



Lot 20, 295 Applewood Road Wetland Determination

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 1)
Filer: Brian P. Hehir, Esq.
Filed Date: December 12, 2024

Response in Opposition filed on February 10, 2025 by Steven and Bonnie Platt, Hilary Burditt, and Joshua Vogel.

The motion is DENIED.

This matter is an appeal by Steven and Bonnie Platt, Hilary Burditt and Joshua Vogel (together, Appellants) of a July 17, 2024 decision of the Agency of Natural Resources (ANR) denying their request for reconsideration of a wetland determination dated September 11, 2023 concluding that there was a Class II wetland located on property owned by Alta Assets, LLC (Alta Assets) located at 295 Applewood Road, Warren, Vermont (the Property). Presently before the Court is Alta Assets' motion for summary judgment. Appellants oppose the motion.

Statement of Questions

Appellants have filed a Statement of Questions of issues they wish the Court to adjudicate in this matter. They ask:

1. Is there A) a single wetland or B) wetlands on Lot 20 on Applewood Road in Warren, Vermont ("Lot 20") as defined under the Vermont Wetland Rules (VWR)?
2. Are there Class 3 wetlands, Class 2 wetlands, or a combination on Lot 20, pursuant to the VWR?
3. Is Lot 20 contiguous to another wetland?
4. Is there sufficient evidence (and did ANR provide sufficient evidence) as to whether Lot 20 is contiguous to another wetland?
5. Are two unconnected wetlands (with upland in the middle) on the same parcel one large wetland or are they two unconnected wetlands?
6. If the latter, can those unconnected wetlands be different Classes?

Statement of Questions (filed on Sept. 6, 2024).

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). In determining whether there is a dispute over a material fact, “we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” White v. Quechee Lakes Landowners’ Ass’n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A). The party opposing a motion for summary judgment “cannot simply rely on mere allegations in the pleadings to rebut credible documentary or affidavits . . . but must respond with specific facts that would justify submitting [their] claims to the factfinder.” Robertson v. Mylan Labs., Inc., 2005 VT 15, ¶ 15, 176 Vt. 356. (citing Gore v. Green Mtn. Lakes, Inc., 140 Vt. 262, 266 (1981); V.R.C.P. 56(e); State v. G.S. Blodgett Co., 163 Vt. 175, 180 (1995)).

Discussion

Alta Assets, as the moving party and applicant, has the burden of proof with respect to establishing sufficient material facts for the Court to rule on the pending motion. Couture v. Trainer, 2017 VT 73, ¶ 9, 205 Vt. 319 (quoting Price v. Leland, 149 Vt. 518, 521 (1988)). The pending motion, in its entirety, is three pages long and contains only seven factual allegations. The facts generally allege that Alta Assets owns the Property and the Property’s wetland(s) have been reviewed by two professionals, a hydrogeologist and an ecologist. Both professionals concluded that the wetland is a Class II wetland. The motion provides an affidavit from the hydrogeologist, Evan Fitzgerald, to the effect of his opinion.

Alta Assets, the moving party, does not offer, by exhibit or otherwise, the Vermont Wetland Rules (VWR) that are applicable to this appeal. Alta Assets does not cite to the specific regulations to assist the Court in understanding the law that it must apply in this de novo appeal to determine the applicable wetland classification.

If the relevant legal framework for the pending appeal were based in statute, no party would be required to file a copy of the statute as the Court may do its own legal research to analyze the statutory law. Conversely, in the municipal zoning appeal context, this Court requires applicable zoning regulations to be admitted into evidence at trial either by offer and admission, stipulation, or by filing a certified copy of the document pursuant to V.R.E. 902. See In re Bjerke Zoning Permit Denial, No. 72-5-11 Vtec, slip op. at 1—2 (Vt. Super. Ct. Envtl. Div. Oct. 23, 2012) (Walsh, J.). In the summary judgment context, the Court requires the regulations to be filed as an exhibit or be otherwise within the record. See V.R.C.P. 56(c)(5) (stating that “[t]he court need consider only the materials cited in the required statements of fact, but it may consider other materials in the record.”).

This is despite the fact that some municipalities may post copies of their zoning regulations on their websites and the regulations may be publicly available.

The present matter with Vermont Wetland Rules is more akin to the municipal zoning regulation circumstances. This is because, to the extent that this Court can find the Vermont Wetland Rules on legal research databases such as Westlaw, the Court is unable to determine whether the available iteration is the relevant version of the rules for the purposes of this appeal. This wetlands determination request was submitted multiple years ago. To the extent that ANR retains historical versions of the VWR on their website, it is inappropriate for the Court to conduct independent research to determine which iteration may be applicable to this action.

Thus, the Court is without the ability to analyze the pending motion.

Furthermore, there is a dispute of fact with respect to the wetland classification.¹ Appellants do not provide an expert opinion that counters that of Mr. Fitzgerald. On the record presented, Appellants dispute material and genuine facts such that summary judgment is inappropriate. See Margison v. Spriggs, 146 Vt. 116, 118 (1985) (“[B]ecause of its severe consequences, summary judgment should be granted cautiously so that no one will be improperly deprived of a trial of disputed factual issues.”) (citation omitted).

For the foregoing reasons, the motion is **DENIED**. This Court will set this matter for a status conference to discuss how this case should proceed to resolution, including a deadline to file dates of unavailability for a merits hearing.

Electronically signed this 11th day of March 2025 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and appears to be written in a cursive or semi-cursive script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

¹ In reviewing the pending motion, the Court notes that the pending appeal is a unique situation in which a landowner argues that a wetland is of a higher classification than a neighbor proffers. In fact, a situation in which Appellants, neighboring property owners, are arguing that the Property contains Class III wetlands, which are non-jurisdictional for state purposes. In connection to the pending motion, Appellants filed the public comment letter that they submitted to ANR regarding the wetland determination at issue in this appeal. They assert in that letter that they want the wetland to be of a lesser classification because the lesser classification may have required Alta Assets to be subject to additional zoning regulations related to a meadow overlay district in the municipal permitting context. This Court, however, in a separate docket found that Alta Assets has a final and binding permit for the construction of a single-family home on the Property and that Appellants could not challenge the permit, which included arguments related to wetlands and the meadow overlay district. See In re Alta Assets, LLC Appeal, No. 23-ENV-00071 (Vt. Super. Ct. Envtl. Div. Jan. 31, 2024) (Durkin, J.) *aff'd* No. 24-AP-122. If this remains Appellants proffered injury, it is unclear to the Court whether it remains ripe for review, as this Court, and the Vermont Supreme Court on appeal, has concluded that the underlying conditional use permit is final and binding. This issue was not addressed by the pending motion so the Court does not rule upon the standing matter, but simply note it.