

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 53-5-17 Vtec

Ermione, LLC SD and CU

ENTRY REGARDING MOTION

Count 1, Municipal DRB Multiple Types (53-5-17 Vtec)

Title: Motion to Dismiss Party (Motion 2)

Filer: Ermione, LLC

Attorney: Ryan P. Kane

Filed Date: July 21, 2017

Response in Opposition filed on 10/31/2017 by Carol Chamberlin, Appellant

Reply in Support filed on 10/27/2017 by Attorney Ryan P. Kane for Appellees Ermione, LLC and Christina Castegren

The motion is GRANTED.

The present appeal is from an April 5, 2017, Town of Fayston Development Review Board (“DRB”) decision approving Ermione, LLC and Christina Castegren’s (“Applicant”) minor subdivision and conditional use application. Applicant moves to dismiss Ms. Carol Chamberlin as a party to the present appeal pursuant to V.R.E.C.P. 5(d)(2).

Applicant argues that Ms. Chamberlin does not qualify as an interested person pursuant to 24 V.S.A. § 4465(b) as her property is not in the immediate neighborhood of the proposed development and she has not alleged a physical or environmental impact to her interests. Ms. Chamberlin disagrees, contending that her property is in the immediate neighborhood of the proposed development and potential impacts to her regular walking routes give rise to interested party status.

Pursuant to 24 V.S.A. § 4465(b)(3), an interested person is one “owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act” who can “demonstrate a physical or environmental impact on [their] . . . interest under the criteria reviewed.” Appellants asserting standing must fall within these statutory requirements. Two Bad Cats, LLC Conditional Use, No. 169-12-14 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. May 29, 2015) (Walsh, J.) (citing In re Gulli, 174 Vt. 580, 582 n* (2002) (mem.)). Those asserting party status under § 4465(b) must “make the minimum factual allegations necessary for us to conclude that we have jurisdiction over their claims.” In re Hartland Grp. Real Estate, No. 94-7-11 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Nov. 1, 2011) (Durkin, J.).

In determining whether a property is in the “immediate neighborhood” of a proposed project, the Court considers “not only the proximity of the appellant to the project on appeal, but also whether the appellant potentially could be affected by any of the aspects of the project which have been preserved for review on appeal.” In Re Bostwick Rd. Two-Lot Subdivision, No. 211-10-05 Vtec, slip op. at 2 (Vt. Env'tl. Ct. Feb. 24, 2006) (Durkin, J.) (citations omitted), *aff'd* No. 2006-129 (Vt. Jan. 1, 2007) (unpub. mem.), available at <https://www.vermontjudiciary.org/sites/default/files/documents/eo06-128.pdf>.

Ms. Chamberlin argues potential impacts to her regular walking routes satisfy the standing requirements of § 4465(b)(3). Ms. Chamberlin alleges that the proposed development will encroach on the natural views she experiences on these routes, all of which are located off her property and some of which cross over or offer views of Applicant's property. Ms. Chamberlin has not alleged any physical or environmental impacts on her property. Allegations of physical or environmental impacts not effecting a party's property interests do not give rise to an interest that would qualify a person as a party with status to participate in litigation; such interests do not satisfy the standing requirement for a court to entertain such claims. Bischoff v. Bletz, 2008 VT 15, ¶ 15, 183 Vt. 235 (“One element of the ‘case or controversy requirement is that plaintiffs must have standing, that is, they must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law.’”), quoting Parker v. Town of Milton, 169 Vt. 74, 77 (1998). When an appellant in a municipal zoning appeal fails to show that their particularized or unique property interests may be affected, we are compelled to declare that they have not fulfilled the statutory requirements concerning interested party status. See Two Bad Cats, LLC, No. 169-12-14 Vtec at 5 (May 29, 2017) (citations omitted).

Further, Applicant argues that, as Ms. Chamberlin's property is approximately 1.2 miles away from the proposed development, it is not located in the immediate neighborhood. Ms. Chamberlin has not disputed this fact, and has merely asserted that her property is in the immediate neighborhood, but has not asserted any facts to support her assertion. The Court, therefore, concludes that she has failed to adequately allege that her property is in the immediate neighborhood of the proposed development.

For the foregoing reasons, Ms. Chamberlin has not shown she meets the definition of “interested person” pursuant to 24 V.S.A. § 4465(b)(3). Therefore, Applicant's motion to dismiss Ms. Chamberlin is **GRANTED**.

So Ordered.

Electronically signed on December 22, 2017 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).



Thomas S. Durkin, Superior Judge
Environmental Division

Notifications:

Appellant Ben Bridgewater

Appellant Wendy Bridgewater

Appellant Carol Chamberlin

Appellant Marie Saylor

Ryan P. Kane (ERN 6705), Attorney for Appellee Ermione, LLC and Christina Castegren

John H. Klesch (ERN 2043), Attorney for Interested Person Town of Fayston

Appellant Christopher J. Nordle