

STATE OF VERMONT
SUPERIOR COURT - ENVIRONMENTAL DIVISION

**Moran Plant Site Plan &
Major Impact Development**

Docket No. 4-1-12 Vtec

Judgment Order

On January 9, 2012, nine (9) individuals (Appellants) appealed the City of Burlington (City) Development Review Board's (DRB) August 17, 2010 approval of a project known as the Moran Plant Site Plan and Major Impact Development (Moran Plant Project). Along with the appeal, Appellants filed a Motion for Party Status with a proffer of evidence; however, they provided no evidence through affidavits or otherwise. Appellants' basis for their right to file the appeal well beyond the 30-day deadline is that the City failed to provide notice pursuant to 24 V.S.A. Section 4464(a)(2).

In response, the City filed a Motion to Dismiss the appeal and an Opposition to Party Status. The City supported its filings with affidavits and exhibits.

On February 9, 2012, the Court held an initial status conference followed immediately by a motions hearing. The hearing was held at the Superior Court, Civil Division, Burlington, Vermont; Judge Thomas G. Walsh presiding. Attorney Samuel Hoar, Jr. appeared on behalf of Appellants. Attorneys Kimberlee J. Sturtevant and Gregg Mayer appeared on behalf of the City.

At the hearing, the City called two witnesses who provided testimony and further evidence relating to issues of notice and adjoining landowner identification. None of the Appellants appeared, testified or provided evidence. Counsel for Appellants offered argument and cross-examined the City's witnesses.

At the conclusion of the evidentiary hearing, the Court took a brief recess to conduct its research and deliberations. Judge Walsh returned to the courtroom to announce his findings of fact and conclusions of law on the record of the hearing. This Judgment Order memorializes the legal determinations made at the hearing.

The Court concluded that Appellants' appeal of the DRB's August 17, 2010 decision approximately 477 days after the decision was rendered was beyond the 30-day deadline. Thus, Appellants had the burden of proving that their late appeal should be allowed. The Court

noted Vermont's strong policy favoring finality in land use permitting. The Court recognized Attorney Hoar's proffer that Appellants received no notice of the 2010 DRB proceedings as required by 24 V.S.A. §4464(a)(2). The Court noted that as the 2010 DRB approval was for conditional use, notice was required under 24 V.S.A §4464(a)(1). The Court then found, based upon the evidence in the parties' pleadings and presented at the hearing, that the City complied with the notice requirements of 24 V.S.A. §4464(a)(1). With respect to Appellant Vera B. Brodman, whose written notice was returned undeliverable, the City sent this written notice to Ms. Brodman's address on record at the City, and therefore the Court found that the City had undertaken reasonable efforts to give notice in compliance with 24 V.S.A. §4464(a)(5). Thus, the Court concluded that Appellants received adequate notice. As such, the Court concluded that Appellants' appeal of the August 17, 2010 DRB approval was out of time. The Court **DENIED** Appellants' Motion for Party Status and **GRANTED** the City's Motion to Dismiss, thereby concluding the case.

This completes the proceedings before this Court in this matter.

Done at Berlin, Vermont this 15th day of February, 2012.

Thomas G. Walsh,
Environmental Judge