

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Confluence Behavioral Health LLC CU

Docket No. 15-2-16 Vtec

Judgment Order

This is an appeal from the Town of Thetford Development Review Board’s approval of a conditional use and site plan application for Confluence Behavioral Health, LLC to operate a therapeutic community residence.

Confluence Behavioral Health, LLC (“Confluence”) is represented by Nathan H. Stearns, Esq. Appellants Jason and Deborah Albert, Frederic and Marjorie Thomas, Russell and Marjorie Cook, and Laurence E. Reeves III (“Appellants”) are represented by Ronald A. Shems, Esq.

Now pending before the Court is Appellants’ “Motion to Withdraw or Dismiss, and Motion for Entry of Judgment,” filed on February 21, 2017. Confluence filed its response on February 28, 2017, advising the Court that it does not object to Appellants’ motion, although it does raise concerns about Appellants’ lack of “any arguments or facts that address[]” the legal issues raised by Appellants’ remaining Questions. The Court shares this concern, particularly since Appellants’ insufficient filings appear to not conform to V.R.C.P. 56 and other procedural rules governing pre-trial requests for judgment. We therefore **DENY** Appellants’ request for judgment and address their request to be allowed to withdraw all their remaining claims for relief.

On January 23, 2017, this Court addressed the parties’ then-pending cross-motions for summary judgment, concluding that:

. . . the Bylaw does not define Confluence’s proposed therapeutic community residence as a “commercial use” and that the Bylaw, as presently drafted, allows for its proposed programs to fit within the term “health care facility”, which is identified as a use conditionally allowed in the RR District. For these same reasons, we deny Appellants’ request for summary judgment on Questions 1 and 2.

In re Confluence Behavioral Health, LLC Cond. Use App., No. 15-2-16 Vtec, slip op. at 24 (Vt. Super. Ct. Env’tl. Div. Jan. 23, 2017) (Durkin, J.).

The Court further granted summary judgment for Confluence on Questions 1 and 2, as well as “the portions of Question 9 that ask whether Confluence’s proposed project conforms to Bylaw §§ 3.10 and 6.06(F)(6).” *Id.* at 25. We denied all of Appellants’ summary judgment requests.

We concluded by noting that “[o]ur determinations here leave to be resolved at trial Questions 3 through 8 and the portion of Question 9 that challenges the conformance with Bylaw §§ 6.06(D)(4) and 6.06(F)(7).” *Id.* This statement was not entirely accurate; Questions 4, 5, and 6 had previously been dismissed by stipulation, entered as an Order by the Court on July 27, 2016. The Questions remaining for trial, therefore, are 3 and 7, and parts of Questions 8 and 9.

By their pending motion, Appellants seek permission “to withdraw all remaining questions, or parts thereof, set to be resolved by trial in this matter.” Appellants’ Motion at 1. In a response, Confluence has indicated that it does not object to the motion to withdraw or dismiss. Pursuant to V.R.E.C.P. 2(d)(2) and 5(d), which allow a Statement of Questions to be amended or narrowed under certain circumstances, Appellants’ request to withdraw these Questions is **GRANTED**.

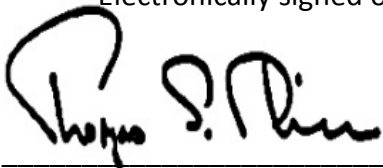
Appellants next ask us to enter judgment on those Questions decided on summary judgment. In its response, Confluence again states that it has no objection, provided that the Court only enter judgment on those specific parts of the Statement of Questions on which we did not leave for resolution at trial in our summary judgment decision. Appellants did not reply to Confluence’s response.

Appellants’ request for entry of judgment is **GRANTED**. Pursuant to V.R.C.P. 54(b) and 58, we hereby enter judgment in favor of Confluence on Questions 1, 2, and the portions of Question 9 that ask whether Confluence’s proposed project conforms to Bylaw §§ 3.10 and 6.06(F)(6). We also enter judgment in favor of Confluence on Question 8 only to the limited extent that we concluded in our summary judgment decision that the proposed use complies with district standards in that it is not a prohibited commercial use, and it does qualify as a health care facility. All other issues that could be raised in connection with Question 8 are withdrawn and dismissed.

The consequence of this Judgment Order is that the appealed conditional use approval issued by the Town of Thetford Development Review Board on January 19, 2016, remains in full force and effect.

This completes the current proceedings before this Court concerning this appeal.

Electronically signed on March 29, 2017 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Judge
Environmental Division