

State of Vermont
Superior Court – Environmental Division

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ENTRY REGARDING MOTION

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In re Wilcox Ice Cream Factory
(Appeal from Town of Manchester DRB decision)

Docket No. 70-4-07 Vtec

Title: Request for Information (Filing No. 9)

Filed: December 20, 2011

The Court recently requested several documents that were absent from the record for this de novo appeal. One of the documents requested was the 2003 decision by the Town of Manchester Development Review Board (“the DRB”) granting the original construction permit to both Gerald and Howard Wilcox. We received a “Report of Zoning Administrator” dated September 24, 2003. However, we still need the DRB’s decision, that is, the decision detailing the “Findings of Fact and Conclusions of Law” that is referenced in the Report of the Zoning Administrator. Therefore, we direct Howard Wilcox, as the applicant, to submit to the Court, no later than **Friday, January 6, 2012**, a certified copy of that DRB decision.

Appellants Gerald and Anne Wilcox (“Appellants”) argue, in their August 17, 2011 memorandum, that portions of the on-site wastewater disposal system for Howard Wilcox’s proposed development will be on Appellants’ property. Before we can rule on the parties’ pending requests in this appeal, particularly as they relate to Questions 1 and 2 from Appellants’ Statement of Questions, we need to determine the extent of the approved development; on what land that development is to occur; and who currently owns that land. Therefore, in addition to the 2003 DRB decision discussed above, we also request that each litigant—Howard Wilcox and Appellants—clearly identify on a copy of the current proposed site plan the extent of the proposed development and the parties’ respective current property boundaries, as determined by the Bennington Superior Court in its partition decision. See Wilcox v. Wilcox, No. 96-03-06 Bncv (Vt. Super. Ct. Feb. 18, 2010) (Suntag, J.). The Court directs litigants to submit either one delineated site plan, or, if they cannot agree, individual delineated site plans. If a portion of the proposed development is on Appellants’ property, Howard Wilcox should identify for the Court what authority, if any, he has to develop that property. The Court orders the parties to submit these documents no later than **Friday, January 6, 2012**.

Finally, the Court notes that the record before us also lacks the municipal zoning ordinance applicable to the application before us on appeal. Thus, we requests that Howard Wilcox submit to the Court, no later than **Friday, January 6, 2012**, a certified copy of the version of the Town of Manchester zoning ordinance that should be used to assess the merits of the current extension application now on appeal to this Court.

Upon our receipt of these documents, we will complete our review of the parties’ pending requests and issue a ruling.

Thomas S. Durkin, Judge

December 20, 2011
Date

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Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

- W. Michael Nawrath, Attorney for Appellants Gerald and Anne Wilcox
- Jon S. Readnour, Attorney for Appellee/Applicant Howard Wilcox
- Robert E. Woolmington, Attorney for Interested Person Town of Manchester