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Brisson Stone LLC v. Town of Monkton

Supreme Court of Vermont - February 12, 2016 - A.3d - 2016 WL 555809 - 2016 VT 15

Commercial gravel extraction permit applicants filed for declaratory judgment claiming protracted review process caused their application to be deemed approved. In a separate appeal, applicants sought review of the development review board's denial of the application. In the second proceeding, adjoining landowner was granted intervenor status, and she moved for summary judgment arguing zoning regulation did not authorize crushing quarried ledge rock to create gravel. The Superior Court, Environmental Division, held that application could not be deemed approved, and subsequently granted summary judgment to intervenor. Applicants appealed and the appeals were combined.

The Supreme Court of Vermont held that:

- Environmental court's decision to deny the application was not clearly erroneous, arbitrary, or capricious, and
- Deemed-approval remedy does not foreclose an interested party's timely appeal on merits of the application.

Environmental court reasonably based its holding on plain language of zoning regulation, finding that the regulation permitted extraction of naturally occurring gravel, but not applicants' proposed method of blasting, drilling, and crushing ledge rock to produce gravel, and thus its decision to deny the application for a commercial gravel extraction permit was not clearly erroneous, arbitrary, or capricious.

Deemed-approval remedy, pursuant to statute providing that failure of a municipal panel to approve or disapprove requested development review application within 45 days after date of final public hearing shall be deemed approval, does not foreclose an interested party's timely appeal on the merits of the application.