

**State of Vermont  
Superior Court—Environmental Division**

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**ENTRY REGARDING MOTION**

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**In re Lake Champlain Bluegrass Festival JO**  
**(Act 250 Jurisdictional Opinion)**

**Docket No. 204-11-10 Vtec**

Title: Motion to Dismiss (Filing No. 1)

Filed: February 14, 2011

Filed By: Liam L. Murphy, Attorney for Appellees/Applicants Steven Palmer and Haybale Entertainment, LLC

Response in Opposition filed on 2/23/11 by Joseph F. Cahill, Jr., Attorney for Appellants Rene R. Prairie and Louise Prairie

Reply filed on 4/1/11 by Liam L. Murphy, Attorney for Appellees/Applicants Steven Palmer and Haybale Entertainment, LLC

☐ Granted

☐ Denied

☒ Other

The Court is currently in the process of reviewing the parties' pleadings on the pending motion and conducting its own legal research. In the course of those deliberations, we concluded that it is appropriate to convert the pending motion to dismiss to a motion for summary judgment on the question of the appellants' standing to appeal. See V.R.C.P. 12(b) ("If, on a motion . . . to dismiss . . . , matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . ."). Here, Appellants Rene R. Prairie and Louise Prairie have submitted an affidavit with their response to the motion to dismiss, providing evidence outside of the pleadings that we will consider as we rule on the pending motion.

We believe that we have sufficient legal memoranda and factual representations to decide the motion as one requesting summary judgment. However, we want to give the parties the opportunity to submit any further legal memoranda or affidavits that they would like the Court to consider. See V.R.C.P. 12(b) (directing that when a trial court converts a pending motion to one requesting summary judgment, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56"). We therefore ask that the parties complete such filings by Wednesday, May 4.

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Thomas S. Durkin, Judge

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April 26, 2011  
Date

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Date copies sent to: \_\_\_\_\_

Clerk's Initials \_\_\_\_\_

Copies sent to:

Joseph F. Cahill, Jr., Attorney for Appellants Rene Prairie, Jr. and Louise Prairie

Liam L. Murphy, Attorney for Appellees Steven Palmer and Haybale Entertainment, LLC

John H. Hansen, Attorney for the Vermont Natural Resources Board/Land Use Panel

Appellee Loren Palmer