

State of Vermont
Superior Court—Environmental Division

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ENTRY REGARDING MOTION

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In re Hale Mountain Fish & Game Club, Inc.

Docket No. 190-11-10 Vtec

(Appeal from Shaftsbury DRB determination on application for thirteen zoning permits)

Title: Motion to Remand (Filing No. 10)

Filed: March 30, 2011

Filed By: Jon S. Readnour, Attorney for Interested Persons Owen and Katherine Beauchesne

Response in Agreement filed on 4/4/11 by Robert E. Woolmington, Attorney for Town of Shaftsbury

Response in Opposition filed on 4/6/11 by James P.W. Goss, Attorney for Appellant/Applicant Hale Mountain Fish & Game Club, Inc.

☐ Granted

☒ Denied

☐ Other

This appeal follows the denial by the Town of Shaftsbury (“Town”) Development Review Board (“DRB”) of an application for approval of thirteen permits submitted by Hale Mountain Fish & Game Club, Inc. (“Hale Mountain”) concerning improvements on its property at 684 Rod and Gun Club Road. Hale Mountain appealed the DRB’s decision; neighbors Owen and Katherine Beauchesne and the Town appear as interested persons in this appeal.

Via the pending motion, the Beauchesnes request that we “remand[] this proceeding back to the Town of Shaftsbury with the requirement that [Hale Mountain] comply with the Town of Shaftsbury Zoning Bylaws.” (See Mot. for Remand 3, filed Mar. 30, 2011.) In its capacity as a party to this appeal, the Town states its agreement with the motion, requesting remand so that Hale Mountain can “submit a complete application for a zoning permit.” (See Town of Shaftsbury’s Resp. to Appellees’ Mot. for Remand 1, filed Apr. 4, 2011.)

It is within our discretion to remand, back to the appropriate decision-maker, an application arising in a de novo appeal of a municipal panel’s act or decision. See In re Maple Tree Place, 156 Vt. 494, 498–501 (1991); V.R.E.C.P. 5(i) (“At the request of the tribunal appealed from, the court . . . may remand the case to that tribunal for reconsideration.”). Situations in which remand may be appropriate include, among others, when an issue arises on appeal that was not presented to the lower tribunal, or when our interpretation of a zoning ordinance would be aided by the input of the administrative body responsible for applying it. See Timberlake Assocs. v. City of Winooski, 170 Vt. 643, 644 (2000) (mem.) (citing Maple Tree Place, 156 Vt. at 500).

Here, the Beauchesnes provide us with no reason to remand Hale Mountain’s application. They argue that Hale Mountain’s application is incomplete but fail to provide citations to the Town of Shaftsbury Zoning Bylaw (“Bylaw”) that would confirm such alleged deficiencies. Also, the objective sought by the Beauchesnes appears similar to a resolution on the merits—the principal issue raised in this appeal is the completeness of Hale Mountain’s application and its conformance to the Bylaw. Were we to grant remand, we would be resolving this issue prior to hearing arguments from all of the parties.

For the reasons stated above we conclude that remand would serve little purpose here. In the absence of a specific request from the tribunal appealed from—the Shaftsbury DRB in this instance—we

decline to exercise our discretion to order that the pending application be remanded. We therefore **DENY** the Beauchesnes' motion to remand.

Thomas S. Durkin, Judge

August 23, 2011

Date

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Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

James P.W. Goss, Attorney for Appellant/Applicant Hale Mountain Fish & Game Club, Inc.

Jon S. Readnour, Attorney for Interested Persons Owen and Katherine Beauchesne

Robert E. Woolmington, Attorney for Town of Shaftsbury