

## STATE OF VERMONT

SUPERIOR COURT  
Vermont Unit

ENVIRONMENTAL DIVISION  
Docket No. 124-8-14 Vtec

North Country Sportsmen's Club Fill Material
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### ENTRY REGARDING MOTION

Title: Motion to Amend Notice of Appeal (Motion 1)  
Filer: North Country Sportsmen's Club  
Attorney: Hans Huessy  
Filed Date: November 7, 2014

Response filed on 11/26/2014 by Attorney Paul S. Gillies for Interested Person Town of Williston

Reply filed on 12/03/2014 by Attorney Hans Huessy for Appellant North Country Sportsmen's Club

#### **The motion is DENIED.**

North Country Sportsmen's Club ("NCSC") obtained a discretionary permit (permit # 14-04) authorizing grading and filling activities on NCSC's property located at 99 Gun Club Road in the Town of Williston, Vermont. The permit was issued by written decision of the Town of Williston Development Review Board ("the DRB"), dated October 8, 2013 and included, as a condition, that NCSC was required to use fill of a certain quality. In response to an inquiry from Mona and Leo Boutin ("the Boutins"), the Town of Williston Zoning Administrator ("ZA") stated the opinion that permit 14-04 did not direct NCSC to remove any existing fill material present on the property prior to the DRB's approval of permit 14-04; the Boutins subsequently appealed the ZA's opinion to the DRB. In a decision dated June 24, 2014, the DRB overturned the ZA's opinion, directed the ZA to issue a Notice of Violation ("NOV") for NCSC's failure to comply with the condition, and instructed NCSC to remove all non-conforming fill material from the property.

On August 18, 2014 NCSC timely appealed that decision to this Court ("the initial appeal"). On August 19, 2014 the ZA issued an NOV as directed by the June 24, 2014 decision, which NCSC timely appealed and the DRB affirmed in a decision dated November 3, 2014 ("the NOV decision").

NCSC now moves to amend its Notice of Appeal ("NOA") to include an appeal of the NOV decision. The Town of Williston ("the Town") opposes the motion. NCSC is represented by Hans Huessy, Esq., the Boutins are represented by Craig Weatherly, Esq., and the Town is represented by Paul Gillies, Esq.

We will grant a motion to amend pleadings when justice so requires if “there is no prejudice to the objecting party, and when the proposed amendment is not obviously frivolous nor made as a dilatory maneuver in bad faith.” See Bevins v. King, 143 Vt. 252, 254 (1983) (citing Tracy v. Vinton Motors, Inc., 130 Vt. 512 (1972)); V.R.C.P. 15(a).

NCSC argues that because both the initial appeal and the NOV decision arise from the same set of facts and circumstances—the proper interpretation of the permit condition that required NCSC to use fill of a certain quality—amending the NOA to include an appeal of the NOV decision would not change the issues raised or require revision of NCSC’s Statement of Questions. We agree that granting NCSC’s motion to amend the NOA would not expand the scope of the issues now before the Court and therefore conclude that such an amendment is not obviously frivolous. Furthermore, because the amendment would result in a single appeal, we conclude that it was not made as a dilatory maneuver in bad faith.

The Town, in its motion opposing the amendment, failed to demonstrate any prejudice following the proposed amendment to the NOA, and for this reason, we consider only whether justice warrants allowing NCSC to amend its NOA. As articulated by this state’s Supreme Court in Bivens v. King, the reasons underlying a liberal amendment policy are threefold and include providing the maximum opportunity for each claim to be decided on its merits, giving notice of the nature of the claim or defense, and enabling the parties to assert matters that were overlooked or unknown at earlier stages in the proceeding. 143 Vt. 252, 254 (1983), citing 6 C. Wright & A. Miller, *Federal Practice & Procedure* §§ 1471, 1473 (1971). Granting the pending motion would not advance any of these measures.

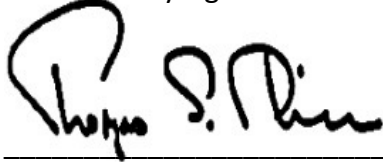
Although the NOV originated from the DRB’s June 24, 2014 decision, which is the subject of the initial appeal, the NOV is itself a separate enforcement action and was affirmed by the DRB in a separate decision upon appeal by NCSC. NCSC, as the appellant before the DRB in that matter, was entitled to appeal the DRB’s NOV decision to this Court. If it desired the two appeals be heard together, NCSC could have then moved to coordinate or consolidate the two related appeals of the separate DRB decisions. However, NCSC chose instead to file the present motion, thereby failing to appeal the NOV decision separately and preserving its rights in the event the Court denied the motion now pending. As such, we find that justice does not require that NCSC be able to amend its notice of appeal for one decision to add an appeal of a separate decision that it chose to not timely appeal.

For the reasons stated above, NCSC’s motion to amend the NOA is **DENIED**. Despite its failure to separately appeal the NOV within the time frame established under V.R.E.C.P. 5(b)(1) in order to preserve its right to challenge the DRB’s decision, it is within this Court’s authority to extend the time for filing an appeal if such relief is requested by motion demonstrating excusable neglect or good cause. Pursuant to V.R.A.P. 4(d)(1), such a motion must be filed within 30 days of the time prescribed by the Rules. V.R.A.P. 4(d)(1).

With the appeal period for the DRB’s November 3, 2014 decision expiring on December 3, 2014, NCSC needed to file a motion requesting an extension no later than January 3, 2015, a deadline which has since passed. However, considering the date on which NCSC filed the pending motion, which was well within the statutorily prescribed limits for an appeal to this Court, and the Court’s own delay of nearly three months in responding to that motion, we

extend the deadline for requesting an extension of time to file a separate appeal pursuant to V.R.A.P. 4 by an additional five business days from the date of this decision. Due to NCSC's failure to preserve its right by filing a separate appeal of the DRB's November 3 decision, we do not waive the filing fee. NCSC therefore has until **Wednesday, February 4, 2015** to file such a motion and if they fail to do so, their right to appeal the NOV decision will be waived.

Electronically signed on January 28, 2015 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

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

Thomas S. Durkin, Judge  
Environmental Division

Notifications:

Hans Huessy (ERN 1813), Attorney for Appellant North Country Sportsmen's Club

Interested Person Bruce A. Ryan

Craig Weatherly (ERN 1368), Attorney for Interested Persons Leo and Mona Boutin

Paul S. Gillies (ERN 3786), Attorney for Interested Person Town of Williston

Interested Person Michael J. Brissett

Interested Person Jessica M. Brissett

Interested Person Bruce A. Ryan