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**Ouellette Subdivision Appeal**

**DECISION ON MOTIONS**

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This is an appeal of a decision by the Town of Wolcott Development Review Board (“DRB”) declining to conduct subdivision review related to an application submitted by Sarah Ouellette (“Applicant”) for a two-lot subdivision of her property located at 3191 East Hill Road and 3274 East Hill Road, Wolcott, Vermont (together, the “Property”). The Property is bisected by East Hill Road, with 28-acres on the west side of the road (“western tract”) and a 9-acre tract on the east side (“eastern tract”). The DRB concluded that no subdivision approval was necessary because the Property was already subdivided by virtue of East Hill Road. Bill Cotton, Jason Lavorgna, and Douglas Sandvig (“Appellants”) are neighboring landowners who appealed the DRB’s decision to this Court.

Applicant is represented in this matter by Julia J. Compagna, Esq. Appellants each represent themselves. Carlye Townsend is an interested party represented by Daniel A. Seff, Esq.<sup>1</sup>

Before the Court are several pending motions. First, Appellants move to stay the Property’s subdivision. Second, Appellants move to join Ms. Townsend as a necessary party. Lastly, Applicant files a motion to dismiss Appellants’ motions, effectively an opposition to the two preceding motions. We also address several jurisdictional issues with Appellants’ Statement of Questions.

**I. Appellants’ Motion to Stay**

An appeal from a decision issued by a municipal panel does not automatically stay that decision. See 10 V.S.A. § 8504(f); V.R.E.C.P. 5(e). While the Court may issue a discretionary stay at the request of a party or on its own motion as “necessary to preserve the rights of the parties,” V.R.E.C.P. 5(e), such stays are an “extraordinary remedy appropriate only when the movant’s right to relief is clear.” In re Howard Ctr. Renovation Permit, No. 12-1-13 Vtec, slip op. at 1 (Vt. Super. Ct. Env’tl. Div. Apr. 12, 2013) (Walsh, J.). The appropriateness of a stay request depends on four factors:

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<sup>1</sup> Shortly after this appeal was filed, Ms. Ouellette conveyed the western tract to Carlye Townsend.

“(1) [the moving party's] likelihood of success on the merits; (2) irreparable harm to the moving party should the stay be denied; (3) substantial harm to other parties should the stay be granted; and (4) the best interests of the public.” In re 110 E. Spring St. CU, No. 11-2-16 Vtec, slip op. at 5 (Vt. Super. Ct. Env'tl. Div. Apr. 22, 2016) (Walsh, J.).

Appellants ask this Court to stay any action that would subdivide the Property. Specifically, Appellants request that this Court somehow revoke the transfer of the western tract to Ms. Townsend and prohibit any future transfer of either tract during the pendency of this action. However, Appellants' motion is not accompanied by any supporting law, facts, or analysis that demonstrates why a stay is warranted under the requisite factors set forth above. This is inconsistent with the Vermont Rules of Civil Procedure's requirement that parties support motions made to the Court. V.R.C.P. 7(b)(1) (A motion “shall state with particularity the grounds therefor including a concise statement of the facts and law relied on . . .”). Thus, Appellants' motion is not up to the standards required by V.R.C.P. 7(b)(1) because Appellants do not articulate why a stay is warranted under the applicable four-factor test. Accordingly, this motion is **DENIED**.<sup>2</sup>

## **II. Appellants' Motion to Add Necessary Party**

Appellants next move to join Ms. Townsend. Appellants' motion states that Ms. Townsend is a necessary party because she now owns the western tract that is at issue in this appeal. On June 21, 2023, Ms. Townsend filed a notice of appearance as an interested person in this matter and is now before the Court. Therefore, we need not rule upon Appellants' motion. Thus, Appellants' motion to join Ms. Townsend is **MOOT**, due to her status as an Interested Person in this appeal.

## **III. Applicant's Motion to Dismiss**

Applicant did not timely respond to Appellants' motion to stay. Applicant retained counsel four months after this appeal arose, then filed an untimely motion to dismiss, asking the Court to dismiss Appellants' motion to stay and motion to add a necessary party. This is not the proper form of a 12(b)(6) motion to dismiss. Regardless, because the Court denied the aforementioned motions, Applicant's motion to dismiss is **MOOT**.

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<sup>2</sup> In reaching this conclusion, we recognize that Appellants are not represented by legal counsel, and we consider this motion in light of that fact. Specifically, when parties are self-represented, this Court is careful to ensure they are not “taken advantage of by strict application of the rules of procedure.” Town of Washington v. Emmons, 2007 VT 22, ¶ 7, 181 Vt. 586 (mem.). Even with self-represented litigants, however, we must enforce the rules of civil procedure, and the rules governing this Court, equitably. Bloomer v. Gibson, 2006 VT 104, ¶ 14, 180 Vt. 397. Thus, a certain degree of latitude is necessary, but this Court cannot offer legal advice or extrapolate arguments from a self-represented litigant's filings. Duval CU Denial, No. 93-8-18 Vtec, slip op. at 1 (Vt. Super. Ct. Env'tl. Div. March 14, 2019) (Walsh, J.).

#### IV. Statement of Questions

In reviewing the above motions, the Court also reviewed Appellants' Statement of Questions. Appellants raise several issues that are not within this Court's jurisdiction. The Court has the power, and the duty, to raise its lack of subject matter jurisdiction sua sponte, regardless of how the issue comes to the Court's attention. See V.R.C.P. 12(h)(3); In re G.R. Enters., Inc., No. 27-2-08 Vtec, slip op. at 2 (Vt. Envtl. Ct. May 12, 2008) (Wright, J.). In addition, this Court has discretion to order an appellant to clarify or narrow its statement of questions. See In re Atwood Planned Unit Dev., 2017 VT 16, ¶ 14, 204 Vt. 301. We will do so when necessary to ensure that "the claims have enough specificity to notify the opposing party and the court of the issues on appeal." Id. (citing In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 20, 188 Vt. 262; In re Gulli, 174 Vt. 580, 583 (2002) (mem.)).

Question 1 asks the Court to stay any sale or subdivision of the Property while this appeal is pending. This essentially asks for the same remedy as Appellant's motion to stay. We do not have the authority to prevent or reverse the sale of private property. The Environmental Division is a Court of limited appellate jurisdiction, which does not extend to disputes over private property rights. In re Woodstock Cmty. Trust & Hous. Vt. PRD, 2012 VT 87, ¶ 40, 192 Vt. 474, 494; see also 4 V.S.A. § 34 (defining the scope of this Court's jurisdiction). Further, we can only review those issues the municipal panel below had the authority to address when considering the original application. See In re Transtar, LLC, No. 46-3-11 Vtec, slip op. at 4 (Vt. Super. Ct. Envtl. Div. May 24, 2012) (Durkin, J.). Here, the DRB only considered an application for a subdivision permit. Since we cannot grant the relief requested, we hereby **DISMISS** Question 1 of Appellant's Statement of Questions.<sup>3</sup>

It is difficult to assess our jurisdiction over many of Appellants' questions because they lack specificity and citations to the applicable zoning regulations. Question 2 asks whether the Property has already been subdivided. This Question is ambiguous and does not give sufficient notice as to what Appellants argue resulted in the Property's subdivision. Questions 4 through 8 lack citations to the applicable zoning regulations, making it difficult to assess whether these Questions are relevant to this appeal or are outside the scope of the Court's jurisdiction in this appeal. In order to have jurisdiction, the alleged zoning violations and associated issues must relate to the subdivision review application presently before the Court. Therefore, Appellants need to cite to the applicable provisions in the zoning regulations to demonstrate that these issues are properly before the Court or risk having

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<sup>3</sup> We note that any sale of the Property's tracts while this appeal is pending is at the Applicant's own risk. Should we find that the Property has not been subdivided by virtue of East Hill Road, the Property would remain unsubdivided as a single parcel and Applicant would require approval to subdivide the Property.

these Questions dismissed. Accordingly, we order Appellants to **AMEND** and **CLARIFY** Questions 2, 4, 5, 6, 7, and 8 to provide notice of the specific issues being raised and to include specific citations to the applicable Regulations.

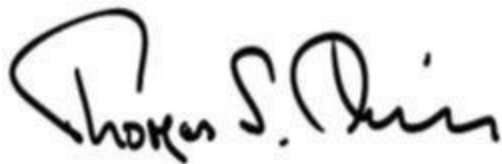
Questions 3, 9, and 10 appear to ask us to issue an impermissible advisory opinion. Question 3 asks whether subdivision review is eliminated if a road bisects a property. Without more specificity, this reads as a hypothetical scenario that is not properly before the Court. However, this may not have been Appellants' intent. We therefore direct that Appellants must specify whether this Question refers to East Hill Road and the Property, or to roads and property divisions in general. If the latter, the Question requests an impermissible advisory opinion that the Court is without jurisdiction to issue. See Baker v. Town of Goshen, 169 Vt. 145, 151–52 (1999). Thus, we order Appellants to **AMEND** and **CLARIFY** Question 3.

Finally, Questions 9 and 10 ask us to determine whether the May 11, 2023 sale from Applicant to Ms. Townsend constituted a subdivision of the Property. This issue was not before the DRB as the sale postdated the DRB's decision on appeal and is not relevant to our review of the pending application. See In re Maple Tree Place, 156 Vt. 494, 500 (1991) (noting that the Court is limited “to consideration of the matters properly warned as before the local board.”). Because the May 11, 2023 sale was not before the DRB, to rule on its import in the present action would be advisory. Thus, we **DISMISS** questions 9 and 10.

### Conclusion

For the foregoing reasons, we **DENY** Appellants' motion for a stay and **DENY** Appellants' motion to add a necessary party. We also **DENY** Applicant's corresponding motion to dismiss. Finally, we **DISMISS** Questions 1, 9, and 10 from Appellants' Statement of Questions. We also order Appellants to clarify Questions 2 through 8 by **Tuesday, October 10, 2023**, by citing to the applicable provisions in the town's zoning regulations that afford this Court the ability to review the issues raised therein. Should Appellants fail to file amended Questions by this date, the Questions will be dismissed.

Electronically signed at Newfane, Vermont on Wednesday, September 27, 2023, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive, slightly slanted style.

Thomas S. Durkin, Superior Judge

Superior Court, Environmental Division