

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 93-8-18 Vtec

Duval CU Denial

ENTRY REGARDING MOTION

Counts 1 and 2, Municipal DRB Conditional Use (93-8-18 Vtec)

Title: Motion to Supplement Cross-Appeal Statement of Questions (Motion 3)

Filer: Peter K. Duval

Attorney: Self-Represented

Filed Date: January 28, 2019

Response in Opposition filed on 02/07/2019 by Attorney Joseph S. McLean for Cross-Appellant
Town of Underhill

The motion is DENIED.

Peter Duval seeks conditional use approval for the conversion of a single-family dwelling with an attached accessory dwelling into a four-unit, multi-family dwelling on his property located at 25 Pine Ridge Road in Underhill, Vermont. The Town of Underhill Development Review Board (DRB) denied his application on June 29, 2018, and denied his request for reconsideration on August 6, 2018. Mr. Duval appealed the DRB's decision to this Court. On November 5, 2018, the Town of Underhill (Town) filed a notice of cross-appeal. The Town also entered its Statement of Questions, raising the issue of what version of the Town's Unified Land Use and Development Regulations (Regulations) should apply to Mr. Duval's application. Mr. Duval then submitted a "cross-appeal supplemental statement of questions," which raised additional questions regarding the applicable Regulations. The Town filed a motion to strike Mr. Duval's filing. In response, Mr. Duval did not oppose the motion to strike but instead filed a "revised cross-appeal supplemental statement of questions" concerning the applicable Regulations.¹ He also filed the present motion requesting that this Court allow him to supplement the Town's Statement of Questions.

We begin by noting that when parties are self-represented, this Court is careful to ensure they are not "taken advantage of by strict application of the rules of procedure." Town of Washington v. Emmons, 2007 VT 22, ¶ 7, 181 Vt. 586 (mem.). Even with self-represented litigants, however, we must enforce the rules of civil procedure, and the rules governing this Court, equitably. Bloomer v. Gibson, 2006 VT 104, ¶ 14, 180 Vt. 397; see also Vt. Agency of Natural Res. v. Denio, No. 107-9-15 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Nov. 21, 2016) (Durkin, J.) (denying a V.R.C.P. 60(b) motion because the parties' pro se status alone did not

¹ Because Mr. Duval does not oppose the Town's motion to strike his first "cross-appeal statement of questions," filed on December 31, 2018, and his filing was not accompanied by any form of motion pursuant to V.R.C.P. 7(b), we **GRANT** the Town's motion to strike. Further, it appears that Mr. Duval intended for his "revised cross-appeal supplemental statement of questions" to fully supersede his December 31, 2018 filing.

warrant setting aside the judgment). Thus, a certain degree of latitude is necessary, but this Court cannot offer legal advice or extrapolate arguments from a self-represented litigant's filings. See In re Cote NOV, No. 273-11-06 Vtec, slip op. at 3 (Vt. Envtl. Ct. Aug. 22, 2017) (Durkin, J.), *aff'd*, 186 Vt. 655; see also In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 (stating that “[i]t was not for the trial court to discern the ground for neighbors’ party status and then to suggest an argument to support that claim.”).

In the present matter, we are faced with an appellant’s unprecedented attempt to supplement a cross-appellant’s Statement of Questions. Mr. Duval points to no statutory authority or procedural rule that enables this action, nor can we identify any.² On the contrary, V.R.E.C.P. 5(f) specifically provides that “[n]o response to the statement of questions shall be filed.” A party’s Statement of Questions is only subject to motions to clarify or dismiss. Id. We interpret these limits on how other parties can respond to a Statement of Questions as necessarily excluding the ability to supplement or amend that Statement. Accordingly, Mr. Duval’s motion is **DENIED**.

So ordered.

Electronically signed on March 14, 2019 at 09:46 AM pursuant to V.R.E.F. 7(d).



Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Appellant Peter K. Duval
Joseph S. McLean (ERN 2100), Attorney for Cross Appellant Town of Underhill
Interested Person John McNamara
Interested Person Catherine McNamara
Interested Person Steve Coddling
Interested Person Dianne Terry
Interested Person John Koier
Interested Person Barbie Koier
Interested Person Nancy Hall
Interested Person John Hall
Interested Person Susan May
Interested Person Thomas May
Interested Person John Hardacre
Interested Person Marilyn Hardacre
Interested Person David Demuynck
Interested Person Cathy Leathersich
Eric G. Derry (ERN 5528), Attorney for party 3 Co-counsel

² We also decline to interpret Mr. Duval’s filing as another type of motion that might be permissible before this Court. As described above, while we seek to introduce flexibility for self-represented litigants, we cannot craft an argument or motion where there is none. See In re Waitsfield Public Water System Act 250 Permit, No. 33-2-10 Vtec, slip op. at 8-9 (Vt. Super. Ct. Envtl. Div. Nov. 2, 2010) (Durkin, J.) (declining to read a motion for party status into an appellant’s Statement of Questions because “we do not find authority in our procedural rules to do so.”). Motions properly before the Court put the opposing party on notice of the relevant issues and the potential or need for a memorandum in opposition. Id.

