

VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 23-ENV-00071

Alta Assets, LLC Appeal

ENTRY REGARDING MOTION

Title: Motion for Relief From Judgment and Motion to Amend Judgment (Motions 6 & 7)

Filer: Appellants Steven Platt, Barbara Platt, Hillary Vogel, and Josh Vogel

Filed Date: February 28, 2024

Memorandum in Opposition, filed on March 12, 2024 by Brian Paul Hehir, Attorney
for Alta Assets, LLC

Memorandums in Support of pending Motions, filed on March 26, 2024 by Appellants

Motions are DENIED

On July 13, 2023, Appellants Steven Platt, Barbara Platt, Hillary Vogel, and Josh Vogel filed an appeal from a decision by the Town of Warren Development Review Board (“DRB”) to approve a permit application filed by Alta Assets, LLC (“Alta”) for approval to construct a single-family residence on its property at 271 Applewood Road in Warren, Vermont. By a decision filed on December 22, 2022, the DRB approved Alta’s permit application, with several conditions.¹

By Entry Order issued on January 31, 2024, we concluded that Appellants did not file their appeal on a timely basis and that, as a consequence of their late filing, this Court was without jurisdictional authority to consider or address the legal issues raised in Appellants’ August 29, 2023, Statement of Questions. We therefore entered summary judgment in Alta’s favor and dismissed Appellants’ appeal.

In their pending motions, Appellants ask that this Court reconsider its January 31, 2024, Entry Order, reopen these proceedings, grant them relief from that Judgment, and amend our Entry and Judgment Orders. For the reasons stated below, we decline to do so and **DENY** Appellants’ motions.

¹ The conditions that the DRB imposed included a condition requiring Alta to revise its landscaping plan. Alta did so and the DRB approved that revised landscaping plan by decision filed on August 28, 2023. Appellants did not challenge the revised landscaping plan in their Statement of Questions, filed on August 29, 2023. The only legal issues that Appellants raised in their Statement of Questions concerned challenges to the DRB’s December 22, 2022 approval.

We first note that Appellants have not presented any evidence or controlling case law to rebut the determinations from our January 31, 2024 Entry Order. They have not challenged our determination that they failed to file a timely appeal. Thus, they have not provided the Court with a factual or legal basis for our disturbing our prior decision.

Appellants also raised a new, somewhat novel legal argument in support of their relief requests. Specifically, Appellants allege that the DRB did not timely issue a decision with respect to an April 5, 2023 appeal, and because of that delay, their appeal to the DRB must be regarded as “deemed approved.” Appellants cite to 24 V.S.A. § 4464(b)(1), which provides that municipal panels shall issue a decision on an application within 45 days after adjourning an evidentiary hearing on said application. That provision pertains not to appeals before a DRB, but rather to permit applications that a DRB considers and allegedly delays its determination of whether the permit should be granted. Thus, even if we had the jurisdictional authority to consider this novel legal argument, it must also fail.

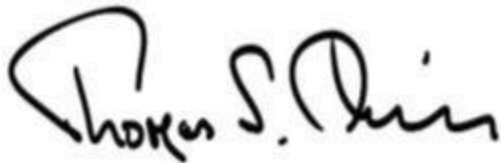
In a similar vein, we do not consider Appellants’ challenges to the various wetlands classifications relied upon by the DRB, given that Appellants failed to timely appeal the DRB’s December 22, 2022, decision and thus voided any jurisdictional authority to address their concerns in this appeal.

Thus, for all these reasons, Appellants’ post-judgment motions for relief and amendment of the judgment must be **DENIED**.

This completes the post-judgment proceedings in this appeal.

So Ordered.

Electronically signed at Burlington, Vermont on Friday, March 29, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive, flowing style.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division