

DEFICIENT DECISION RESULTS IN REMAND, NOT DEEMED APPROVAL

The Environmental Court has clarified that the proper remedy in instances where a zoning board has issued a timely yet deficient decision is to vacate the decision and remand the matter back to the board to correct the deficient decision. Appellants who might be subject to the defective decision are not entitled to deemed approval on the grounds that the decision failed to meet the requirements of 24 V.S.A. § 4464(b)(1). *In re Dufault Variance Application*, 129-6-07 Vtec, (October 24, 2007).

The matter involved a request for a variance from a side yard setback requirement in the St. Albans Town zoning bylaw. The St. Albans development review board (DRB) held a hearing after which it issued a timely decision denying the variance request. The decision generally tracked the five requirements of the state variance statute, 24 V.S.A. § 4469, but did not contain the factual bases upon which the DRB made its conclusions, as required under 24 V.S.A. § 4464(b)(1).

The property owners appealed the decision to the Environmental Court, arguing that because the decision failed to meet the requirements of 24 V.S.A. § 4464(b)(1), they were entitled to deemed approval. The Environmental Court rejected this argument, concluding that while the deemed approval remedy should be applied to remedy untimely decisions or protracted deliberations, it is not appropriate in cases where a decision is timely yet fails to meet some other requirements of the law. In such instances, the decision will be vacated by the Court and the case remanded to the DRB. The DRB may then reopen the hearing or make findings or conclusions based on the evidence taken at the original hearing. A copy of the decision can be obtained at:
<http://www.vermontjudiciary.org/tcdecisions/07-129z.Dufault.sjo.pdf>.

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