

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

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**ENTRY REGARDING MOTION**

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**In re RACDC Retention Pond**

**Docket No. 62-5-12 Vtec**

**(Appeal from Town of Randolph Development Review Board decision)**

Title: Motion for Summary Judgment (Filing No. 5)

Filed: July 9, 2012

Filed By: Appellant William J. Kevan Jr

Response: NONE

Granted

Denied

Other

On December 15, 2011, William Kevan (Appellant) sent the Town of Randolph Zoning Administrator (the ZA) a letter alleging that the Randolph Area Community Development Corporation (RACDC) violated its zoning permit by failing to include a storm water retention pond in its Salisbury Square Planned Residential Development in the Town of Randolph, Vermont (the Town). The ZA determined that removal of the storm water retention pond did not violate RACDC's permit, and, therefore, took no action. Appellant appealed the ZA's decision to the Town of Randolph Development Review Board (the DRB), which dismissed Appellant's appeal for lack of jurisdiction. Appellant then appealed the DRB's decision to this Court. Currently pending before this Court is Appellant's Motion for Summary Judgment.

The Vermont Rules of Civil Procedure provide that the Rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." V.R.C.P. 1. In order to promote judicial efficiency under V.R.C.P. Rule 1, we decide Appellant's Motion for Summary Judgment before RACDC files a response to the Motion.

The Town of Randolph has elected that appeals from its municipal panels to this Court be conducted "on the record." See 24 V.S.A. § 4471. In an on-the-record appeal, this Court will not consider new evidence; rather, our review is limited to the record before the DRB and the briefs submitted by the parties. See V.R.E.C.P.5(h); In re Saman ROW Approval, No. 176-10-10 Vtec, slip op. at 1 (Vt. Super. Ct. Env'tl. Div. Sept. 2, 2011) (Durkin, J.). We will uphold the DRB's findings of fact if they are supported by substantial evidence in the record, and we will review the DRB's legal conclusions de novo where such conclusions are outside its area of expertise. See In re Stowe Highlands Resort PUD and PRD Application, 2009 VT 76, ¶ 7, 186 Vt. 568.

On-the-record appeals to the Environmental Division are governed by the Vermont Rules of Appellate Procedure. See V.R.E.C.P. 5(h); see also In re Ferrera & Fenn Gravel Pit Application, No. 159-9-10 Vtec, slip op. at 2 (Vt. Super. Ct. Env'tl. Div. Sept. 29, 2011) (Durkin, J.). The appellate process allows the parties to file legal briefs setting forth their reasons why the decision below should be upheld or reversed. See V.R.A.P. 28. The appellate process is

designed to be efficient and abbreviated, as no further evidentiary proceedings are allowed. In an on-the-record appeal, the Environmental Division functions as an appellate court. Thus, summary judgment is inappropriate before this Court in an on-the-record appeal. See Ferrera & Fenn Gravel Pit Application, No. 159-9-10 Vtec, slip op. at 2.

We therefore **DENY** Appellant’s motion for summary judgment. In addition, we also **DENY** RACDC’s Motion for Enlargement of Time to Respond to Appellant’s Motion for Summary Judgment as it is now moot.

Lastly, we note that the following additional motions remain pending: Appellant’s Request for Mediation, RACDC’s Motion to Dismiss, and Appellant’s Motion to Vacate the DRB Decision and Remand the Matter. These pending matters will be addressed in a future entry order.

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Thomas G. Walsh, Judge  
Date July 31, 2012

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Date copies sent to: \_\_\_\_\_ Clerk's Initials \_\_\_\_\_

- Copies sent to:  
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