

STATE OF VERMONT  
ENVIRONMENTAL COURT

In re: Appeal of  
David Jackson

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Docket No. 165-9-99 Vtec

Decision and Order on Motion to Dismiss

This is the first of three related appeals<sup>1</sup> now pending in Environmental Court. In Docket No. 165-9-99 Vtec, Appellant David Jackson appealed from an August 8, 1999 decision of the Zoning Board of Adjustment (ZBA) of the Town of Castleton. Appellant is represented by John D. Hansen, Esq.; Appellees Gerald and Patricia McCue are represented by E. Patrick Burke, Esq.; Interested Person Agnes Earls has appeared and represents herself; and the Town is represented by John S. Liccardi, Esq.

This appeal relates to Appellant's request to the ZBA for clarification if the height of the building approved in an unappealed February 1998 permit for his property in Castleton. Appellees have moved to dismiss this appeal on the grounds that Appellant is bound by the February 1998 permit as it was not appealed. 24 V.S.A. §4472(d).

Appellees are correct that Appellant is bound by the terms of the February 1998 permit. However, as in Town of Bennington v. Hanson-Walbridge Funeral Home, Inc., 139 Vt. 288(1981), while the unappealed zoning permit must now stand unchallenged, the scope or extent of that permit may be the subject of further decisions of a ZBA, and may thereafter be subject to the judicial review Appellant seeks in the present appeal.

Accordingly, based on the foregoing, Appellees' Motion to Dismiss Docket No. 165-9-99 Vtec is DENIED. Docket No. 165-9-99 Vtec is consolidated with the other two

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<sup>1</sup> The other two appeals are: Appeal of McCue, Docket No. 258-12-99 Vtec, in which David and Gloria Jackson have filed a cross-appeal, and Appeal of Jackson, Docket No. 43-2-00 Vtec.

appeals: Appeal of McCue, Docket No. 258-12-99 Vtec, in which Mr. Jackson has filed a cross-appeal, and Appeal of Jackson, Docket No. 43-2-00 Vtec.

The merits of all three appeals are scheduled to be heard on July 7, 2000. Any other pretrial motions should be filed on or before June 2, 2000, so that they may be briefed and decided before the scheduled hearing. For the parties' information, any postponement of the scheduled hearing would result in a rescheduled date after August 16, 2000.

Done at Barre, Vermont, this 22<sup>nd</sup> day of May, 2000.

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Merideth Wright  
Environmental Judge