

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 20-3-20 Vtec

Costco Land Use Permit Amendment Appeal

ENTRY REGARDING MOTIONS

Title: Motion for Preliminary Injunction and Stay (Motion 4)
Petition to Stay under Rule 42 of the Act 250 Rules (Motion 5)

Filer: R.L. Vallee, Inc.

Attorney: Alexander J. LaRosa

Filed Date: May 16, 2020

Response filed on 05/20/2020 by Attorney Evan P. Meenan for the Natural Resources Board;
(NRB takes no position)

The Clerk shall schedule a MOTION HEARING.

This matter relates to a gas station proposed by Costco Wholesale Corporation (“Costco”) on property located as 218 Lower Mountain Drive in Colchester. R.L. Vallee, Inc. (“Vallee”) appeals Land Use Permit #4C0288-19F issued to Costco by the District #4 Environmental Commission, which was an amendment to pre-existing Land Use Permit #4C0288-19C. Two motions are before the Court: Vallee’s Motion for Preliminary Injunction and Stay, and Vallee’s Petition for Stay under Rule 42 of the Act 250 Rules. In both motions, Vallee seeks to enjoin Costco from operating its gas station during the pendency of this appeal. Vallee also requests that a hearing on the preliminary injunction request be combined with a merits hearing within 60 days.

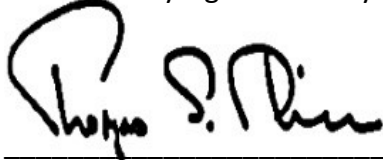
Pursuant to V.R.C.P. 65(b), “no preliminary injunction shall be issued without notice and hearing.” A hearing will also assist the Court in evaluating Vallee’s various stay requests. The Court’s ability to hold evidentiary hearings has been impacted by the ongoing judicial emergency declared in response to COVID-19. Under the directives from the Vermont Supreme Court, in-person hearings are strictly limited. Hearings by telephonic or video conference will be possible, upon approval by the Chief Superior Judge.

There is additional uncertainty regarding the Court’s ability to hold full merits hearings within the next 60 days. Therefore, we decline to combine the hearing on Vallee’s motions with a merits hearing until we receive further guidance from the Supreme Court. The parties are asked to advise the Court if they would consent to a combined preliminary injunction and merits hearing in a telephonic or video conference.

In the interim, Vallee's motions will be set for a hearing by telephonic or video conference within the next three weeks, and a notice of hearing will be issued once the Court receives the necessary approval. If it becomes impossible to combine the hearings, the merits hearing will be scheduled in consultation with the parties, once the Court has begun the process of scheduling and rescheduling cases for trial.

So Ordered.

Electronically signed on May 27, 2020 at Burlington, 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, Superior Judge
Environmental Division

Notifications:

Alexander J. LaRosa (ERN 5814), Attorney for Appellant R.L. Vallee, Inc.

Evan P. Meenan (ERN 1632), Attorney for the Natural Resources Board

David L. Grayck (ERN 4510), Attorney for Additional Appellant Timberlake Associates, LLP

Mark G. Hall (ERN 2537), Attorney for Cross Appellant Costco Wholesale Corp.