

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 22-ENV-00092

Wheeler Parcel Act 250 Determination

DECISION ON MOTION TO DISMISS

Title: Motion to Dismiss Criterion 10 from Appeal (Motion: 30)

Filer: Christopher D. Roy, Esq.

Filed Date: January 31, 2024

Memorandum in Support filed by Joseph S. McLean, Attorney for Chittenden County Regional Planning Commission, on April 25, 2024.

Memorandum in Opposition filed by James M. Leas, Alan Luzzatto, and Jeanne Zagursky April 25, 2024.

Response to Memorandum in Support filed by James M. Leas, Alan Luzzatto, and Jeanne Zagursky April 26, 2024.

Reply in Support of Motion filed by Christopher D. Roy, Esq., Attorney for BlackRock Construction, LLC, on May 2, 2024.

The motion is DENIED.

The appeal challenges the District 4 Environmental Commission's (District Commission) approval of an Act 250 permit issued to Blackrock Construction, LLC (BlackRock) for the development of a 32-unit residential project at the intersection of Dorset Street and Park Road in South Burlington, Vermont (the Project). Inverness Homeowners' Association, Glen Eagles Homeowners' Association, Villas at Water Tower Hill Homeowners' Association, Neighbor's Committee to Stop Neighborhood Blasting, and James Leas initially appealed the District Commission's decision to this Court.¹ Presently

¹ Pursuant to this Court's October 12, 2023 Decision on Motions in this case, the Court denied Inverness Homeowners' Association and Glen Eagles Homeowners' Association's motions for non-attorney representation and directed each organization to retain counsel and have said counsel file a notice of

before the Court is BlackRock's motion to dismiss Criterion 10 from this appeal arguing that the remaining appellants lack party status thereunder. Remaining appellants Villas at Water Tower Hill Homeowners' Association, Neighbor's Committee to Stop Neighborhood Blasting, and James Leas (together, Remaining Appellants) oppose the motion. Chittenden County Regional Planning Commission (CCRPC) supports the motion.

Inverness Homeowners' Association (Inverness) sought and obtained party status before the District Commission under Criterion 10. The Remaining Appellants did not seek or obtain party status under Criterion 10 before the District Commission. On April 11, 2023, this Court granted Appellants' motion to extend party status under Criterion 10 to all appellants in the case, including the Remaining Appellants. See In re Wheeler Parcel Act 250, No. 22-ENV-00092, slip op. at 3 (Vt. Super. Ct. Env'tl. Div. Apr. 11, 2023) (Walsh, J.) (the April 2023 Decision). BlackRock specifically noted that it did not object to this extension. CCRPC did not file any objection to the motion.

From there on, Criterion 10 has been at issue in this case by the Remaining Appellants and the subject of significant debate and discovery. In October 2023, this Court noted that Inverness, the sole party that retained party status under Criterion 10, would be required to obtain counsel by October 31, 2023 in order to remain as an appellant in this appeal. See Wheeler Parcel, No. 22-ENV-00092, slip op. at 2 (Oct. 12, 2023) (Walsh, J.). Inverness did not retain counsel by that date and has, to date, not retained counsel, submitted any filing to the Court, or joined in any filing submitted to the Court.

In January 2024, Remaining Appellants, without Inverness, filed a motion for summary judgment solely on Remaining Appellants' behalf and in which Criterion 10 was heavily debated by the parties. At no point did BlackRock or CCRPC object to Remaining Appellants moving for summary judgment absent Inverness.²

appearance in this matter on or before October 31, 2023 should they seek to continue in the pending appeal. In re Wheeler Parcel Act 250, No. 22-ENV-00092, slip op. at 2 (Vt. Super. Ct. Env'tl. Div. Oct. 12, 2023) (Walsh, J.). In a March 22, 2024 Entry Order, the first written order since the October 31, 2023 deadline passed, the Court recognized that these parties did not retain counsel by that date and formally dismissed both parties as appellants. See In re Wheeler Parcel Act 250, No. 22-ENV-00092, slip op. at n. 1 (Vt. Super. Ct. Env'tl. Div. Mar. 22, 2024) (Walsh, J.).

² While Inverness had not been formally dismissed as an appellant at the time of filing, the Court notes this fact as the operative date for Inverness to retain its appellant status had passed nearly three months prior

Generally, “an aggrieved person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) [Title 10], participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings.” 10 V.S.A. § 8504(d)(1). A party “may only appeal those issues under the criteria with respect to which the person was granted party status.” *Id.* This Court may, however, allow an aggrieved person to appeal a District Commission decision if “some other condition exists that would result in manifest injustice if the person’s right to appeal was disallowed.” 10 V.S.A. § 8504(d)(1)(C).

Manifest injustice would result here if the Court were to disallow Remaining Appellants to retain standing as granted in the April 2023 Decision. First, neither BlackRock nor CCRPC objected to the extension of Criterion 10 party status to Appellants in 2023 despite procedural concerns with Appellants’ failure to formally request party status thereunder. Thus, for more than a year, all parties operated under the assumption that Criterion 10 was fully at issue in this appeal and conducted significant discovery and motion practice on the issue. Second, Inverness was ordered to retain counsel by October 31, 2023 or risk dismissal as an appellant. Inverness did not comply with that deadline. It has since not submitted any filing to the Court, including failing to provide any unavailable dates with the Court in January 2024. If the appellant group was aware that BlackRock and CCRPC intended to challenge Criterion 10 standing, Inverness may have taken a different approach and retained counsel.

From November 1, 2023 to the date of this motion, BlackRock and/or CCRPC have not filed any formal objection with Remaining Appellants retaining their party status under Criterion 10 as set forth in the April 2023 Decision. The Court issues this Entry Order on Friday, May 3, 2024. Trial in this matter begins on Monday, May 6, 2024, or 3 days from the date of this Entry Order. At this point in this appeal, it would be a manifest injustice to

to Appellants motion for summary judgment. The Court notes that Appellants’ Certificate of Service for their motion for summary judgment reveals that Appellants themselves did not serve Inverness or Glen Eagles Homeowners’ Association with their motion.

disallow Remaining Appellants the ability to retain their previously granted party status under Criterion 10.

For these reasons, BlackRock's motion is **DENIED**.

Electronically signed this 3rd day of May 2024, pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is written in a cursive, slightly stylized font.

Thomas G. Walsh, Judge
Vermont Superior Court, Environmental Division