Environmental Court of Vermont State of Vermont

ENTRY REGARDING REQUEST In re Main St. Place LLC Demolition Permit Docket No. 163-8-09 Vtec (Appeal from Derby ZBA determination on appeal from Zoning Admin. Decision) Title: Request for Remand, (Filing No. 2) Filed: August 18, 2009 Filed By: Paul S. Gillies, Attorney for: Appellant Community National Bank

Response filed on 10/26/09 by David W. Rugh, Attorney for Opposition

X Granted ____ Denied ____ Other

Appellant Community National Bank ("CNB") requests that this Court remand the pending application to the Derby Zoning Board of Adjustment ("ZBA") for a properly-noticed hearing on the application by Main Street Place, LLC ("Main St. Place") for a permit to demolish buildings at 50 - 58 Main Street in Derby. This remand request was first presented in CNB's August 19, 2009 Notice of Appeal. Appellee-Applicant Main St. Place opposes CNB's request for remand. We begin our analysis by reviewing the applicable standards for a motion to remand.

The Supreme Court has noted that the use of remand "necessarily must be an area of trial court discretion." <u>In re Maple Tree Place</u>, 156 Vt. 494, 501, (1991). Also, under V.R.E.C.P. 5(i) the Court is given significant discretion in determining whether a remand is appropriate. <u>In re Irish Construction</u> <u>Application</u>, No. 44-3-08 Vtec, slip op. at 13 (Vt. Envtl. Ct. April 6, 2009) (Durkin, J.). This is indicated by the rule's language, which states that the Court "may" issue a remand when requested. <u>Id</u>.

Although remand is discretionary, the Supreme Court has offered guidance for instances where a party was not afforded an opportunity to be involved in the municipal proceedings below. The Supreme Court has noted:

"It is beyond [the] role [of] an appellate tribunal, even under a de novo review standard, to start addressing new issues never presented to the planning commission [or zoning board] and on which interested persons have not spoken in the local process. Use of the remand authority in such cases is consistent with the court's role."

In re Maple Tree Place, 156 Vt. at 500, 594 A.2d at 408.

Due to lack of written notice to adjoining property owners, as directed by 24 V.S.A. § 4464(a)(1)(C), of the of the ZBA hearing on the demolition permit application, CNB has never had an opportunity to be heard at the municipal level. Additionally, the issues that CNB raises in opposition to the demolition permit have never been presented to the ZBA by CNB as an abutter to the properties in question. Under this analysis, it is necessary that this case be heard first before the appropriate municipal panel before it is reviewed by this Court.

For all these reasons Appellant Community National Bank's request for remand to the Derby Zoning Board of Adjustment is GRANTED.

<u>February 12, 2010</u>
Date
Clerk's Initials
Community National Bank
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