

STATE OF VERMONT

SUPERIOR COURT
Vermont Unit

ENVIRONMENTAL DIVISION
Docket No. 41-3-14 Vtec

Fielder Conditional Use Application

ENTRY REGARDING MOTION

Count 1, Municipal DRB Conditional Use (41-3-14 Vtec)

Title: Motion to Stay (Motion 1)

Filer: Shaun and Laura Fielder

Attorney: Charles L. Merriman

Filed Date: March 19, 2014

Response filed on 04/09/2014 by Attorney David W. Rugh for Interested Person Town of Calais

The motion is GRANTED IN PART and DENIED IN PART.

The pending appeal concerns an application by Laura and Shaun Fielder (“Applicants”) for conditional use approval for their planned improvements to their small undeveloped lot on Nelson Pond Road in the Town of Calais. Applicants appealed the decision of the Town of Calais Development Review Board (“DRB”) to grant their application, albeit with several conditions that caused Applicants some concern.

Applicants filed a timely appeal from the DRB’s decision of February 18, 2014 and moved to stay the directives contained in the DRB’s conditional approval. The Court held a hearing on Applicants’ motion for stay on April 29, 2014, after which the Court conducted a site visit with the parties and their attorneys present. The site visit provided the Court with helpful context for the factual offers of proof that were made at the motion hearing.

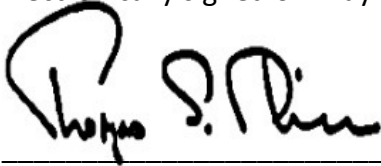
Based upon the offers of proof and legal arguments presented at the motion hearing, the Court enters the following directives:

1. Condition 1 of the DRB’s decision of February 18, 2014 (“DRB Decision”), which directs that Applicants present a revised plan to the DRB by July 15, 2014, is hereby **STAYED** until further order of this Court.
2. Condition 2 of the DRB Decision, directing that Applicants provide revised erosion control plans to the DRB by July 15, 2014 is also hereby **STAYED**, except that Applicants are hereby directed to maintain the slope stabilization and erosion control measures already completed on the property in such a manner as to mitigate the flow of storm water or ground water off of their property that causes erosion.

3. Condition 3, directing that Applicants present to the DRB a restoration plan for the areas on their property disturbed by their unpermitted construction activity is hereby **STAYED** until further order of this Court.
4. As to Condition 4, Applicants are directed to provide the Town, by July 15, 2014, with their erosion control plan for their property and shall maintain the site pursuant to that erosion control plan until further order of this Court.
5. The parties' presentations appeared to show that Applicants mistakenly assumed that when the Town Selectboard approved their curb cut request, that approval had also been provided for Applicants' plan to place a small camper within several feet of the roadway that borders Nelson Pond. Our hearing confirmed that Applicants' assumption in this regard was incorrect. Applicants are directed to not place a camper within the 150-foot setback of Nelson Pond until they receive authority to do so from either this Court or the DRB.

So ordered.

Electronically signed on May 06, 2014 at 02:31 PM pursuant to V.R.E.F. 7(d).



Thomas S. Durkin, Judge
Environmental Division

Notifications:

Charles L. Merriman (ERN 3809), Attorney for Appellants Shaun and Laura Fielder
David W. Rugh (ERN 1507), Attorney for Interested Person Town of Calais