

State of Vermont  
Superior Court – Environmental Division

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ENTRY REGARDING MOTION

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**In re Saman ROW Approval**

**Docket No. 176-10-10 Vtec**

**(Appeal from Development Review Board ROW application approval)**

Title: Motion to Strike (Filing No. 7)

Filed: November 4, 2011

Filed By: Elizabeth H. MaGill, Attorney for Appellant William Basa

No Response filed

X Granted

\_\_\_ Denied

\_\_\_ Other

William Basa ("Appellant") appeals a 2010 decision by the Town of Plainfield Development Review Board ("the DRB") granting an application for approval of a fifty-foot right-of-way in Plainfield, Vermont to Peter Saman ("Applicant"). Because this is an on-the-record appeal, the parties have filed appellate briefs with this Court.

Appellant now moves to strike Applicant's Reply to Appellant's Response to Applicant's Brief ("Applicant's Reply"), contending that it asks the Court to consider matters that were not part of the record below. Specifically, Applicant's Reply seeks to use an approved 2011 subdivision application in an effort to contradict Appellant's argument that an approval of Applicant's right-of-way is linked to his desire for subdivision approval.

In an on-the-record appeal, we will consider only the record before us, which consists of "the original papers filed with the municipal panel [and] any writings or exhibits considered by the panel in reaching the decision appealed from . . . ." V.R.E.C.P. 5(h)(1)(A); see also V.R.A.P. 10(a); State v. Brown, 165 Vt. 79, 82 (1996) ("The documents were not among the original papers and exhibits on file in the trial court and consequently are not part of the record on appeal.").

Here, the DRB issued its determination in 2010, and therefore the 2011 subdivision application was not before it. Accordingly, the subdivision application is not part of the record below, and we cannot consider it.

We therefore **GRANT** Appellant's Motion to Strike. The Court will not consider Applicant's Reply when making its final determination on the merits.

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Thomas S. Durkin, Judge

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November 9, 2011

Date

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

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

Copies sent to:

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