

ENVIRONMENTAL COURT DECISIONS

The Vermont Environmental Court is authorized to hear appeals of decisions of municipal planning commissions, zoning boards of adjustment and development review boards. It is important to note that Environmental Court decisions do not represent the definitive interpretation of a legal issue as they can be appealed to the Vermont Supreme Court. However, because most Environmental Court decisions are not appealed it is important for municipalities to be familiar with Environmental Court rulings. As always, the Law Center will track Vermont Supreme Court decisions and report in the *VLCT News* if any of the issues discussed below are addressed on appeal.

TOWN PLAN COMPLIANCE – LOCAL BYLAWS

The Law Center is frequently asked if municipal planning boards may deny an application based on non-compliance with a town plan. The question typically arises when a municipality's criteria for permit approval (e.g. conditional-use permit, subdivision permit or PUD/PRD approval) include that a project conform or be consistent with a town plan. *In re: Appeal of John H. Rhodes* involved an applicant's appeal of conditions that the town of Georgia included in a preliminary plat approval for a proposed subdivision.

In re: Appeal of John H. Rhodes, Docket No. 198- 10-98 Vtec. One of the criteria in the town's subdivision regulations is that a project must comply with the town plan. *Id* at 9. In reviewing this criteria the environmental Court said that "[W]hile a town plan is generally not independently enforceable, and serves instead as guidance in the application of the zoning and subdivision regulations ... in the present instance the town plan is incorporated as a standard," in the town's subdivision regulations. *Id* at 9.

In its ruling, the Environmental Court did not directly address the issue of denying or conditioning a project based on compliance with a town plan. However, the Environmental Court's ruling can be interpreted to mean that if municipalities incorporate their town plan as specific standards in their bylaws, an application may be denied or conditioned based on provisions of the plan. At the very least the Environmental Court is saying that the practice of including compliance with a town plan in its bylaws, as a specific criterion, is acceptable. The Law Center cautions that a municipality would have to have a clear and solid evidentiary record of a project's failure to comply with its town plan in order to have its decision stand up on appeal.

DETERMINING WHO IS AN INTERESTED PERSON

The Environmental Court issued a decision on motions for Summary Judgement and to Dismiss that address one aspect of the issue of who may qualify as an "interested person" in appeals brought under Title 24, Chapter 117. The question of who is an "interested person" under 24 V.S.A. § 4464(b)(3) is one that zoning administrators and planning/zoning boards frequently wrestle with.

The cases involve the appeal of a town zoning permit issued for the construction of one building, expansion of a second and construction of a 160' telecommunication tower. *In re: Appeals of Beckstrom, et al., and In re: Appeal of H.A. Manosh, Inc.*, Docket Nos. 212-11-98 Vtec, 11-1-99 Vtec, 61-4- 99 Vtec and 1-1-99 Vtec. Vermont RSA Limited Partnership d/b/a/ Bell Atlantic Mobile (BAM) had entered into an option agreement with the applicant to lease the second building and space on the tower. *Id* at 2. The appellants challenged BAM's authority to enter the case as a party based their belief that it does not qualify as an "interested person" under 24 V.S.A. § 4464(b)(3). The Environmental Court rejected the appellant's challenge ruling that "[T]he option agreement is a sufficient property interest to qualify Vermont RSA Limited Partnership d/b/a/ Bell Atlantic Mobile as an interested person under § 4464(b)(3), even though it does not yet occupy the property. *Id* at 2. Accordingly, we now know that in the eyes of the Environmental Court holding an option creates an interest that qualifies an individual as an "interested person."

PROJECT COMPLETION DATES

One municipality recently expressed concern about issuing a permit for a phased project that the applicant does not complete. The concern is twofold: That construction will commence and the permittee will abandon a half-completed project, leaving a project that is not in conformity with a surrounding area and erosion problems if part of the site is left open; second, there is the concern that an applicant will apply for a Planned Residential or Planned Unit Development, which requires two or more units, and never complete construction of the planned development as contemplated. This can create adverse aesthetic

conditions and allow applicants to essentially place single-family dwellings in areas that have been designated for multi-unit planned developments. The issue of setting project completion dates was addressed by the Environmental Court in *In re: Appeal of Ran Mar, Inc.*, Docket No. 60-4-99 Vtec.

In *In re: Appeal of Ran Mar, Inc.*, the town of Berlin planning commission included a condition in its permit for a planned residential development (PRD) that required that the project be completed in five years. *Id* at 2. The condition was based on provisions of the town's bylaws that allow a PRD to be phased in over reasonable period of time to avoid placing an undue burden on municipal services and that allows phasing to assure the orderly development of the entire subdivision. *Id* at 2.

The permittee appealed and requested the project completion date be extended to ten years. *Id* at 2. The permittee argued that, given the Central Vermont housing market, ten years is a reasonable amount of time for the town and region to economically absorb the proposed development. According to the Environmental Court, the town submitted no evidence regarding the impact of extending the project completion date to ten years on municipal services or on the orderly development of the PRD. As a result the Environmental Court extended the construction completion date to ten years. *Id* at 2.

In sum, the Environmental Court's ruling implies that municipalities may impose project completion dates if they have adopted bylaws requiring that a project be completed in a reasonable period of time. However, the municipality must have a rational basis for setting a project completion date, such as the impact of a project on municipal services or the orderly development of a project, and be able to justify the completion date that it imposes by citing evidence in the record.

- Jon Groveman, Esq.

VLCT News, February 2001