

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 21-ENV-00122

Midtown Associates, Inc. NOV Appeal

JUDGMENT ORDER

This matter is before the Court on Midtown Associates, Inc.'s ("Appellant") Notice of Violation ("NOV") appeal. The City of Burlington ("City") issued the NOV to Appellant on September 13, 2021. Appellant timely appealed the NOV to the City of Burlington Development Review Board ("DRB"). On November 2, 2021, the DRB reversed the violation alleged in the NOV, but issued a new finding and conclusion asserting that a different violation was on-going at the subject property. Appellant timely appealed the DRB's decision to this Court. Presently before the Court are the parties' cross-motions for summary judgment.¹ Appellant is represented by Attorney Matthew Daly. Attorneys Kimberlee Sturtevant and Kyle Clauss represent the City.

For the reasons provided in the Entry Order that accompanies this judgment order, the Court **GRANTS** Appellant's motion for summary judgment and **DENIES** the City's cross-motion. The Permit that the NOV alleges has been violated is still active, as the owner has until November 24, 2023, to complete the approved project and obtain a UCO. See Permit, Condition No. 2. When the Zoning Administrator issued the NOV on September 13, 2021, the Appellant still had over two years to bring the property into compliance with the Permit and obtain the UCO. Compare *id.* (setting compliance deadlines) with NOV at 1. Thus, the Court concludes that

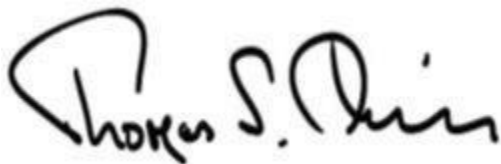
¹The Court notes that both motions were untimely, but as no party has objected to the Court's consideration of the motions, the Court considers them now. However, the Court cautions the parties to maintain the Court established deadlines going forward. Order at 1 (entered Dec. 22, 2022) ("By January 9, 2023, *any* motions for summary judgement shall be filed by either party." (emphasis added)); see V.R.C.P. 56(b) ("A party may file a motion for summary judgment at any time until 30 days after the close of all discovery, unless a different time is set by stipulation or court order."); cf. Appellant's Mot. for Extension (filed Jan. 9, 2023).

enforcement of the Permit is not yet ripe, and Appellant is entitled to judgment as a matter of law. The Court therefore reverses the DRB's adverse determination.

Because the use violation—i.e., unpermitted parking lot—was not noticed by the NOV and instead issued by the DRB on appeal, rather than by the Zoning Administrator through a notice of violation, the Court concludes that issues regarding whether there is an ongoing use violation of the CDO at the property is not properly before the Court. Accordingly, the Court reverses the DRB's decision upholding the violation as to onsite parking. As such, Question 2, which asks the Court to rule upon aspects of the improperly noticed use violation, calls for an advisory opinion beyond the scope of this Court's jurisdiction and is, therefore, **DISMISSED**.

This concludes this matter before the Court.

Electronically signed at Newfane, Vermont on Friday, April 28, 2023, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive, flowing style.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division