

# STATE OF VERMONT

SUPERIOR COURT  
Vermont Unit

ENVIRONMENTAL DIVISION  
Docket No. 1-1-14 Vtec

## Lancaster SD Application

### ENTRY REGARDING MOTION

Count 1, Municipal DRB Subdivision (1-1-14 Vtec)

Title: Motion to Compel (Motion 1)

Filer: Hugh Lancaster

Attorney: Douglas L. Molde

Filed Date: August 12, 2014

Response filed on 09/08/2014 by Attorney Richard E. McCormick for Appellant Larry Cota  
Opposition

#### **The motion is GRANTED IN PART and DENIED IN PART.**

Denise and Larry Cota (Appellants) appeal the decision of the Town of Fletcher (Town) Development Review Board (DRB) of December 4, 2013 granting Subdivision Application S13-02 by Hugh and Eva Lancaster (Applicants) for property located on North Road, Fletcher, Vermont. Now pending is Applicants' motion pursuant to Vermont Rule of Civil Procedure (V.R.C.P.) 36(a) to compel discovery relating to several requests for admission served upon both Appellants and the Town. Both Appellants and Applicant have moved for attorney's fees with respect to the costs of prosecuting this motion and responding to it. A telephonic hearing was conducted on the record in Costello Courthouse in Burlington on November 24, 2014.

Applicants are represented by Douglas L. Molde, Esq. Appellants are represented by Richard E. McCormick, Esq. The Town is represented by Chad V. Bonanni, Esq. After allowing the parties to each present their respective arguments and clarification of some facts concerning the pending application, the Court issued its decision on the pending motion. This Order is to provide a summary of the Court's conclusions. To the extent the reader wishes to further review the reasoning for the Court's decision, the reader is referred to the record of the November 24, 2014 hearing.

Applicants propounded several requests for admission to Appellants and the Town on April 30, 2014. The Town supplied responses to the requests on May 13, 2014; all parties agree that the portion of the motion seeking an order to compel admissions by the Town is now **MOOT**.

Appellants' responses to several of the requests indicated that they were without sufficient information to form an opinion on them. Pursuant to Rule 36(a), Appellees moved for this Court to determine the sufficiency of these answers. In rendering our decision, we look to that Civil Rules for guidance: "An answering party may not give lack of information or

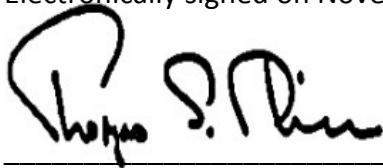
knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.” Id.

After the parties presented their arguments and concerns on the record, the Court issued an order requiring Applicants, within thirty days of this Order (i.e.: no later than **December 24, 2014**), to file the subdivision application and maps or plats that are the subject of this appeal. The Court also ordered that, by **January 13, 2015**, Appellants clarify the issues to be considered by the Court by identifying the factual foundation of their assertion that Applicants have created four or more lots by means of subdivision in the relevant time period: between August, 2009 and August, 2013.

Both Applicants’ and Appellants’ requests for attorney’s fees are **DENIED**.

**So ordered.**

Electronically signed on November 24, 2014 at 02:26 PM pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", is written over a horizontal line.

Thomas S. Durkin, Judge  
Environmental Division

Notifications:

Richard E. McCormick (ERN 3752), Attorney for Appellants Denise and Larry Cota  
Chad V. Bonanni (ERN 4155), Attorney for Interested Person Town of Fletcher  
Douglas L. Molde (ERN 3955), Attorney for Appellee Hugh and Eva Lancaster