

**State of Vermont
Superior Court - Environmental Division**

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ENTRY REGARDING MOTION

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**In re Circus Smirkus Camp CU Permit
(Appeal from Greensboro DRB conditional use determination)**

Docket No. 107-8-13 Vtec

Title: Motion to Remand (Filing No. 1)

Filed: September 16, 2013

Filed By: Interested Persons John and Jill O'Brien

Response in Opposition filed on 10/03/13 by Applicant Circus Smirkus

Response in Opposition filed on 10/04/13 by Town of Greensboro, Vermont

Granted

Denied

Other

This matter is an appeal and cross-appeal from the July 17, 2013 decision of the Town of Greensboro, Vermont Development Review Board ("DRB") granting site plan and conditional use approval to Circus Barn, Inc., d/b/a Circus Smirkus for the construction of a so called commercial enterprise at 409 and 421 Breezy Avenue in Greensboro. The initial status conference in this matter has yet to be conducted. However, Jill and John O'Brien filed a motion to remand on September 16, 2013.¹ We address that motion here and, as a consequence of our ruling, have directed the Court Manager to reschedule the initial conference for this appeal.

As grounds for their motion to remand, the O'Briens allege that they are abutters to the land upon which Circus Smirkus seeks to develop the commercial enterprise. The O'Briens also allege that they never received notice of the proceedings before the DRB. Lastly, the O'Briens state that they would like the matter to be remanded to the DRB so that they can testify about road conditions, traffic, noise, and staff housing issues.

Circus Smirkus opposes the O'Briens' motion for remand, asserting that notice of the DRB proceedings was sent to the O'Briens. Furthermore, Circus Smirkus argues that as part of our *de novo* review of this appeal, the O'Briens would have the opportunity to file a motion to intervene and participate in this appeal.

The Town of Greensboro also opposes the O'Briens' motion. In support of its position, the Town provided an affidavit of the Town Zoning Administrator ("ZA"), Kristen Leahy, wherein Ms. Leahy affirms that she sent notification of the DRB proceedings to the O'Briens at

¹ Attorney Paul S. Gillies, counsel for several appellants, filed a motion to withdraw due to a conflict of interest and a motion to continue the initial conference to allow the appellants to retain new counsel. We have postponed addressing the motion to withdraw, to allow an opportunity for alternate counsel to be identified. The initial conference, originally scheduled for September 30, 2013, has now been rescheduled for November 18, 2013.

the most recent address the O'Briens provided to the Town, for purposes of the Town Grand List.

Development review actions before the DRB require notice pursuant to 24 V.S.A. § 4464(a)(1) for conditional use review and § 4464(a)(2) for site plan review. Based upon the uncontroverted affidavit of the ZA, we find that the Town complied with the notice requirements of 24 V.S.A. § 4464(a) in that notice was mailed to the O'Briens. Specifically, the ZA sent written notice to the O'Briens at the last address they provided to the Town, an action which we consider a reasonable effort to give notice in compliance with 24 V.S.A. § 4464(a)(5). Thus, we conclude that the O'Briens received adequate notice. As such, we **DENY** the O'Briens' motion for remand.

This matter shall proceed to the initial pre-hearing conference scheduled for November 18, 2013, per the attached Notice of Hearing.

Thomas S. Durkin, Judge
October 17, 2013
Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:

Copies sent to:

- Attorney Paul S. Gillies for Appellant Sarah Dillon
- Attorney Paul S. Gillies for Appellant Sheila Dillon
- Attorney Paul S. Gillies for Appellant Laurence I. Hewes III
- Attorney Paul S. Gillies for Appellant Mary Hewes
- Attorney Paul S. Gillies for Appellant Laurence I. Hewes IV
- Attorney Paul S. Gillies for Appellant Patrick D. Hewes
- Attorney Paul S. Gillies for Appellant Mary C. D. Hewes
- Attorney Paul S. Gillies for Appellant Thomas M. Woodward, Jr.
- Attorney Paul S. Gillies for Appellant Barbara Woodward
- Attorney Paul S. Gillies for Appellant Lucile Brink
- Attorney Paul S. Gillies for Appellant C. Diane Irish
- Attorney Gerald R. Tarrant for Cross Appellant Sarah Williams
- Attorney Gerald R. Tarrant for Cross Appellant Rachel Williams
- Attorney Gerald R. Tarrant for Cross Appellant Susan Williams
- Attorney Brian P. Monaghan for Interested Person Town of Greensboro
- Attorney Mark G. Hall for Appellee Circus Barn Inc., d/b/a Circus Smirkus
- Interested Person John O'Brien
- Interested Person Jill O'Brien
- For Informational Purposes Only Joseph Gresser