



KCS LCC; C.F. Trust Zoning Decision Appeal

**ENTRY ORDER**

Title: Motion to Dismiss (Motion: 1)

Filer: Claudine C. Safar, Esq.

Date: July 25, 2024

No response filed.

**The motion is GRANTED.**

KCS, LLC and C.F. Trust (together, Applicants) appeal a memorandum issued by the Town of Jericho (Town) Development Review Board (DRB) in response to Applicant’s application for sketch plan review related to a proposed 6-unit planned unit development (the Project) at 20 Morgan Road, Jericho, Vermont (the Property). The Town moves to dismiss this appeal on the grounds that the memorandum is not an appealable decision. Applicants have not responded to the Town’s motion.

The Town’s motion is made pursuant to V.R.C.P.12(b)(1), which governs motions to dismiss for lack of subject matter jurisdiction. When reviewing such a motion, the Court accepts all uncontroverted factual allegations as true and construes them in the light most favorable to the nonmoving party. Rheume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245.

Pursuant to 24 V.S.A. § 4471(a), appeals may be taken from “decisions” rendered by appropriate municipal panels in municipal regulatory proceedings. While “decision” is not defined by the statute, this Court has held that “the word connotes finality – if a ‘decision’ does not resolve an issue, it is not really a decision, but mere commentary or analysis.” In re Saxon Partners LLC BJ’s Warehouse Sketch Plan, No. 5-1-16 Vtec, slip op. at 2 (Vt. Super. Ct. Env’tl. Div. Mar. 25, 2016) (Walsh, J.). “Where a municipal panel renders commentary, guidance, or other hypothetical discussion, those ‘decisions’ are not appealable, because an appeal would be merely advisory.” Id. (citing In re Stowe Club Highlands Merger/Subdivision Application, No. 35-3-11 Vtec, slip op. at 6

(Vt. Super. Ct. Env'tl. Div. Feb. 15, 2012) (Walsh, J.); see also In re 232511 Invs. Ltd., 2006 VT 27, ¶ 19, 179 Vt. 409 (citation omitted) (noting that courts can only adjudicate actual cases or controversies).

As such, this Court must conclude whether the memorandum was a final and binding decision made pursuant to the Town of Jericho Land Use and Development Regulations (the Regulations). Pursuant to Regulations § 10.8.2, sketch plan review is something that applicants are “encourage[d],” but not required, to participate in. It “is an informal public hearing with the [DRB] to explore options in a preliminary manner with minimal expense involved.” Id. The Regulations go on to specifically state that “[n]o formal decision is taken at this time . . .” Id.

Thus, the Regulations are clear: guidance issued by the DRB on sketch plan review is not a final decision appealable under 24 V.S.A. § 4471(a). Sketch plan review as defined by the Regulations is an informal, voluntary step that applicants may take to discuss a development concept. Thus, the resulting memorandum issued here is by the terms of the Regulations not a final decision appealable to this Court under 24 V.S.A. § 4471(a). Because it is not a final decision, the Court lacks jurisdiction over the appeal and the Town’s motion is **GRANTED**. This matter is **DISMISSED**. This concludes the matter before the Court. A Judgment Order accompanies this Entry Order.

Electronically signed this 16<sup>th</sup> day of October 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, somewhat stylized font.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division