

substantially changed to respond to objections to the first.”); In re Dunkin Donuts S.P. Approval (Montpelier), 2008 VT 139, ¶ 8 (By “address[ing] all concerns that prevented approval of the prior application,” an applicant is not bound by the previous denial and may resubmit a proposal to the appropriate municipal panel.).

Exhibit A to Appellee-Applicant’s motion contains the application’s narrative describing the changes to the proposed project; it includes a section specifically relating the changes in the application to specific paragraphs of the Court’s 2008 decision addressing the reasons for which the former application was denied. The application now before the Court has been redesigned or changed to address the concerns that prevented approval of the prior application. Accordingly, Appellants’ motion for summary judgment to dismiss this application as an impermissible successive application is DENIED. This determination simply means that the application can proceed to its merits in this Court; it is not a ruling as to whether any redesigned element of the project now meets the applicable review standards.

As discussed at the telephone conference held on July 12, 2010, the dates of October 20, October 21, and October 29 may be available to begin the trial (otherwise scheduled for November 1 through 4) on an earlier date, as preferred by Appellee-Applicants. The parties agreed to move the trial up to begin on the earliest available of those dates, and to check with their witnesses as to whether those dates are available in the witnesses’ schedules. On or before July 20, 2010, the parties shall report any unavailable dates in writing to the Court.

Also as discussed at the telephone conference, the parties may file as prefiled testimony or evidence any testimony or evidence presented at the hearing of the earlier case. Supplemental direct testimony may be presented from any witness whose prefiled testimony is filed, and all witnesses shall be made available at trial for cross-examination. On or before September 3, 2010, the parties shall provide each other and the Court with a list of what prefiled testimony or evidence they propose to submit. A telephone conference has been scheduled for September 13, 2010, to discuss the proposed prefiled testimony and exhibits.

Judge
_____ July 13, 2010
Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:
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Attorney C. Daniel Hershenson for Appellees Woodstock Community Trust,
Inc., and Housing Vermont
Attorney Todd C. Steadman for Town of Woodstock
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