

**State of Vermont
Superior Court—Environmental Division**

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ENTRY REGARDING MOTION

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In re Lawrence Site Plan Approval
(Appeal from Town of Brattleboro Development Review Board decision)

Docket No. 166-10-10 Vtec

Title: Motion to Re-submit Evidence (Filing No. 9)

Filed: May 9, 2011

Filed By: Appellant Susan Rockwell

Granted Denied Other

Appellant Susan Rockwell has requested permission to re-submit evidence that she previously attached to a version of her Statement of Questions that the Court struck from the record. Appellant’s current motion seeks a reconsideration of that determination. For the reasons stated below, we **DENY** Appellant’s request.

An appellant’s Statement of Questions both establishes the scope of the appeal and provides notice to other parties of what issues are being appealed. See V.R.E.C.P. 5(f); Appeal of Town of Fairfax, No. 45-3-03 Vtec, slip op. at 4 (Vt. Env’tl. Ct. June 13, 2005) (Wright, J.). However, a Statement of Questions is not a proper vehicle for the submission of evidence by an appellant.

Appellant’s submission of evidence is particularly inappropriate here where the municipality, the Town of Brattleboro, has fulfilled all necessary legislative requirements to have its land use and environmental determinations considered on-the-record when appealed to this Court. See 24 V.S.A. § 4471(b). Our task in an on-the-record appeal is to review the record from the DRB proceeding and determine whether the DRB’s factual findings are supported by “substantial evidence.” In re Stowe Highlands Resort PUD and PRD Application, 2009 VT 76, ¶ 7, 186 Vt. 568 (citation omitted). We are not authorized to consider evidence not in this record nor may we reach our own factual determinations.

For these reasons, we **DENY** Appellant’s pending motion to re-submit evidence; in reaching a decision on Appellant’s appeal we intend to rely solely upon the record submitted by the DRB to the Court pursuant to V.R.E.C.P. 5(h).

Thomas S. Durkin, Judge

July 27, 2011
Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:
Appellant Susan Rockwell, Esq., Pro Se
Jodi P. French, Attorney for Interested Person Town of Brattleboro
Appellee Stephen Lawrence, Pro Se