

# ENVIRONMENTAL COURT ROUNDUP

*(Editor's Note: In this Legal Corner, the VLCT Municipal Assistance Center presents a summary of three recent Environmental Court decisions of significance to municipalities. Please note that this summary indicates how the Environmental Court will treat these particular issues, but as with all Environmental Court decisions, they are subject to review by the Vermont Supreme Court if appealed.)*

## STATUTE OF LIMITATIONS IN LAND USE PERMIT ENFORCEMENT ACTIONS

In a recent decision issued by the Vermont Environmental Court, Judge Merideth Wright explained which enforcement actions are barred by the statute of limitations provided in 24 V.S.A. § 4496(a).

According to § 4496(a), a zoning administrator (ZA) may institute an action to enforce the terms and conditions of any required municipal land use permit within 15 years of the date the alleged violation first occurred. Specifically, § 4496(a) applies to enforcement actions brought under 24 V.S.A. §§ 4444 (“Enforcement; penalties”) and 4445 (“Enforcement; remedies”), which allow a ZA to bring enforcement actions against landowners who violate provisions of municipal zoning bylaws. Section 4496(a), however, makes no mention of enforcement actions brought under § 4470(c) against landowners who violate decisions of development review boards (DRB), zoning boards of adjustment (ZBA), or the courts.

In the case of *St. Albans v. Hayford*, Docket No. 161-9-03 Vtec, the court held that when a landowner is denied approval of a project by the DRB/ZBA, the 15-year statute of limitations provided in 24 V.S.A. § 4496(a) *does not* apply to enforcement actions brought by the municipality under § 4470(c). Note that because § 4470(c) also applies to enforcement of court decisions, the court’s decision applies when municipalities seek to enforce court decisions as well. Reading the relevant statutory provisions in light of this decision makes the statute of limitations issue appear quite straightforward. Sections 4444 and 4445 of Title 24 provide for enforcement actions in court against landowners who violate a municipality’s zoning bylaws. Section 4470(c) provides for enforcement actions in court against landowners who violate decisions of DRBs/ZBAs and courts. Section 4496(a) places a 15-year statute of limitations on enforcement actions brought under the former sections – 24 V.S.A. §§ 4444 and 4445. No mention is made in 24 V.S.A. § 4496(a), however, of enforcement actions brought under 24 V.S.A. § 4470(c).

For municipalities, this decision reinforces the broad power and responsibility to enforce board and court decisions. The court made it clear that the time in which municipalities may institute actions to enforce violations of DRB, ZBA, and court decisions under § 4470(c) is unlimited. Discussing § 4496(a)’s statute of limitations, Judge Wright stated that “by its terms it does not apply to enforcement actions filed pursuant to 24 V.S.A. § 4470(c) regarding violations of ZBA or DRB decisions.” Moreover, “that omission has been carried forward in the revisions to this statute passed this year.” By omitting a statute of limitations for this type of enforcement action, the Legislature made a clear policy decision. On the one hand, the Legislature sought to protect landowners from municipalities that did not enforce their bylaws in a timely fashion. Through § 4496(a) the Legislature is saying that if a municipality fails to bring

an enforcement action within 15 years of a violation of its bylaws, it loses that right. On the other hand, however, the Legislature is tougher on landowners who violate board and court decisions. By not including § 4470(c) actions in § 4496(a)'s statute of limitations, the Legislature is providing towns with broad power to enforce their decisions. When a landowner seeks approval of a project from a DRB or ZBA, towns have unlimited time to bring enforcement actions against landowners who ignore a decision.

This decision benefits municipalities because it reinforces their power to enforce decisions of their boards and the courts. Regardless of whether the source of a municipality's authority to bring an enforcement action is 24 V.S.A. § 4444, 4445, or 4470, however, VLCT encourages municipalities to diligently initiate these actions.

*- Justin Sluka, Intern, VLCT Municipal Assistance Center*

*VLCT News*, August/September 2004