



decision on appeal had granted the City a "permit" under § 4449(a)(1) or its predecessor § 4443(a)(1).

However, it is the permit for a project issued by the zoning administrator (administrative officer) that is addressed under § 4449(a)(1), and not any other approvals that may be prerequisites to the administrative officer's issuance of the permit, such as conditional use approvals or site plan approvals or variances or subdivision permits issued by the DRB. The provisions in § 4449(a)(3) regarding the permit's taking effect only apply by their terms to permits issued pursuant to § 4449(a)(1), that is, to the final permit issued by the administrative officer.

The parties have not provided the Court with the decision appealed from, or the permit application form. If any permit was issued by the administrative officer in the present case, no party has brought such a permit to the attention of the Court. All that appears to be on appeal is the DRB's grant of conditional use approval for the project, which is not by its terms covered by § 4449.

Thus, while the new 24 V.S.A. § 4449 took effect July 1, 2004, and is applicable to pending appeals as a solely procedural change, it does not appear to affect this particular appeal. (Additional guidance regarding the operation of this section is anticipated to be found in the Vermont Supreme Court emergency rule amendment to be issued shortly, covering applications for stay affected by this section and other unrelated changes to the notice-of-appeal procedures (also effective July 1, 2004), and the related Reporter's Notes to that rule amendment.)

Because of the short time frame before the scheduled hearing, we will be calling the parties in the early morning of July 6, 2004 to try to schedule a brief telephone conference in the late morning of July 6. This decision is being faxed to the attorneys as a courtesy on July 4, 2004, but will be dated as effective after the holiday weekend on July 6, 2004.

Done at Barre, Vermont, this 6<sup>th</sup> day of July, 2004.

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Merideth Wright

Environmental Judge