

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 23-ENV-00066

Guillemette ZA Determination Appeal

DECISION ON MOTIONS

Appellant’s Motion to Remand is GRANTED; Appellee’s Motion to Dismiss is DENIED.

This is an appeal of a June 6, 2023 determination by the Town of Monkton Zoning Administrator (ZA) declining to initiate an enforcement action against Mark and Anne Guillemette (Appellees) in connection with wood processing, salvage yard, and contractor yard operations occurring on their property located at 4644 Silver Street in Monkton, Vermont (the Property). Michael Casey (Appellant) is a neighboring landowner who first requested, and now appeals, the ZA’s determination. Appellees seek to dismiss this appeal, arguing that the appeal is untimely and was brought in the wrong forum. In response, Appellant argues that dismissal would be manifestly unjust because the ZA’s decision included incorrect appeal instructions. Instead, Appellant asks the Court to remand this matter to the Monkton Development Review Board (“DRB”).

In this matter, Appellant is represented by Attorneys Geoffrey Hand and Megan Noonan. Appellees are represented by Attorneys Antonietta Girardi Dutil and David Cooper. The Town of Monkton is represented by Attorney James Carroll.

Discussion

Pursuant to 24 V.S.A. § 4465, “[a]n interested person may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the board of adjustment or development review board of that municipality or with the clerk of

that municipality if no such secretary has been elected.” 24 V.S.A. § 4465(a). The notice of appeal must be filed within 15 days of the date of the decision. Id. The appeal to the appropriate municipal panel is “the exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act” by the administrative officer. 24 V.S.A. § 4472(a). Failure to appeal a decision to the appropriate municipal panel binds all interested persons to that decision, and they “shall not thereafter contest, either directly or indirectly, the decision... in any proceeding.” 24 V.S.A. § 4472(d). These provisions, known as the “exclusive remedy” provisions, are strictly enforced to ensure that zoning contests go through the administrative process in a timely fashion, and to prevent collateral attacks on final and binding decisions. In re Hopkins Certificate of Compliance, 2020 VT 47, ¶ 10, 212 Vt. 368.

There are limited exceptions to the exclusive remedy provisions. One exception is if some “condition exists that would result in manifest injustice if the person’s right to appeal was disallowed.” 10 V.S.A. § 8504(b)(2)(C). Manifest injustice is a strict and exacting standard. In re Appeal of MDY Taxes, Inc., 2015 VT 65, ¶ 15, 199 Vt. 248.

Based on the undisputed facts presented, we conclude that dismissing this appeal would be a manifestly unjust result. The Zoning Administrator’s determination included an inaccurate statement of appeal rights, directing Appellant to file their notice of appeal within 30 days to this Court, rather than in 15 days to the DRB. Appellant reasonably, and detrimentally, relied on this incorrect notice of appeal rights and filed a timely appeal in the proper venue according to those instructions. Where “a government official charged with administering zoning regulations provides inaccurate advice, we will not assume that the citizen was nevertheless aware of the actual legal requirements.” In re Langlois/Novicki Variance Denial, 2017 VT 76, ¶ 23, 205 Vt. 340 (citation omitted). Dismissal in this case would be manifestly unjust to a citizen who relied on written statements by a government official. Accordingly, we **GRANT** Appellant’s motion to remand the matter to the Monkton DRB to consider this appeal on the merits.

Conclusion

For the forgoing reasons, Appellees' motion to dismiss this appeal as untimely is **DENIED**. Appellant's motion to remand the matter to the Monkton Development Review Board is **GRANTED**. A Judgment Order is issued concurrently with this decision.

Electronically signed April 22, 2024, pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first letters of the first and last names being larger and more prominent.

Thomas G. Walsh, Judge
Superior Court, Environmental Division