

## Environmental Roundup

### EXERCISING DISCRETION

In another Environmental Court case, Judge Wright addressed an appellant's claim that the Zoning Administrator (ZA) should have applied a discretionary review standard contained in the City of Montpelier's Zoning and Subdivision Regulations to his neighbor's application. In *Appeal of Spaulding*, the ZA granted a permit to build a detached garage – an accessory structure to a permitted use – and the Development Review Board (DRB) affirmed that decision. *Appeal of Spaulding*, Docket No. 131-8-03. The appellant, presumably owners of a neighboring property, appealed to the Environmental Court for a determination of whether Article 8, paragraph 815.G. of Montpelier's Zoning and Subdivision Regulations should have been applied in making the ZA's decision. Paragraph 815.G. is contained in a section called "Site Protection and Design" and requires that "development and location, height, bulk, design, and materials of the buildings be designed in harmony with the surrounding area."

In issuing her decision on whether the ZA should have applied 815.G.'s "in harmony" standard, Judge Wright noted that "[the ZA's] duty to enforce the bylaws is a non-discretionary or ministerial one" and that "Administrative Officers are constrained by state statute to administer the zoning bylaws or regulations 'literally.'" Moreover, Judge Wright explained that Administrative Officers exercise discretion in very limited circumstances. For instance, a ZA will exercise discretion when determining which types of permits are required for a particular application, issuing enforcement notices of violation, and determining certification of compliance.

After establishing the fact that the ZA's duty is to literally administer the city's zoning and subdivision regulations, Judge Wright concluded that it is not the ZA's duty to apply 815.G.'s discretionary "in harmony" standard. Using rules of statutory construction, Judge Wright explained that "under [Montpelier's] regulations as a whole, the Administrative Officer performs no aesthetic or design review functions to determine whether a proposal is compatible with the character of the area or whether a building, open space or other feature of an application is designed in harmony with the surrounding area... That type of discretionary aesthetic or design review function is specifically given to the DRB in the conditional use, site plan review or design review process." Because the ordinance does not explicitly "vest discretionary design or aesthetic decisions in the Administrative Officer, [the Environmental Court] cannot do so by inference."

The result of this decision is that unless expressly granted the authority, a ZA should not apply discretionary standards. This Court will not read such authority into a bylaw and neither should ZAs.

- Justin Sluka, Intern, VLCT Municipal Assistance Center