

STATE OF VERMONT

SUPERIOR COURT
Vermont Unit

ENVIRONMENTAL DIVISION
Docket Nos. 68-5-14 Vtec
69-5-14 Vtec
& 70-5-14 Vtec

Hannaford SD Revision Application, Aubuchon SP Revision Application, Automotion SP Revision Application

ENTRY REGARDING MOTION

Title: Motion Party Status under 5(d)(2) (Motion 3)
Filer: Catherine Goldsmith
Attorney: James Allan Dumont
Filed Date: July 9, 2014

No response filed

The motion is GRANTED.

Martin's Foods of South Burlington (Appellant) appeals three May 6, 2014 Town of Hinesburg Development Review Board (DRB) decisions which separately denied site plan revisions for the Firehouse Plaza and two adjoining parcels. Concurrently with the filing of their cross-appeals, Bethany Ladimer, Heidi Simkins, Jean Kiedaisch, Rachel Kring, Natacha Liuzzi, Art Weis, Brian Bock, James Goldsmith, Wendelin Patterson, Sandy Rivkin, Catherine Goldsmith, Chuck Reiss, Sally Reiss, Mary Beth Bowman, John Kiedaisch, and Robert Thiefels (Cross-Appellants) have moved to be recognized as appellants with party status under Rule 5(d)(2) of the Vermont Rule for Environmental Court Proceedings (V.R.E.C.P.) and 10 V.S.A. § 8504(b)(1).

Interested persons (as defined in 24 V.S.A. § 4465) who have participated in the municipal regulatory proceeding (as defined in 24 V.S.A. § 4471) may appeal a decision of a municipal panel to this Court. 10 V.S.A. § 8504(b)(1). Cross-Appellants assert that they are interested persons under 24 V.S.A. § 4465(b)(4), which defines the term as:

Any ten persons who may be any combination of voters or real property owners within a municipality . . . who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue . . . allege that any relief requested by a person under [Title 24], if granted, will not be in accord with the policies, purposes, or terms of the plan or by-law of that municipality.

This section further requires that the petition "must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal." 24 V.S.A. § 4465(b)(4). Section 4471 defines "participation in a local regulatory proceeding" as "offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding." 24 V.S.A. § 4471(a).

Cross-Appellants, all voters in the Town of Hinesburg, signed a petition that was submitted to the DRB claiming an interest in the denial of the application because granting the application would violate Hinesburg's zoning by-laws, town map, and town plan. The petition names Cross-Appellants' attorney, James DuMont, as the group's representative. This satisfies the requirements for Cross-Appellants to be afforded interested person status under 24 V.S.A. § 4465(b)(4). Kalakowski v. John A. Russell Corp., 137 Vt. 219, 222–23 (1979). Because their attorney submitted legal arguments in writing, orally argued before the DRB, and examined witnesses at the DRB proceedings on their behalf, Cross-Appellants "participated" in the proceeding as that term is defined in the statute. See 24 V.S.A. § 4471(a).

We therefore conclude that Cross-Appellants are proper parties before the Court under 10 V.S.A. § 8504(b)(1). As such, they are to be automatically accorded party status unless the Court determines otherwise. V.R.E.C.P. 5(d)(2). Here, Cross-Appellants filed their motion to ensure their status before the Court. For the reasons stated in greater detail above we **GRANT** Cross-Appellants' Motion for Party Status.

Electronically signed on February 04, 2015 at 01:24 PM pursuant to V.R.E.F. 7(d).

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

Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Christopher D. Roy (ERN 1352), Attorney for Appellant Martin's Foods of So.Burlington
Ernest M. Allen (ERN 3968), Attorney for Interested Person Town of Hinesburg
James Allan Dumont (ERN 1948), Attorney for Cross Appellants Catherine Goldsmith, Sally & Chuck Reiss, Mary Beth Bowman, Jean Kiedaisch, John Kiedaisch, Bethany Ladimer, Simkins, Rachel Kring, Natacha Liuzzi, Art Weis, Brian Bock, James Goldsmith, Wendelin Patterson, Robert Thiefels, and Sandy Rivkin