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In re Costco Wholesale Administrative Decision

Supreme Court of Vermont - August 8, 2025 - A.3d - 2025 WL 2264346 - 2025 VT 44

Retail store appealed, and commercial neighbors cross-appealed, state and municipal determinations that amendment to land use permits was not necessary for retail store to begin operating gas station on its property at full-time hours.

Following two-day merits hearing in four coordinated proceedings, the Superior Court, Environmental Division, issued final judgment order stating that store had satisfied all conditions in existing permits and that it did not need an amendment to operate gas station at full-time hours. Neighbors appealed, and store cross-appealed.

The Supreme Court held that:

- Issues related to full-time operation of gas station were not moot;
- Environmental court had jurisdiction to review issues;
- Environmental court addressed all related matters raised in neighbors' statement of questions; and
- Store was not required to obtain permit amendments before it began operating gas station full-time.

Environmental court's determination that traffic mitigation conditions in retail store's state-level land use permit contemplated full-time operation of gas station on the property as part of initially approved project, such that amendment to permit was not required, did not create an invalid condition subsequent; conditions were not open-ended and they did not purport to vest state commission with authority to continuously amend the permit as necessary to redress future state permit violations, thus expropriating another agency's enforcement authority, but instead, they were type of reasonable, evidence-based conditions with prospective application that courts recognized as permissible.

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