STATE OF VERMONT

ENVIRONMENTAL COURT

In re: Appeal of Charlotte Greenewalt	} } } } }	Docket No. 247-12-98 Vtec

Decision and Order on Motion for Partial Summary Judgment

Appellant appealed from a November 1998 decision of the Development Review Board (DRB) of the Town of Dover granting Appellee-Applicant Rodney Williams, Jr. an amendment to a Planned Unit Development to expand a veterinary clinic. Appellant is represented by Stephen R. Phillips, Esq.; Appellee-Applicant is represented by William M. McCarty, Jr., Esq.; the Town is represented by Joseph S. McLean, Esq. Appellant has moved for partial summary judgment on Question 2 of the Statement of Questions: whether the decision must be reversed and remanded because "the minutes appear to reflect that a member of the Board with a conflict of interest voted."

Appellant has also moved to strike Appellee-Applicant's response to the motion for summary judgment because it was filed out of time, and has moved to strike the "Correction and Clarification" filed by Appellee-Applicant on December 29, 1999 as irrelevant. Both motions to strike are DENIED. Appellee's response was filed out of time, but by only a few days in a holiday season, and no prejudice has resulted to Appellant. The "Correction and Clarification" is merely a short additional argument, which will be considered as a reply memorandum. V.R.C.P. 56.

Appellee-Applicant applied to amend the Tollgate Village Planned Unit Development to expand a veterinary clinic. The Dover Development Review Board was a seven-member board, with one alternate. In November 1998 Pamela Bedson was a duly-elected alternate to the Dover DRB. Five members were present, including Pamela Bedson, constituting a quorum for the November 11, 1998 DRB meeting at which the application was considered and acted upon. Other unrelated agenda items were also considered at that hearing.

Pamela Bedson identified herself at the hearing as having a conflict of interest because she was a tenant renting space in the Tollgate Village PUD. She stated that she was disqualified and would be "sitting out" the hearing on Appellee-Applicant's application. She participated as a DRB member on other unrelated matters at the November 11, 1998 hearing. She did not participate in the hearing or deliberation of the DRB on the application at issue in the present case, although she remained in the room. She in fact abstained from the vote on the application at issue in the present case.

The original minutes of the November 11, 1998 hearing stated that the vote on the application "was unanimous." The vote in fact was a unanimous vote of the members who participated, not including Ms. Bedson. The original version of the minutes did not state that Ms. Bedson had abstained from voting on the application. After this appeal raised the issue, on April 28, 1999 the DRB voted to amend the November 11, 1998 minutes to include a statement of Ms. Bedson's abstention. Both versions of the minutes reflect that Ms. Bedson participated in the unanimous vote to go into deliberative session and in the unanimous vote to go out of deliberative session.

Appellant argues that it was not sufficient for the disqualified member to state her disqualification and that she would not participate in the hearing of or deliberations on the application. Rather, Appellant argues that Ms. Bedson's presence during the hearing and the deliberative session, despite her clearly recusing herself, "cast the shadow of partiality and bias across the proceedings."

It is true that the appearance of fairness is often as important as is actual fairness to retain public confidence in local government. However, the procedure required of local planning commissions and zoning and development review boards does not yet require that a member who has disqualified herself from participating on one application in an evening's meeting must absent herself from the entire meeting to make that recusal effective. Compare, Appeal of Reynolds, Docket No. 196-12-97 Vtec (Vt. Envtl. Ct., Nov. 19, 1998) (on appeal to Vermont Supreme Court, Docket No. 1998-580).

Accordingly, based on the foregoing, Appellant's Motion for Summary Judgment is

DENIED. This matter will be set for a hearing on the merits[1] of the application; a telephone conference to discuss the scheduling of that hearing will be set in the morning of Monday, February 7, 2000.

Done at Barre, Vermont, this 25th day of January, 2000.

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Merideth Wright
Environmental Judge

[1] Appellant states that she is "not categorically opposed" to the proposed use and that "given a fair hearing upon remand" she believes that the DRB "would adopt her proposed conditions as reasonable." She will have the fullest opportunity to present her proposed conditions to the Court, which will hear this matter de novo.