

STATE OF VERMONT

SUPERIOR COURT
Environmental Division Unit

ENVIRONMENTAL DIVISION
Docket No. 116-10-19 Vtec

Town of Essex Maintenance Class 4 Roads

DECISION ON MOTION

Lisa R. LaBerge appeals the Town of Essex (Town) Selectboard's September 9, 2019, adoption of a policy concerning the level of maintenance the Town will perform on class 4 town highways. The Town asks that the matter be dismissed pursuant to Rule 12(b)(1) of the Vermont Rules of Civil Procedure as the Environmental Division lacks subject matter jurisdiction to hear the appeal. Where a party challenges the court's subject matter jurisdiction we accept "all uncontroverted factual allegations of the complaint" as true, and construe those allegations in the "light most favorable to the nonmoving party." Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245 (citing Jordan v. State Agency of Transp., 166 Vt. 509, 511 (1997)). Ms. LaBerge has not filed in reply to the Town's motion to dismiss.

Ms. LaBerge initiated this action by filing a Notice of Appeal, including a document listing her concerns, on or about October 4, 2019. That filing clearly shows that Ms. LaBerge disagrees with the Town's policy, but it does not conform to the requirement that appellants submit a Statement of Questions within 21 days of filing their notice of appeal. See V.R.E.C.P. 5(f) (issues must be presented in the Statement of Questions). No Statement of Questions has been filed to date.

Even considering the issues in Ms. Laberge's initial filing as if they were presented in a Statement of Questions, we find that this Court lacks subject matter jurisdiction. For context on the municipal action at issue, we turn to the Town policies attached to the notice of appeal and the Town's motion to dismiss.

The Town of Essex Municipal Code (Municipal Code) includes a policy "that no improvements or maintenance will be made by the town to any Class 4 roads not currently being maintained, as of the date of adoption of the ordinance codified in this chapter." Municipal Code § 9.02.030. The stated purpose of the policy "is to ensure that the expense of upgrading these roads to accommodate additional development is not borne by the residents of the town." Id. In addition, "it is the policy of the town to prohibit development on Class 4 highways until they

are upgraded by other interested parties to the public works department highway specifications.” Id. § 9.02.040.

On September 9, 2019, according to the parties’ filings, the Town Selectboard adopted a new policy concerning Class 4 roads (the Policy). Ms. LaBerge provided a copy of the Policy, which purports to “clarify and better define” the Town’s responsibilities under Municipal Code § 9.02.030 “to reflect changes required under State of Vermont Act 64.” It appears that the Selectboard acted pursuant to 19 V.S.A. § 310(b) which states: “Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town.” Ms. LaBerge seeks to “appeal the adoption of the Policy . . . by the Town of Essex Selectboard.”

The Environmental Division of the Vermont Superior Court is a court of limited jurisdiction. Our jurisdiction includes:

- (1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220;
- (2) jurisdiction of matters arising under 24 V.S.A. chapter 61, subchapter 12 and chapter 117; and
- (3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.

4 V.S.A. § 34. This appeal, more accurately described as a challenge to a selectboard decision, does not fall within any of the categories above.

Chapter 201 of Title 10 concerns enforcement actions brought by the Secretary of Natural Resources and is inapplicable to the present action. Chapter 220, regarding consolidated environmental appeals, is inapplicable because the Town Selectboard’s decision to adopt the Policy was not a municipal planning or zoning decision pursuant to Chapter 117 of Title 24.¹ See 10 V.S.A. § 8503(c). Apart from appeals, this Court has jurisdiction over “suits that challenge the procedural enactment of municipal planning laws” under 24 V.S.A. Chapter 117. Gould v. Town of Monkton, 2016 VT 84, ¶ 16, 202 Vt. 535. The Policy does not fall under Title 24, rather it appears the Town Selectboard acted pursuant to its authority over town highways under Title 19. See 19 V.S.A. §§ 303, 310(b). Finally, a class 4 town highway maintenance policy is not a solid waste ordinance such that Chapter 61 of Title 24 would apply, and it does not involve the revocation of a permit such that Chapter 151 of Title 10 would apply.

¹ We also note that the Selectboard’s decision here is not a “certificate of approved location for salvage yards” under 24 V.S.A. Chapter 61, Subchapter 10. See 10 V.S.A. § 8503(f).

With respect to Chapter 117 of Title 24 in particular, appeals to this Court must be from an “appropriate municipal panel”; defined as “a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review.” 24 V.S.A. §§ 4471(a), 4303(3). The Selectboard, as a legislative body, was not engaging in “development review” when adopting the Policy in question. See 24 V.S.A. § 4303(3); 24 V.S.A. § 4415(d) (authorizing a legislative body to issue development permits under certain conditions). Therefore, the Selectboard decision could not have come from an “appropriate municipal panel” for purposes of an appeal under Title 24, Chapter 117. See 24 V.S.A. § 4471; see also In re Saman ROW Approval, No. 176-10-10 Vtec., slip op. at 1 (Vt. Super. Ct. Envtl. Div. Sept. 2, 2011) (Durkin, J.) (holding that, ordinarily, “[c]hallenges to selectboard decisions and actions do not come before this Court.”). Taking all of Ms. LaBerge’s assertions as true, this Court is without jurisdiction to address the issues she raises. Jurisdiction may be with the Civil Division of the Superior Court.

We conclude that the Town Selectboard’s action adopting the Policy did not arise under 10 V.S.A. Chapters 201 and 220; 24 V.S.A. Chapter 61, Subchapter 12 and Chapter 117; or 10 V.S.A. Chapter 151. Thus, Ms. Laberge’s appeal does not fall within this Court’s limited jurisdiction under 4 V.S.A. § 34. The Town’s motion to dismiss pursuant to V.R.C.P. 12(b)(1) for lack of subject matter jurisdiction is **GRANTED**. This matter is **DISMISSED**.

A Judgment Order accompanies this Decision. This completes the current proceedings before this Court.

Electronically signed on December 09, 2019 at 11:16 AM pursuant to V.R.E.F. 7(d).



Thomas G. Walsh, Judge
Superior Court, Environmental Division