

**FILED**

State of Vermont  
Superior Court – Environmental Division

APR 17 2012

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ENTRY REGARDING MOTION  
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VERMONT  
SUPERIOR COURT  
ENVIRONMENTAL DIVISION  
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In Re Bjerke Zoning Permit Denial

Docket No. 72-5-11 Vtec

Title: Motion for Summary Judgment (Filing No. 1)

Filed: December 12, 2011

Filed by: Applicant/ Appellant Alan A. Bjerke


Response filed on January 19, 2012 by Interested Person City of Burlington

Granted                       Denied                       Other

Alan A. Bjerke (Applicant) appeals the City of Burlington Development Review Board's (the DRB) denial of his application for a zoning permit to make certain modifications to property he owns in the City of Burlington, Vermont. In support of his appeal to this Court, Applicant submitted a Statement of Questions containing three Questions. Currently pending before the Court is Applicant's motion for summary judgment on Question 1, which asks whether his permit application was deemed approved under the City of Burlington Comprehensive Development Ordinance (Ordinance) Section 3.2.5 and 24 V.S.A. § 4448(d).

For the reasons detailed in this Court's March 22, 2012 Decision, we conclude that the undisputed facts indicate that the City took appropriate action on Applicant's application within 30 days of its submission. Thus, the application is not deemed approved under 24 V.S.A. § 4448(d) or the Ordinance. In our March 22, 2012 Decision we **DENIED** Applicant's motion for summary judgment on Question 1. We also advised the parties that we were inclined to conclude that the City is entitled to judgment as a matter of law on Question 1. However, pursuant to the new version of V.R.C.P. 56, we gave Applicant notice and a reasonable time to respond to the Court's intended action. Neither party filed a response to our March 22, 2012 Decision.

Accordingly, for the reasons detailed in this Court's March 22, 2012 Decision, we **GRANT** summary judgment in favor of the City of Burlington on Question 1 of Applicant's Statement of Questions. Applicant's Questions 2 and 3 remain pending before this Court, and the Court will now set this matter for trial. On or before **Friday, April 27, 2012**, parties shall provide to the Court, in writing, their dates of unavailability for a one-day trial in July and August, 2012.

  
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Thomas G. Walsh, Judge

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April 17, 2012  
Date

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Date copies sent to: 4/17/12  
Copies sent to:

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Clerk's Initials: lcc

- Attorney Alan A. Bjerke, representing himself
- Kimberly J. Sturtevant, Attorney for Interested Person City of Burlington