

STATE OF VERMONT
ENVIRONMENTAL COURT

In re:	}	
Rozzi Real Estate, Inc., Subdivision Final Plan Application	}	Docket No. 225-10-05 Vtec
(Appeal of Koval and McCormack)	}	
	}	

Decision and Order on Appellee-Applicant’s Renewed Motion for Summary Judgment

Appellants Eric Koval and Thomas McCormack (Appellants) appealed from a decision of the Planning Commission of the Town of Essex granting final plan approval to Appellee-Applicant Rozzi Real Estate, Inc.’s application for a seven-lot subdivision of property located at 197 Weed Road. Appellants represent themselves; Appellee-Applicant Rozzi Real Estate, Inc. is represented by Elizabeth M. Demas, Esq.; and the Town is represented by William F. Ellis, Esq.

Appellee-Applicant moved for summary judgment on each of the seven questions in Appellants’ Statement of Questions. On March 8, 2006, the Court by written Decision and Order granted Appellee-Applicant’s Motion for Summary Judgment on Questions 1, 3, and 4, denied it on Question 6, and reserved ruling on Questions 2, 5 and 7 until March 21, 2006, to give the parties the opportunity to provide the Court with specific facts showing whether or not there is a genuine issue for trial on these questions, on a schedule for each question given in the order. The trial dates discussed in the March 8, 2006 order were April 11 and April 21, 2006; however, the Court’s schedule has changed so that the available dates for trial of the remaining issues in this matter are April 5 and April 6, 2006.

The March 8, 2006 decision and order gave Appellee-Applicant Rozzi Real Estate, Inc., to March 15, 2006, to file any supplemental materials in support of summary judgment in its favor on Question 2, and gave Appellants Koval and McCormick the same deadline

to file any supplemental materials in support of their arguments on Questions 5 and 7. The order gave the respective parties until 4:30 p.m. on March 20, 2006 to file any responsive memoranda and supporting materials.

Appellee-Applicant Rozzi Real Estate, Inc., filed additional argument, but without any additional supporting materials, with regard to Question 2. Appellants did not oppose Appellee-Applicant's renewed motion with regard to Question 2. Accordingly, as discussed in the March 8, 2006, decision, it is **HEREBY ORDERED** and **ADJUDGED** that Appellee-Applicant's Motion for Summary Judgment with regard to Question 2 is **GRANTED**.

Appellee-Applicant Rozzi Real Estate, Inc., filed a renewed motion for summary judgment with regard to Question 6, with additional supporting materials. The additional affidavit and argument filed in support of Question 6 resolves Question 6 with regard to the modern barn and the shed, but it does not establish either the basis for the historic significance of the "stable" building, nor whether that building is adequately protected by the proposed plan, which only calls for the stable to be protected until some further study is done of it. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Appellee-Applicant's Motion for Summary Judgment on Question 6 is **DENIED** with respect to the "stable" and is **GRANTED** with respect to the barn and the shed. Therefore Question 6 remains for trial, but only with respect to the stable building.

Appellants failed to file any additional supporting materials or argument with regard to Questions 5 or 7. Accordingly, as discussed in the March 8, 2006, decision, it is **HEREBY ORDERED** and **ADJUDGED** that Appellee-Applicant's Motion for Summary Judgment with regard to Questions 5 and 7 is **GRANTED**.

Accordingly, the trial will proceed only on Question 6, and only as regards the stable building, beginning on April 5, 2006, at 9 a.m. (see enclosed notice). It is not expected that

the hearing will continue beyond April 5, 2006, but if it does not conclude, time is available for it to proceed, if necessary, on April 6, 2006, beginning at 9 a.m. and concluding no later than 2:30 p.m. on that day.

Done at Berlin, Vermont, this 21st day of March, 2006.

Merideth Wright
Environmental Judge