

Participation in Preliminary Plat Review Ensures Interested Party Right of Appeal

Act 115, the comprehensive rewrite of Vermont's Municipal and Regional Planning and Development law, raised many questions about the degree to which one must participate in order to preserve a right of appeal. The Vermont Supreme Court answered one of these questions in the case *In re Appeal of Patricia Carroll, et al*, 2007 VT 19.

In June 2003, developers Alice Rivers and CRC Sand & Gravel took the first step towards approval of their five-lot subdivision by filing an application for sketch-plan review by the Town of Jericho Development Review Board (DRB). At the hearing, James Carroll spoke on behalf of himself and his wife, and submitted their concerns about the subdivision in writing under the name "The Carroll Family and Friends."

The developers next sought Preliminary Plat Review for their subdivision request, which the DRB considered at a hearing it held on October 23, 2003. As before, Mr. Carroll was in attendance, spoke to the application, and submitted his and his wife's concerns in writing to the DRB. The Preliminary Plat, with conditions, was approved.

As the last step in the review process, developers sought Final Plat Review. The DRB held a hearing on the developers' application on December 2, 2004, which both Mr. and Ms. Carroll attended. At the hearing, Mr. Carroll read some prepared written comments that he submitted to the DRB. The minutes of that hearing did not reflect that Ms. Carroll spoke. However, she did submit an affidavit in which she declared that she had helped prepare her husband's remarks. On December 3, 2004, the DRB sent its written decision approving the Final Plat application to the developers.

Ms. Carroll and others appealed the DRB's approval to the Vermont Environmental Court. The developers filed a motion to dismiss the appeal, arguing that Ms. Carroll had not "participated in a municipal regulatory proceeding" as required by the newly amended Municipal and Regional Planning and Development Act (Chapter 117 of Title 24) because she did not offer evidence, either through testimony or a statement of concern, at the hearing on the developers' Final Plat application. Ms. Carroll responded that the preliminary and final plat review hearing were part of one overall proceeding for subdivision review. Although the Environmental Court seemed to agree with Ms. Carroll that the preliminary and final plat review are essentially one subdivision proceeding, it ultimately could find no statutory authority on which to base such a decision, and dismissed her appeal.

On appeal to the Vermont Supreme Court, Ms. Carroll challenged the Environmental Court's dismissal on the grounds that (1) the new Chapter 117 provision requiring her to participate in a municipal regulatory proceeding did not apply because it came into effect a year after the developers' original filing of its request for a subdivision; (2) she participated in the final plat hearing; and (3) her participation in the preliminary plat hearing constituted participation for purposes of the entire municipal regulatory proceeding, i.e. the developers' subdivision application. Because the Supreme Court agreed with Ms. Carroll's third argument, it refused to address the first two.

Whereas the old Municipal and Regional Planning and Development Act conferred an automatic right of appeal to Environmental Court to anyone who met the definition of an “interested person,” under the new law, interested party status alone is not sufficient. 24 V.S.A. § 4464(b). Now, only those interested persons who *participated* in a municipal regulatory proceeding have a right to appeal. “Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.” 24 V.S.A. § 4471(a).

In this case, the main question before the Court was what did the Vermont Legislature mean by the phrase “municipal regulatory proceeding?” When interpreting a statute, the Court’s objective is to give effect to the Legislature’s intent, which it does by looking to the statute’s plain meaning. The Court presumes that the Legislature intended a plain, ordinary meaning of language, and will not read something into the statute which is not there, unless doing so is necessary to make the statute effective. Here, the Legislature did not define the phrase “municipal regulatory proceeding” and the use of the phrase was not clear enough for the Court to make a decision based solely on its wording.

To aid in its analysis, the Court looked to Black’s Law Dictionary 1241 (8th ed. 2004) which defines “proceeding” as “(t)he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.” Applying this definition, the Court looked upon the preliminary plat review as simply a step in the subdivision review process. In holding for Ms. Carroll, the Court reasoned that looking upon the preliminary plat and final plat reviews as part of one overall municipal regulatory proceeding – rather than as separate proceedings – was consistent with the Legislature’s goal of limiting the right to appeal to only those interested persons who have participated in a municipal regulatory proceeding.

Finally, while the Court did clarify that an interested person need only participate in either the preliminary or final plat review in order to obtain a right to appeal, as an aside, it also raised the question of whether an interested person may appeal a preliminary plat review. The Court concluded, “(w)e doubt that the interested party can appeal from a decision that reflects only a ‘general agreement’ between the developer and the DRB..., but we need not ground our decision on this point.”

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