

VERMONT SUPREME COURT ADDRESSES PRIVATE ENFORCEMENT OF MUNICIPAL ZONING DECISIONS

A question occasionally arises as to whether Vermont's zoning statutes allow citizen suits to obtain judicial enforcement of municipal zoning board decisions outside of the context of an appeal. The Vermont Supreme Court has ruled that under 24 V.S.A. § 4470(b), an interested person can indeed obtain enforcement of a zoning board decision by filing a complaint directly with the Environmental Court or Supreme Court – the party need not utilize the process for appealing a zoning administrator's decision set out in 24 V.S.A. §§ 4465 and 4471. *Sunset Cliff Homeowners Assoc. v. City of Burlington*, 2008 VT 56.

The facts of the case are rather complex. Keystone Development Corporation filed an application for zoning and subdivision permits to construct a planned residential development on a 40-acre parcel in the City of Burlington. The City's Development Review Board granted the developer's applications, but the decision was appealed to the Environmental Court. In a *de novo* appeal, the Court denied Keystone's applications in part because it concluded that the developer's tree retention plan was inadequate under the City's subdivision regulations. Notwithstanding the denial, Keystone subsequently cleared a portion of the property in the location of a proposed storm water attenuation pond. Members of the Sunset Cliffs Homeowners Association filed a motion as interested persons with the Environmental Court to enjoin development of the parcel. The Environmental Court issued an injunction, but subsequently granted Keystone's motion to dissolve the injunction, staying dissolution of the injunction for a week.

During that week, the Association initiated an action in the Environmental Court seeking a writ of mandamus against the City of Burlington to enforce the Environmental Court decision and an injunction against Keystone. At week's end, the City agreed to the mandamus and commenced an enforcement action against Keystone. The Environmental Court issued a permanent injunction against Keystone in October 2004, enjoining Keystone from cutting any trees or doing other development work on the parcel of land until there was final approval of all necessary City permits. Keystone then appealed the injunction to the Supreme Court.

While that appeal was pending, the City and Keystone executed a stipulation purporting to dissolve the Environmental Court's injunction and dismiss the case without prejudice. Thereafter, Keystone submitted a second application for the project. The Burlington DRB denied the second application in part because it concluded that the developer's tree-retention plan was still inadequate. In response, Keystone withdrew all its permit applications and announced its intention to engage in cutting trees, clearing land and performing ditch work on the theory that it could no longer be regulated because it was not then seeking any permits. Thereafter, the Association filed an action in the Environmental Court seeking an injunction to prevent Keystone from engaging in these activities and an order of mandamus requiring the City to take steps to prevent the cutting, clearing, and ditch work. The Environmental Court issued a preliminary injunction and the Supreme Court accepted Keystone's request for an interlocutory appeal.

Among other things, Keystone argued that the Environmental Court lacked jurisdiction to issue the preliminary injunction requested by the Association because the Association had failed to follow the process for appeal of a zoning administrator's enforcement decision outlined in 24 V.S.A. §§ 4465 and 4471. Said another way, because the Association failed to request that the Burlington zoning administrator initiate enforcement action against Keystone and did not thereafter appeal the zoning administrator's decision to the Burlington DRB and the Environmental Court, the Environmental Court lacked authority issue an injunction to stop Keystone's land clearing and ditching activities.

The Supreme Court rejected Keystone's argument, noting that under 24 V.S.A. § 4471(b), the Superior Court and the Environmental Court are authorized to enforce decisions of an appropriate municipal panel "upon petition, complaint, or appeal...by [a] municipality or any interested person by means of mandamus, injunction, process of contempt or otherwise." Because the Association was seeking to enforce a decision issued by the Burlington DRB, it could proceed under 24 V.S.A. § 4471(b) and was not obligated to follow the more cumbersome appeal procedure set out at 24 V.S.A. §§ 4465 and 4471.

While the *Sunset* decision is not surprising, it is noteworthy in a few respects. First, the decision clarifies that interested persons can initiate lawsuits to enforce a municipal zoning or subdivision decision directly in Environmental or Superior Court. Next, unlike the appeal process set out in 24 V.S.A. §§ 4465 and 4471, there is no requirement under 24 V.S.A. § 4471(b) that an interested person must participate in a local proceeding before an appropriate municipal panel before he or she initiates an enforcement action in Environmental Court or Superior Court. So long as the party qualifies as interested person under 24 V.S.A. § 4465, he or she can bring an action to enforce a zoning or subdivision decision in Environmental Court or Superior Court under 24 V.S.A. § 4471(b). A copy of the decision can be obtained at: <http://www.vermontjudiciary.org/courts/index.htm#Supreme%20Court>.

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Sidebar

Who, or What, is an Interested Person?

V.S.A. § 4465(b) states that “for the purposes of this chapter, an interested person means any one of the following:

- (1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- (2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
- (3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- (4) Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
- (5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.”

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