

COURT VACATES DRB DECISION AND REMANDS CASE

In an unpublished November decision, the Vermont Supreme Court strongly criticized the manner in which a Development Review Board (DRB) handled on-the-record review of a conditional use permit application. It remanded the case to the DRB for further fact finding.

In April 2003, the DRB held a hearing on a conditional use permit for an automobile repair shop. No recording was made of the proceeding. Because the town had opted for on-the-record appeals, the Environmental Court remanded the matter to the DRB for another hearing.

The second hearing was held. After the second hearing, the DRB denied the application, concluding that the proposed home business would adversely affect the traffic and the character of the residential neighborhood.

The Environmental Court upheld the DRB's decision and the applicants appealed to the Supreme Court. The applicants argued that there was neither credible nor substantial evidence to support the DRB's decision. The Supreme Court agreed. It vacated the DRB and Environmental Court decisions and remanded the case to the DRB for further findings and a third hearing, if necessary.

On-the-record review empowers local communities and can simplify the zoning process. However, as the Supreme Court stated, DRB findings must make a clear statement of what was decided and how the decision was reached. When the record is incomplete, the decision may be vacated, which can necessitate additional hearings and more delay.

As of March, only seven Vermont municipalities had adopted on-the-record appeals. Some officials have opined that the burdens of on-the-record review outweigh the benefits. This doesn't bode well for on-the-record appeals. The Supreme Court has urged VLCT to provide education on how to make adequate findings and render decisions that allow appellate review.

VLCT plans to take the Supreme Court up on its request and will develop a workshop to educate DRB members and zoning administrators about on-the-record hearings and drafting solid decisions. Watch for it this spring.

- Jim Barlow, Attorney, VLCT Municipal Assistance Center

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