in defense of the DRB's denial. Applicant and the City of Burlington (the City) both oppose this request arguing that the scope of appeal is limited to the Statement of Questions filed by the Applicant.

This Court's procedural rules dictate that in every appeal the appellant must file a Statement of Questions and that "[t]he appellant may not raise any question on the appeal not presented in the statement as filed, unless otherwise ordered by the court in a pretrial order" V.R.E.C.P. 5(f). Thus, "[a]s a general rule, 'the Environmental Court is confined to the issues raised in the statement of questions filed pursuant to an original notice of appeal.'" In re Jolley Assocs., 2006 VT 132, ¶ 9, 181 Vt. 190 (quoting In re Garen, 174 Vt. 151, 156 (2002)). Where additional interested persons seek to participate in an appeal filed by another they may do so but the issues before the Court remain limited to the statement of questions. Id. (noting that in Garen the Supreme Court concluded that "intervenors are permitted only to argue issues raised by a principal party"). "If a party wishes to determine the issues before the environmental court on appeal, the party must file a separate notice of appeal." Garen, 174 Vt. at 156. The rules governing appeals to the Environmental Division do not provide for an intervening party to augment the issues on appeal. Id. at 155; Jolley Assocs., 2006 VT 132, ¶ 9.

The only party to file a notice of appeal and a Statement of Questions was Applicant. The only issues before the Court, therefore, are those issues raised in that Statement of Questions. Intervenor's request for an order stating that they may raise any possible defenses to the DRB's decision, including those that are outside of Applicant's Statement of Questions, is therefore **DENIED**. The matter before the Court is limited to the three questions raised in Applicant's Statement of Questions, filed May 15, 2014.

Electronically signed on January 12, 2015 at 04:00 PM pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink that reads "Tom Walsh". The signature is written in a cursive, flowing style.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Mark G. Hall (ERN 2537), Attorney for Appellant Eagles Place, LLC
Kimberlee J. Sturtevant (ERN 4778), Attorney for Interested Person City of Burlington
Franklin L. Kochman (ERN 1682), Attorney for Interested Persons Allan S. Hunt and Frank Von Turkovich
Interested Person Jacob H. Webster
Interested Person Anne Geroski
Interested Person Liisa Reimann Rivera
Interested Person Thomas Simon
Interested Person Margaret S. Menten
Interested Person Ronald Wanamaker
Interested Person Norman Williams
Interested Person Jerrold Manock
Interested Person Marjorie Allard
Interested Person John (Jack) Menten
Interested Person Dan Goltzman
Interested Person Lucy Totten
Interested Person Emily Lee