

Confidentiality of Written Legal Opinion

Zoning officials and board members often seek the advice of attorneys when considering complex permit applications. The Vermont Supreme Court recently examined the confidentiality afforded a legal opinion that, while otherwise exempt from the public records law, was in this case examined by a development review board (DRB) during the course of a public meeting.

The case stemmed from a development proposal in Stowe. While considering a permit application, the Stowe DRB requested a written opinion from its attorney. The DRB chair distributed copies of the opinion to the DRB members during a public hearing, but did not provide a copy to the applicant. When the applicant requested a copy of the opinion, the DRB refused to provide it, stating that because the opinion contained legal advice, attorney-client privilege exempted the document from the public records law. 1 V.S.A. § 317(c)(4).

The applicant brought suit to compel the DRB to produce the letter. *232511 Invs., Ltd. (Stowe Highlands) v. Town of Stowe Dev. Review*, 2005 VT 59. The applicant asserted that because the DRB considered the letter in a public meeting, it was required to release it to the public.

The Vermont Supreme Court disagreed, holding that legal advice issued a municipal board is protected by the attorney-client privilege and shielded from the public records law under 1 V.S.A. § 317(c)(4). Review of the opinion during a public meeting did not compel its release to the applicant and the DRB was not required to enter executive session to protect the confidentiality of the privileged document.

The Court's opinion indicates that a municipal board may examine confidential materials during a public meeting, and that doing so does not compel the subsequent release of those confidential materials to the public.

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