

Permitting and Case Law: The Year in Review

Christian Chorba, Esq.

Downs Rachlin Martin PLLC

City of Burlington v. Sisters & Brothers Investment Group, LLP, 2023 VT 24, 297 A.3d 959, 961

- Concerns gas station/parking lot property on Pearl Street in Burlington
- Notice of violation for unpermitted change of use from nonconforming gas station to “private parking lot”
- At Vermont Supreme Court, Sisters & Brothers argued that (1) there cannot be a change of use violation because private parking lot is not defined, (2) enforcement is time-barred, (3) no basis for determining that violations continued for so long, (4) fine amount was punitive, not remedial, and (5) 2004 agreement was moot.
- Vermont Supreme Court determined that first two arguments fail because they derive from the 2019 unappealed DRB decision, length of violations can be determined by overall examination of circumstances, and fine had to be reversed because there was insufficient evidence that Sisters & Brothers knew about the 2004 agreement.

In re Burns 12 Weston St. NOV, 2022 VT 37, 283 A.3d 947, 949 (Vt. 2022)

- Owners purchased unpermitted duplex, began renovating interior, and received “Certificate of Non-Applicability of Zoning Permit Requirements” from city’s Department of Planning and Zoning. Environmental Division upheld that certificate, but Supreme Court reversed, and owners did not pursue certificate
- Department of Planning and Zoning issued notice of violation alleging that building was an unpermitted duplex, but Environmental Division vacated
- Vermont Supreme Court held that zoning statute of limitations, 24 V.S.A. § 4454(a), barred enforcement action, and owners were not required to raise that issue in the first litigation

In re Windham & Windsor Housing Trust Permit Appeal, 2023 WL 4699440(Vt. July 21, 2023)

- Housing trust sought to build 25-unit planned residential development (PRD) with two parking lots on two separate lots, connected by walking path
- Neighbor appealed from Environmental Division summary judgment decision approving PRD
- Environmental Division granted summary judgment to housing trust
- On appeal, Vermont Supreme Court determined that even though not contiguous, the two separate lots could be considered one for purposes of hosting the PRD: lots do not have to be contiguous or located on a single “lot”

In re JSCL, LLC CU Permit, 2021 VT 22, 214 Vt. 359, 362, 253 A.3d 429, 431

- Town of Ferrisburgh zoning board of adjustment approved conditional use application to build trucking facility for fuel-hauling business.
- Environmental Division determined that proposed facility was an allowed conditional use in the Ferrisburgh Industrial Zoning District and therefore could be permitted if it otherwise complied with the zoning bylaws
- Vermont Supreme Court found that proposed project complied with the noise-performance standard; was not a fire, explosive, or safety hazard; and conditions regarding traffic were not impermissibly vague

In re Snowstone, LLC Act 250 Jurisdictional Opinion,
2021 VT 72A, 216 Vt. 216, 274 A.3d 42

- Concerns whether Act 250 permit is required to operate a small dimensional-stone extraction operation on 0.93-acre parcel of land
- Vermont Supreme Court affirmed Environmental Division's conclusion that the project did not constitute "development" requiring Act 250 permit, largely because quarry purchaser and owner of rest of land did not constitute one "person"