

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

=====

ENTRY REGARDING MOTION

=====

**In re Main St. Place, LLC (PC tie vote)
(Appeal of claimed non-decision by Planning Commission)**

Docket No. 168-11-11 Vtec

Title: Motion for Enlargement of Time (Filing No. 4)

Filed: February 13, 2012

Filed By: Applicant/Cross-Appellant Main Street Place, LLC

Response: None.

X Granted Denied Other

Currently before the Court are five separate, but related, appeals concerning municipal land use permits for development activities on the same two lots: 50 and 58 Main Street in the Village of Derby Line, Vermont. The above Docket is an appeal by the Village of Derby Line (“the Village”), as well as a cross-appeal by Main Street Place, LLC (“Applicant”), of a tie vote reached by the Town of Derby Planning Commission in response to Applicant’s application for site plan approval to raze the existing buildings on the two lots, bring the areas to grade, and replant the areas.

There are cross-motions for summary judgment filed in this matter that we address in a separate Entry Order. In conjunction with the cross-motions, on February 13, 2012, Applicant filed a motion for the enlargement of time to file a combined response to the Village’s motion for summary judgment and reply to the Village’s opposition to Applicant’s motion for summary judgment, both of which were filed by the Village on January 30, 2012. Applicant requested more time in order to gather information to respond to a particular factual allegation put forward by the Village. The Village did not oppose Applicant’s motion, and Applicant subsequently filed its combined response and reply on March 2, 2012.

Normally, a party has thirty days to file a response in opposition to a motion for summary judgment, V.R.C.P. 56(b),¹ and ten business days to file a reply to another party’s opposition to any motion it files for summary judgment. V.R.C.P. 6(a), 78 (b); see V.R.E.C.P. 5(a)(2). However, the Court has discretion to grant a party more time to make such filings when a party shows cause and files its motion for enlargement of time within the time period allotted for the response or reply. See V.R.C.P. 6(b); V.R.E.C.P. 5(a)(2).

¹ We note that an updated version of V.R.C.P. 56 took effect on January 23, 2012, subsequent to the filing of the pending motion. We analyze the pending motion, and all of the motions for summary judgment filed in the four related appeals concerning 50 and 58 Main Street in the Village of Derby Line, under the current version of the rule because the rule change does not affect our analysis and at least one of these motions for summary judgment was filed after the rule change.

Because Applicant here showed cause for the additional time it requested—to gather information to respond to a particular factual allegation put forward by the opposing party—and filed its motion for the enlargement of time within the time period allotted for its response and reply, we **GRANT** Applicant’s unopposed motion for enlargement of time. We have considered the combined response and reply filed by Applicant on March 2, 2012 when ruling on the cross-motions for summary judgment filed in this matter.

Thomas S. Durkin, Judge

June 19, 2012
Date

=====

Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

Jon T. Anderson, Attorney for Main Street Place, LLC

Paul S. Gilles, Attorney for Village of Derby Line