STATE OF VERMONT

ENVIRONMENTAL COURT

In re: Appeals of Shantee Point Estates, Inc. } Docket Nos. 169-9-98 Vtec, 144-8-99 Vtec, and 152-8-99 Vtec

Decision and Order on Pending Motions

In Docket No.169-9-98 Vtec, Appellant Shantee Point Estates, Inc. appealed from a decision of the Zoning Board of Adjustment (ZBA) of the Town of St. Albans upholding a Notice of Violation for constructing a road without site plan approval. In Docket No.144-8-99 Vtec, Appellant appealed from the July 6, 1999 decision of the Planning Commission denying site plan approval for the construction of the road. In Docket No.152-8-99 Vtec, Appellant appealed from the July 15, 1999 decision of the ZBA upholding a Notice of Violation for constructing the road without subdivision approval. The parties agree that these three cases should be consolidated, and that the time to appeal for all three cases will run from the last final decision in any of them. There is a related Franklin Superior Court case, Docket No. S 313-97 FC, which has been heard before Judge Wright in conjunction with the Environmental Court cases, but has not been consolidated with them. Appellant is represented by Liam M. Murphy, Esq. and Lisa B. Shelkrot, Esq.; the Town is represented by David A. Barra, Esq.; and Intervenor/Interested Person Stephen Dana is represented by Brian P. Hehir, Esq.

Appellant has moved the Court to reconsider its grant of party status to Mr. Dana in all three cases, arguing that his interest is adequately represented by that of the Town. That motion is DENIED. Mr. Dana's interest is not adequately represented by that of the Town. As an adjoining landowner, and one served by the disputed segment of road, he has a property interest in the effect of the disputed road on his property and his tenants, which differs from the interest of the Town in enforcement of the standards in the zoning regulations. The difference in interest is particularly apparent in the decisions appealed from, in which the Town sought to condition approval of the new road on Appellant's

reaching some agreement or accommodation with Mr. Dana.

Factual findings made in the June 1999 decision in Docket No. 169-9-98 Vtec and in the December 15, 1999 decision in the Franklin Superior Court case, Docket No. S 313-97 FC, are hereby incorporated by reference to avoid repetition.

Docket No.169-9-98 Vtec

In June 1999 the Court granted summary judgment in favor of the Town with regard to the "connector segment" of the road at issue in these cases, and ruled that Appellant had to apply for and obtain site plan approval for the"connector segment." That decision denied summary judgment on the question of whether the remainder of the new road needed site plan approval, ruling that that question depended on whether the old portion of the road running along the lake could be discontinued, which in turn depended on whether the disputed segment of Shantee Point Road was a private or a town road. The Court ruled that if it is a private road, then site plan approval is not required for the new road other than the connector segment.

The December 1999 decision in S 313-97 FC determined that the old portion of the road was a private road. That decision effectively also concludes the remainder of Docket No. 169-9-98 Vtec. Appellant has moved for a final order and judgment to be entered in this Docket. While the time has not yet expired for the other parties' response to that motion, it seems at variance with the parties' agreed position that no order in any of the three consolidated cases should be entered or should be effective for purposes of calculating the appeal period, until the last order is issued. Accordingly, the Court does not hereby act on the Motion for a final order, and will hold it in abeyance until the order to be issued after the hearing in Docket No. 144-8-99 Vtec.

Docket No.144-8-99 Vtec

The hearing scheduled for tomorrow, January 18, 2000, will address any evidence necessary to this appeal, regarding whether site plan approval should be granted for the connector segment portion of the new road.

Docket No.152-8-99 Vtec

The parties have all moved for summary judgment on the legal issue posed in Docket No. 152-8-99 Vtec: whether subdivision approval is required for the new road.

This question depends simply upon whether the construction constituted "the construction or extension of a road or driveway to serve more than two lots," as subdivision approval is required for such land development under §200(b) of the Subdivision Regulations. The new segment of the road runs at the boundary of Intervenor's and Appellant's property. Appellant owns all the property served by the new segment of the road except Mr. Dana's property further down the point. Appellant argues that "lot" is defined by property ownership, so that the road only serves at most two lots and the Subdivision Regulations are not triggered. The Town and Intervenor argue that leased lots should be considered as lots within §200(b) so that the road serves many more than two lots.

The term "lot", when not in a PUD or PRD, is defined in Part V of the Town's Regulations in pertinent part as "a parcel of land occupied or to be occupied by only one principal structure . . . ." This is a somewhat unusual definition in that it does not mention the form of ownership[1] of the parcel. However, we must interpret a Town's zoning and subdivision regulations if possible to make sense of them as a whole, and to give meaning to each part.

The various leased lots in Appellants' property meet the definition of lot, as they are each occupied (and the few vacant ones are designed to be occupied) by one principal camp or house. For the purposes of the subdivision regulations, they must each be counted in determining if the road construction serves more than two lots. Regardless of whether one counts only the lots adjoining the new road segment, or also includes the land farther down the point, the road construction serves more than two lots.

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[1] The Town also notes that Act 250 (10 V.S.A. §6001) defines "lot" as "any undivided interest in land, whether freehold or leasehold . . . . However, nothing in the Town's regulations imports the Act 250 definition.

Accordingly, Appellant's Motion for Summary Judgment is DENIED and Summary Judgment is hereby GRANTED in favor of the Town and in favor of Intervenor Dana. Subdivision approval is required for the new road, because it serves more than two lots. This decision concludes Docket No. 152-8-99 Vtec; however, as discussed above, this order will become final when the last order is issued in these three consolidated cases.

Done at Barre, Vermont, this 17th day of January, 2000.

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Merideth Wright
Environmental Judge