

ENC 1999-069

In re Shantee Point Estates, Inc.

June 1, 1999

STATE OF VERMONT ENVIRONMENTAL COURT

Docket No: 169-9-98 Vtec

In re: Appeal of SHANTEE POINT ESTATES, INC.

Decision and Order on Motion for Summary Judgment

Appellant Shantee Point Estates appealed from the August 20, 1998 decision of the Zoning Board of Adjustment (ZBA) of the Town of St. Albans upholding a Notice of Violation for constructing a road without site plan approval. Appellant is represented by Liam M. Murphy, Esq. and Lisa B. Shelkrot, Esq.; and the Town is represented by David A. Barra, Esq. and Paul R. Bowles, Esq. Appellant has moved for summary judgment. The following facts are undisputed unless stated otherwise.

Appellant owns approximately forty acres of land on Shantee Point in the Town of St. Albans, along the Lake Champlain shore. The land is divided into lots. Appellant's principals own houses on several of the lots, others are leased lots with seasonal camps. Shantee Point Road runs close to the western edge of the property, affecting lake access and views of some of the lots.

In early 1997, Appellant planned to relocate Shantee Point Road (FN1) by constructing a new road on the property, running behind the houses rather than between the houses and the lake, and discontinuing the former Shantee Point Road. A "Concept Plan" for this road was drawn up by Cross Consulting Engineers, dated December 6, 1996, revised April 30, 1997. This Concept Plan has not been provided to the Court in connection with the present motion.

Appellant sought a determination from the Zoning Administrator whether site plan approval was required. The Zoning Administrator consulted with the Planning Commission, which met on May 6, 1997. In a letter dated May 20, 1997, the Zoning Administrator relayed "the Planning Commission consensus" that the road relocation project as shown on the Concept Plan would not require site plan review. No party appealed this action of the Zoning Administrator. The second paragraph of the letter stated in full as follows:

If the road is to be relocated in stages, the portion of the road labeled "Proposed Connector" between the Couture Camp and the A. Harmon residence (at or near the MGD (FN2)/Dana property line) must be of a temporary nature. Twelve months is proposed as a reasonable amount of time to reach consensus with Dana, please comment on that proposal.

Appellant does not appear to have responded to or appealed the statement that the "Proposed Connector" must be of a temporary nature, nor commented as requested in the last line.

On July 21, 1997 the Planning Commission met and again discussed the proposed road. Its minutes of that date state the Commission's agreement that site plan review was not required, because no new development was proposed. No formal motion was made or vote taken. No party sought to appeal this statement in the minutes.

Appellant built the road in the location shown on the Concept Plan, including the Connector Segment. We will refer to it as the "new road" in this decision only to distinguish it from Shantee Point Road, and not to render any decision on whether it constituted 'relocation' as opposed to 'new construction' of a road. Appellant could not reach an agreement with the owner of the Dana property, and therefore the Connector Segment has remained in use.

On June 15, 1998, the Zoning Administrator wrote to Appellant that site plan review "is required for this project" and that "use of the "Proposed Connector" from the disputed Public Highway (TH #27)/Private Road is to be discontinued." On July 8, 1998, the Zoning Administrator issued a Notice of Violation to the same effect. The ZBA upheld the Notice of Violation and it is on appeal to this Court in the present case.

Without a copy of the Concept Plan as it was presented to the Planning Commission in 1997, we cannot determine the extent of the project for which the Planning Commission determined that site plan review was not required. That determination was not appealed and the parties cannot now challenge it under 24 V.S.A. §4472(d), but the scope of that determination cannot be resolved on summary judgment without the Concept Plan.

The Court is, however, able to address the status of the Connector Segment. Based solely on the materials filed by the parties, it appears that the Zoning Administrator's and Planning Commission's determinations that the road as shown on the Concept Plan did not require a permit, were based upon a proposal that the former road would be closed and that the Connector Segment would be temporary. While it is true that the Zoning Administrator could not have required Appellant to reach an agreement with the neighboring landowner, the Zoning Administrator did rule that the Connector Segment was only approved for temporary use for one year. Even if the Zoning Administrator acted beyond his authority in approving the Connector Segment on only a temporary basis, Appellant did not appeal that determination, and it is also final under §4472(d). *Levy v. Town of St. Albans*, 152 Vt. 139 (1989). Accordingly, Summary Judgment is GRANTED in favor of the Town with regard to the Connector Segment. Appellant must now obtain site plan approval at least for the Connector Segment, if it now proposes to make the Connector Segment permanent.

On the other hand, the question of whether the remainder of the new road needs site plan approval depends on whether Shantee Point Road can be discontinued, which in turn depends on whether it is a private or a town road. Accordingly, the remainder of the Motion for Summary Judgment is DENIED, as material facts are in dispute. If it is a private road, and therefore may be discontinued, then site plan approval is not required for the new road other than the Connector Segment. In that event, the only remaining element of the Notice of Violation on appeal to this Court would be whether the Connector Segment should be discontinued until or unless it receives site plan approval. If Shantee Point Road is a town road, then we must address whether that change of status is a sufficiently changed circumstance to warrant requiring the entire new road to obtain site plan approval as new construction. Or, possibly, the parties will choose to pursue further litigation in superior court to "throw up" the town road, that is, to return it to private status.

In the interests of judicial economy, the Court will wish to explore with the parties whether this litigation should move forward or be held in abeyance while the Franklin Superior Court resolves whether or not Shantee Point Road is a public road. Accordingly, we will hold a brief telephone conference at 8:45 a.m. on Friday, June 4, 1999 to discuss the next events in the case.

Done at Barre, Vermont, this 1st day of June, 1999.

Merideth Wright Environmental Judge

FN1. A neighboring landowner has since filed an action in Franklin Superior Court to determine whether Shantee Point Road is a Class 4 town highway or a private road. *Dana v. Shantee Point Estates*, Docket No. S313-97Fc.

FN2. Formerly the partnership name of the entity now incorporated as Shantee Point Estates, Inc.

© Lawriter Corporation. All rights reserved.

The Casemaker™ Online database is a compilation exclusively owned by Lawriter Corporation. The database is provided for use under the terms, notices and conditions as expressly stated under the online end user license agreement to which all users assent in order to access the database.