

State of Vermont
Superior Court – Environmental Division

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ENTRY REGARDING MOTION
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In re Bennington Wal-Mart Demolition/Constr. Permit Docket No. 158-10-11 Vtec
(Appeal from District #7 Environmental Commission Determination)

Bennington Wal-Mart Municipal Permit Docket No. 26-2-06 Vtec

Title: Request to Dismiss (Filing No. 5)

Filed: February 14, 2013

Filed By: Appellant Vermont Natural Resources Council, Appellant Citizens for Greater Bennington, BLS Bennington LC and Wal-Mart Real Estate Business Trust

Response filed: None

Granted Denied Other

The Vermont Natural Resources Council (VNRC) and Citizens for a Greater Bennington (CFGB), and thirty-seven Appellants in Docket No. 26-2-06 Vtec (Individual Appellants), and BLS Bennington LC and Wal-Mart Real Estate Business Trust filed a Stipulation of Dismissal (Stipulation) on February 13, 2013. Based upon the Stipulation, the Individual Appellants voluntarily dismiss with prejudice their appeal of the January 17, 2006 Town of Bennington Development Review Board decision (Docket No. 26-2-06 Vtec). Also, pursuant to the Stipulation, VNRC and CFGB voluntarily dismiss with prejudice their appeal of the September 23, 2011 District 8 Environmental Commission Permit #8B0079-8 (Docket No. 158-10-11 Vtec).

With respect to Docket No. 26-2-06 Vtec, cross-Appellant BLS Bennington LC withdrew its cross-appeal pursuant to a settlement agreement filed with this Court on or about July 30, 2009. Accordingly, as the Individual Appellants were the only remaining parties with standing to maintain the appeal, upon the terms expressed within the Stipulation, we hereby **DISMISS** the appeal. The January 17, 2006 Town of Bennington Development Review Board Decision granting development plan and design plan approval and zoning permit approval, as modified, if at all, by the 2009 settlement agreement and the Stipulation, is now final and binding. This completes the appeal proceedings in this matter.

With respect to Docket No. 158-10-11 Vtec, upon the terms expressed within the Stipulation, we hereby **DISMISS** VNRC's and CFGB's appeal. Because, however, there is a cross appeal in this matter by Cross Appellants Down to Earth Golf Course Construction, Inc. d/b/a Mt. Anthony Country Club and David Griffin and Maru Leon Griffin, this matter will now proceed upon the cross appeal only. We note that there is a pending interlocutory appeal to the Vermont Supreme Court (Supreme Court Docket No. 2012-347). We must await jurisdiction being returned to this Court prior to reactivating our proceedings.

Neither the Stipulation nor this Entry Order impact a third related appeal entitled Bennington Wal-Mart Stormwater Permit (Docket No. 49-3-10 Vtec).

Thomas G. Walsh, Judge
February 20, 2013
Date

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Date copies sent: _____

Clerk's Initials: _____

Copies sent to:

Attorneys Paul Brierre, Jamey Fidel for Appellant Vermont Natural Resources Council and Appellant Citizens for Greater Bennington

Attorney David Grayck for Cross Appellants Down to Earth Golf Course Const. dba Mt. Anthony Country Club, David Griffin, and Maru Leon Griffin

Attorneys Elizabeth Lord, William H. Rice for Interested Person Agency of Natural Resources

Attorney Robert E. Woolmington for Interested Person Town of Bennington

Attorney John H. Hasen for Interested Person Natural Resources Board/LU Panel

Attorney Alan B. George for Appellee BLS Bennington L.C.