

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No. 136-12-18 Vtec

Bart Industries, Inc. Zoning Permit

**ENTRY REGARDING MOTION**

Count 1, Municipal DRB Other (136-12-18 Vtec)

Title: Motion to Dismiss Appeal (Motion 1)

Filer: B-A-R-T Industries, Inc.

Attorney: Stephen C. H. Cassarino

Filed Date: January 10, 2019

Response in Opposition filed on 01/10/2019 by Attorney James Valente for Appellant Carol Young

**The motion is DENIED.**

B-A-R-T Industries, Inc., (Bart Industries) seeks a permit to add a fueling facility and two 30,000-gallon propane tanks to its parcel located at 19 Transport Park in Rockingham, Vermont. The Town of Rockingham Development Review Board (DRB) approved the permit on November 29, 2018. On December 17, 2018, Carol Young, an abutting property owner, timely appealed the DRB's decision to this Court. Bart Industries filed the present motion to dismiss on January 10, 2019, asserting that this Court should dismiss Ms. Young's appeal because she did not file her Statement of Questions on time.

When considering a motion to dismiss, this Court accepts as true all uncontroverted factual allegations and construes those factual allegations in the light most favorable to the nonmoving party. In re Goddard Coll. Conditional Use, No. 175-12-11 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. Jul. 5, 2012) (Walsh, J.), *aff'd*, 2014 VT 124, 198 Vt. 85.

V.R.E.C.P. 5(f) requires appellants to file their Statement of Questions "[w]ithin 21 days after the filing of the notice of appeal." The parties agree that Ms. Young's Statement of Questions was due on January 7, 2019, and that she did not file them until January 10, 2019. Bart Industries asks us to dismiss Ms. Young's appeal because of the delay. Ms. Young admits that she filed three days late but asks that we allow this matter to proceed to the merits. Her attorney explained that a calendaring error caused the delay.

This Court is required to apply the Vermont Rules for Environmental Court Proceedings to make a "full and fair determination" of the issues that come before us. V.R.E.C.P. 1. Our Rules prescribe that "[f]ailure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal." V.R.E.C.P. 5(b)(1). Thus, it is within our discretion to dismiss an appeal because of a late Statement of Questions, but we will only do so when the circumstances so require. In re Putney Park & Ride Project, No. 148-11-13 Vtec, slip op. at 1-2 (Vt. Super. Ct. Envtl. Div. Apr. 22, 2014) (Walsh, J.). This Court has previously accepted Statements of Questions that were filed a few days late after considering the length of

the delay and any prejudice that might result. See, e.g., Id.; see also In re 114 Coll. St. Permit Amendment, No. 227-09-06 Vtec, slip op. at 6 (Vt. Envtl. Ct. Apr. 20, 2007) (Wright, J.), *rev'd on other grounds sub nom. In re McGrew*, 2009 VT 44, 186 Vt. 37.

In the matter at hand, Ms. Young filed her Statement of Questions three days after the deadline but well before the initial conference in this appeal. Bart Industries does not identify any prejudice that will result if the appeal proceeds. Justice is better served by seeing this matter through to the merits. Accordingly, Bart Industries' motion to dismiss is **DENIED**.

So ordered.

Electronically signed on January 28, 2019 at 08:59 AM pursuant to V.R.E.F. 7(d).



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Thomas G. Walsh, Judge  
Superior Court, Environmental Division

Notifications:

Municipality Town of Rockingham

James Valente (ERN 4847), Attorney for Appellant Carol Young

Stephen C. H. Cassarino (ERN 6348), Attorney for Appellee B-A-R-T Industries, Inc.

Erin Gilmore (ERN 1593), Attorney for party 3 Co-counsel