

State of Vermont
Superior Court - Environmental Division

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ENTRY REGARDING MOTION

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In re Freimour & Menard CU Permit
(Municipal CU Permit Appeal)

Docket No. 59-4-11 Vtec

Title: Motion in Limine (Filing No. 6)

Filed: October 12, 2012

Filed By: Appellants Allen and Doreen Pigeon

Response in Opposition filed on November 30, 2012 by Applicants Sharon Menard and Leon Freimour

Reply filed on December 3, 2012 by Appellant Allen and Doreen Pigeon

Granted Denied Other

This matter concerns an appeal by Appellants, Doreen and Allen Pigeon, of the Town of Swanton's Zoning Board of Adjustment's ("ZBA") decision granting Applicants, Sharon Menard and Leon Freimour, a conditional use permit to convert their seasonal home into a year-round residence. Appellants also commenced a parallel case in the Franklin Superior Court - Civil Division. Currently pending before this Court, is Appellants' motion in limine requesting that: (a) the Court take judicial notice of the Franklin Superior Court's decision and order on Appellant's motion for contempt and (b) preclude testimony and evidence concerning ownership of the portion of land where Applicants constructed their new driveway and ownership of Yandow Road.

Applicants have an obligation to make a threshold showing that they have the authority to use land as proposed in an application. In re Freimour & Menard CU Permit, No. 59-4-11 Vtec, slip op. at 8-9 (Vt. Super. Ct. - Env. Div., June 6, 2012)(Durkin, J.). Such a showing does not preclude an opponent to the project from contesting such ownership in a Civil Division proceeding. The Environmental Division is not empowered to adjudicate property ownership and use disputes; our authority in this case is to determine conformance with the applicable land use ordinance. Accordingly, the Court will allow evidence at the merits hearing that will assist in its determination of whether Applicants have made a sufficient threshold showing that they have the right to use the land as proposed.

Thomas S. Durkin, Judge

December 10, 2012

Date

Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

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Appellee Sharon Menard

Appellee Leon Freimour