

STATE OF VERMONT
ENVIRONMENTAL COURT

In re: Appeal of
Edward Deptula

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Docket No. 9-1-00 Vtec

Decision and Order on Motion to Dismiss Town as Party

Appellant Edward Deptula appealed from a decision of the Zoning Board of Adjustment (ZBA) of the Town of Montgomery granting a permit to Appellee-Applicant Joseph Nastasi to operate a machine shop. Appellant represents himself; Appellee-Applicant also represents himself; the Town of Montgomery is represented by Amanda S.E. Lafferty, Esq. Appellant has moved to dismiss the Town as a party.

Appellant argues that the Town has no standing to participate as an interested party, because neither the town plan nor a town ordinance is "at issue" in this case, citing Sabourin v. Town of Essex, 146 Vt. 419, 420-21 (1985) and Rossetti v. Chittenden County Transportation Authority, 165 Vt. 61, 66 (1990). In those decisions, the Vermont Supreme Court ruled that a town may not bring an appeal challenging the wisdom of a zoning decision. However, a town may appeal (and may participate in an appeal brought by another) if there is a claim that the ZBA "exceeded its authority or misconstrued a bylaw provision." Rossetti v. Chittenden County Transportation Authority, 165 Vt. 61, 66 (1990). The Court stated that "[w]ithout such a claim, we do not believe the bylaw was "at issue" as that term is used in 24 V.S.A. §4464(b)(2)."

With such a claim, therefore, a bylaw is "at issue" to give the Town standing as an interested person. In the present case, Appellant claims that the ZBA misconstrued the bylaw's provisions defining "home occupation" and "light industry," and requests damages and court costs. These claims give the Town standing to participate as a party in the appeal.

Accordingly, based on the foregoing, Appellant's Motion to Dismiss the Town as an Interested Party is DENIED. We will hold a conference BY TELEPHONE in this matter on

June 15, 2000 to discuss scheduling this appeal for a hearing.

Done at Barre, Vermont, this 22nd day of May, 2000.

Merideth Wright
Environmental Judge