

The Year in Review: Permitting Court Decisions of Note

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VERMONT
DEVELOPMENT
CONFERENCE

Vermont Supreme Court 2023/24 Decisions of Note



- **Scope of Court's Jurisdiction**

- *In re DJK, LLC WW & WS Permit*
- *In re Ranney Dairy, LLC Major Subdivision*

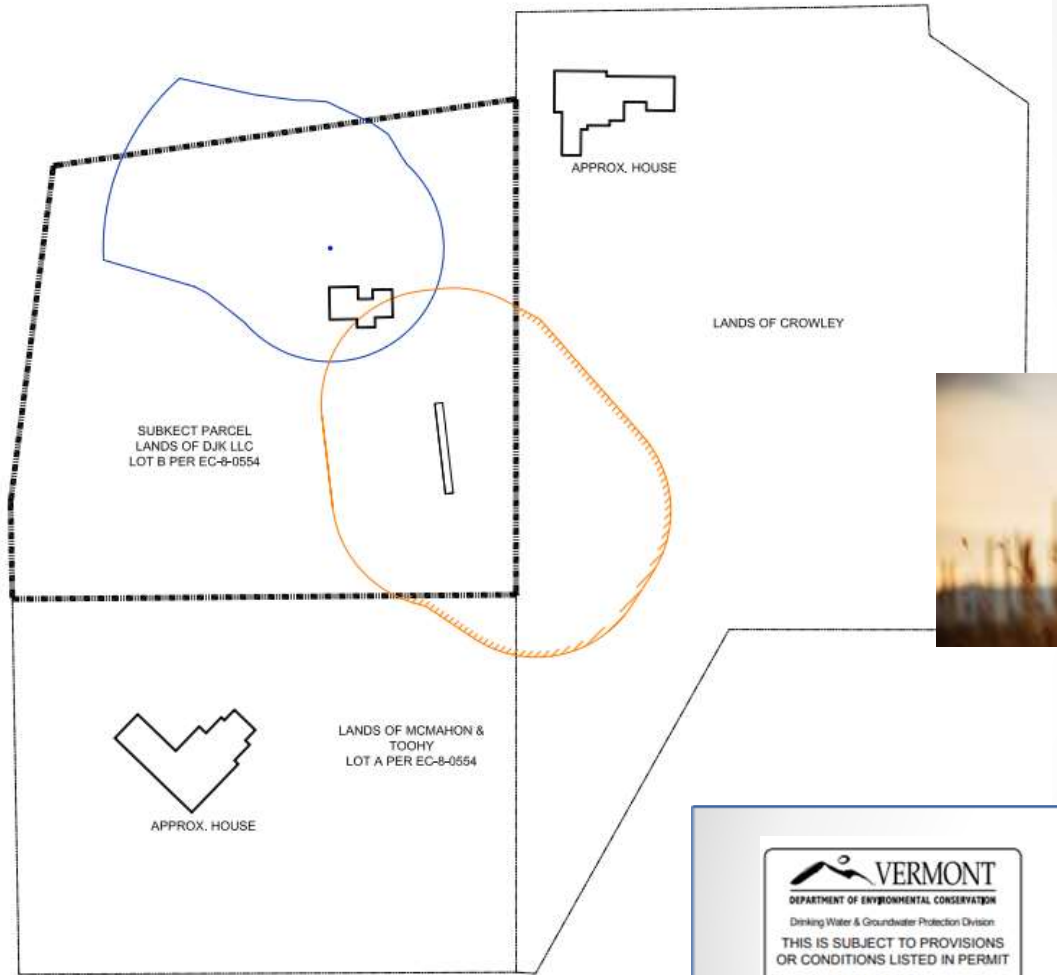
- **Timing**

- *In re 2078 Jersey Street CU Reconsideration Denial*
- *In re Burchard Road Petition to Abandon Land Use Permit Denial*

- **Statutory Interpretation**

- *In re Vermont Permanency Initiative, Inc Denial*
- *In re Burton Corporation Conditional Use/Act 250*
- *In re 237 Points North Road DRB Appeal (mem.)*

*In re DJK, LLC
WW & WS
Permit
2024 VT 34
(June 24, 2024)*




VERMONT
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Drinking Water & Groundwater Protection Division
THIS IS SUBJECT TO PROVISIONS
OR CONDITIONS LISTED IN PERMIT
Permit #: [WW-8-2087](#)
Date: [April 27, 2021](#)

In re DJK, LLC WW & WS Permit 2024 VT 34 (June 24, 2024)

Court Rulings:

- Reaffirmed rule the Environmental Division lacks jurisdiction to determine property disputes—i.e., whether a permit creates an easement in neighbor's property
- Permit did not result in a physical taking of neighbor's property
- Neighbors were not deprived of any cognizable property interest in groundwater beneath their property
- Neighbor's procedural due process rights were not violated



In re DJK, LLC WW & WS Permit
2024 VT 34 (June 24, 2024) - Concurrence

Caution from Concurrence (3-2)

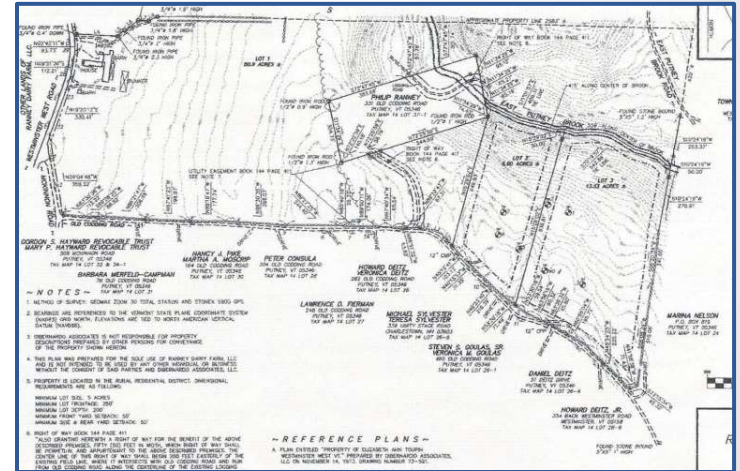
- Would have found Court had Jurisdiction to consider the existence of an easement as part of Neighbor's per se physical takings claim
- Opined that while groundwater is held in the public trust, property owners still have some property rights to groundwater



In re Ranney Dairy Farm, LLC Major Subdivision 2024 VT 66 (October 25, 2024)

Distinguishing DJK

- “DJK is distinguishable because the statute that created the Environmental Division’s jurisdiction in that case did not directly require an evaluation of the existence of an easement; rather, the existence of an easement was raised in the context of a neighbor’s takings claim that was auxiliary to the wastewater-permit decision on appeal.”



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In re 2078 Jersey Street CU Reconsideration Denial

2024 VT 20 (April 12, 2024)

Scenario

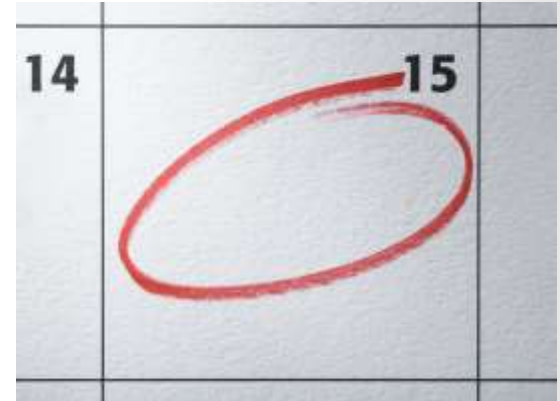
- Town ZBA denied Conditional-Use Permit
- Applicant requested ZBA reconsider 26-days after permit denial.
- Town ZBA did not consider reconsideration request prior to expiration of appeal deadline, then denied request as untimely
- Applicant appealed, and Town moved to dismiss the appeal as untimely.
- Court denied motion and Town brought an interlocutory appeal.



In re 2078 Jersey Street CU Reconsideration Denial 2024 VT 20 (April 12, 2024)

Court Holdings:

- The rule tolling the time for appeal on a motion for reconsideration does not apply to such requests before Town Zoning Boards



In re Burchard Road Petition to Abandon Land Use Permit Denial

2024 VT 51 (August 9, 2024)

Scenario/Procedural History:

- Underlying Act 250 permit encumbered property.
- New property owners sought to abandon Act 250 permit.
- District Commission declined to review abandonment petition, and Landowners appealed.
- Environmental Court approved stipulated judgment, ruling that permit was abandoned. NRB & Landowners only parties.
- No appeal was taken from that order



In re Burchard Road Petition to Abandon Land Use Permit Denial 2024 VT 51 (August 9, 2024)

Scenario

- Nine months after final judgment, Neighbor filed a motion for relief from judgment, asking the Environmental Court to “void” the January order.
- Neighbor—whose primary residence was out-of-state—asserted she did not receive the notice mailed to her Vermont street address.
- Court denied neighbor’s motion, concluding she lacked standing to file a Rule 60(b) motion and Neighbor appealed



In re Burchard Road Petition to Abandon Land Use Permit Denial 2024 VT 51 (August 9, 2024)

Holdings:

- Supreme Court had jurisdiction to review Neighbor's 60(b) motion
- Vacating stipulated judgment and order and reopening proceeding was unwarranted, despite Commission's notice being ineffective
- Neighbor's failure to intervene until after judgment deprived Neighbor of standing to challenge judgment with 60(b) motion
- Supreme Court clarified the rule on when to vacate a judgment for notice issue
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Rules of Interpretation

The Court “looks first to the plain language of the statute for guidance. The Court will assume the common and ordinary usage of language in a statute unless doing so would render it ineffective, meaningless, or lead to an irrational result.”



“Because land use regulation is in derogation of the common law, any ambiguity is resolved in favor of the landowner.”

Rules of Interpretation

- **In re Vermont Permanency Initiative, Inc Denial**
 - Statutory interpretation for exemptions to zoning
- **In re Burton Corporation Conditional Use/Act 250**
 - Deferring to a municipality's interpretation of its own ordinance
- **In re 237 Points North Road DRB Appeal (mem.)**
 - Bound by the plain meaning

In re Vermont Permanency Initiative, Inc. Denial
2023 VT 65 (December 21, 2023)



In re Vermont Permanency Initiative, Inc. Denial 2023 VT 65 (December 21, 2023)



In re Vermont Permanency Initiative, Inc. Denial 2023 VT 65 (December 21, 2023)

“Court will not read additional requirements into the statute, particularly, where, as here, the purpose of the statute is to preclude local zoning boards from excluding group homes from residential areas.”

- Proposed secure facility was a “group home” under zoning statute
- Secure group home for justice-involved youth would serve those with a disability as required for preferential zoning treatment



In re Vermont Permanency Initiative, Inc. Denial Justice Carroll, Dissenting

“Before looking at § 4412’s plain language, it is important to bear in mind that the present dispute arises from the Legislature’s 2020 directive ... develop ‘a long-term plan for Vermont youths who are in the custody of [DCF], are adjudicated or charged with a delinquent or criminal act, and who require secure placement (target population).”

- Keeping in mind this directive, Justice disagreed with majority’s finding that this was a “group home” serving youth with “disabilities”
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Conflicting Rules of Interpretation?

- Because zoning ordinances “are in derogation of private property rights,” they must be construed narrowly in favor of the property owner, and “any ambiguity is resolved in favor of the landowner.”
- The Court will defer to a municipality's interpretation of its own ordinance if it is reasonable and has been applied consistently.

In re Application of Lathrop Ltd. P'ship I, 2015 VT 49

In re Burton Corporation Conditional Use/Act 250

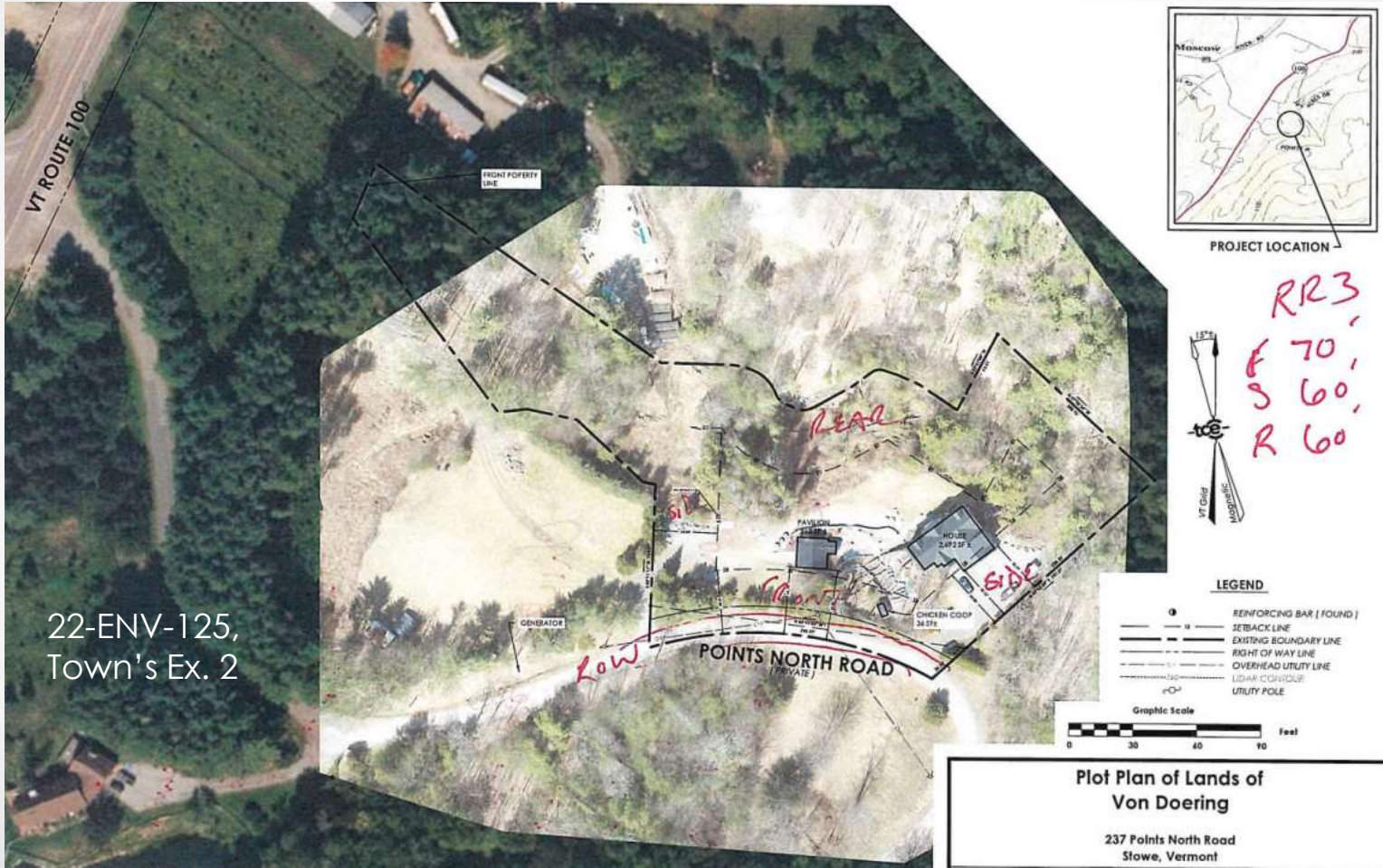
2024 VT 40

- Ordinance: “Performing Arts Centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment.”



Commonwealth Bar & Stage

In re 237 Points North Road



QUESTIONS?

SPEAKERS

Chris Roy

Downs Rachlin Martin PLLC

croy@drm.com

Kelsey Schweitzer

Downs Rachlin Martin PLLC

kschweitzer@drm.com