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James A. Dumont, Esq.

Caroline F. Engvall, Legal Assistant

March 27, 2024

Clerk
Zoning Board of Adjustment
Town of Pittsford
Pittsford Town Office
P.O. Box 10
Pittsford, VT 05763

Mr. Jeff Biasuzzi
Zoning Administrator
Town of Pittsford
Pittsford Town Office
P.O. Box 10
Pittsford, VT 05763
zoning@pittsfordvermont.com

*NOTICE OF APPEAL -- Route 7 Intersection with Route 3 and Oxbow Road, in
Pittsford; Elimination of Green Island and Slip Lane -- 24 VSA 4452 -- Commencement of
Construction*

Dear Clerk and Jeff:

I hereby appeal, on behalf of Rick and Sandra Conway, the Zoning Administrator's decision dated March 25, 2024, a copy of which is attached to this Notice of Appeal.

Sincerely,
Jim
James A. Dumont, Esq.

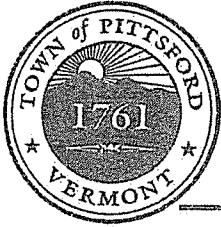
cc: Mark Seltzer, Esq.

ARTICLE XIV: APPEALS

Section 1401: Appeals of Actions of the Administrative Officer

Any interested person as defined below may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the Zoning Board of Adjustment (ZBA) and by filing a copy of the notice with the Zoning Administrator.

- A. The ZBA shall hold a public hearing on a notice of appeal within 60 days of its filing. The ZBA shall give public notice of the hearing, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- B. The ZBA may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the ZBA determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant.
- C. All appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.
- D. A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Town Clerk as part of the public records of the municipality. Failure of the ZBA to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.



Town of Pittsford

"The Sunshine Village"

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March 25, 2024

RE: Zoning Administrator review of Town regulation on VT/US Rt. 7 & Rt. 3 highway construction

Dear Attorney Dumont,

In reply to your correspondence, which I initially received and reviewed on March 1, 2024, I have requested Town attorney review; reviewed applicable Sections of 24 VSA, Chapter 117; researched VT Superior and Supreme court cases; and reviewed past VT highway repair & reconstruction projects in Pittsford and other Rutland County towns. This has required some time to accomplish, but is within 30 days of your request to have the Town initiate enforcement action to prevent construction on VT Rt. 7.

The Superior and Supreme Court decisions I reviewed supported VTRANS authority to construct its highways without Town approval. There is precedent that this includes staging areas and mobile offices that support a state project.

The issuance of local permits for VT highway projects did not come up during the recent work in Segments 1 & 4. I did not find the practice of issuing a Town permit for state highway projects in other Rutland County towns.

I determine Pittsford's Zoning Regulations (effective 4/11/2019) Section 106(1) does include state highways as structures or facilities, and is exempt from Town jurisdiction. The town regulation is directly from 24 VSA Section 4413(a)(1).

Therefore, my literal interpretation of the Town Zoning regulations (supported by past practice and precedents) is that they do not apply to the current Rt. 7 project, and that issuance of any local Notice of Violation to VTRANS is outside the Zoning Administrator's authority.

Respectfully,

Jeffrey Biasuzzi, Zoning Administrator

Cc: za file (ZA Determination VTRANS Rt.7-Rt.3 3.22.2024)
D. Atherton, G. Kupferer

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Caroline F. Engvall, Legal Assistant

February 28, 2024

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Mr. Jeff Biasuzzi
Zoning Administrator
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Re: Route 7 Intersection with Route 3 and Oxbow Road, in Pittsford; Elimination of Green Island and Slip Lane – 24 VSA 4452

Dear Gary and Jeff:

Section 4452 of Title 24 stats:

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer **shall** institute in the name of the municipality any appropriate action, injunction, or other proceeding to **prevent**, restrain, correct, or abate that construction or use, or to **prevent**, in or about those premises, any act, conduct, business, or use constituting a violation. A court action under this section may be initiated in the Environmental Division, or as appropriate, before the Judicial Bureau, as provided under section 1974a of this title.

As you know, I represent Rick and Sandra Conway. The Conways continue to support the Agency of Transportation's 2015 plans for the Route 7/Route 3/Oxbow Road intersection. These 2015 plans were submitted to the Federal Highway Administration and the Town. Regrettably, the Agency later changed its mind. The Agency now proposes a new plan that will make this intersection dangerous by eliminating the slip lane and the green island, and creating a right-turn lane on Route 7. On behalf of the Conways, I have asked the Agency to submit an application for a conditional use permit for the changes it is now proposing, so that the Zoning Board of Adjustment can review these issues. We believe that the Zoning Board would approve of the project on the

condition it conforms to the 2015 plans. The Agency, however, has refused to submit a zoning permit application.

A conditional use permit, and site plan review, are required under sections 104, 106, 300, 301 and 1302, and Articles V, X and XX, of the Pittsford Zoning Ordinance.

Of course, state projects, like other projects covered by section 4413 of Title 24 and § 106 of the Pittsford Zoning Ordinance, are not subject to all regulatory standards. Section 4413 of the statutes and section 106 of the ordinance authorize regulation by the Zoning Board of Adjustment “with respect to” the location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening of the Agency’s proposed land use changes, so long as the regulation does not interfere with the intended function of the land use. The regulation of the proposed land use which my clients seek from the Pittsford Zoning Board of Adjustment are “with respect to” the location, size, traffic and landscaping aspects of the proposed land use. The regulation which we seek from the Pittsford Zoning Board of Adjustment would not interfere with the intended function of the proposed land use. It would improve the intended function.

I am writing to you now because, in deposition testimony yesterday, the Agency’s witness stated that a contract has been signed and construction will begin in April. This is precisely the situation addressed by § 4452. The Administrative Officer’s duty is mandatory. The statute says “shall” and, as you know, other sections of Title 24 require that the Administrative Officer enforce the zoning ordinance literally.

I am also writing to you now because we learned, in yesterday’s depositions, that the Agency’s expert — a Vermont Licensed Professional Engineer with decades of experience — does **not** believe that the existing slip lane is hazardous or raises any safety issues. The representative of the Agency who testified before the District Commission as an expert, it turns out, is not a Licensed Professional Engineer, and the Licensed Professional Engineer on this project neither approved in advance of her testimony to the District Commission nor agrees with it now. In fact, in the pending court case the Agency has withdrawn from the list of expert witnesses the person who testified before the District Commission that the slip lane has safety problems. Unfortunately, the District Commission relied on the testimony of the non-expert witness. Her testimony is repeated nearly verbatim in their decision.

We also learned yesterday that the Agency’s highly qualified expert does not know why the slip lane was removed from the plans.

We also learned that the person who testified before the District Commission still believes that the slip lane should be removed. When asked why, she stated that the slip lane should be removed because it is dangerous—even though the Agency’s highly qualified traffic expert and our own highly qualified traffic expert have testified it is not.

In contrast, the Agency’s plans call for southbound trucks that are entering Route 3 to take a hard right turn at the intersection. The Agency’s expert does not contest what our

experts have said—that a truck waiting to turn right onto Route 3 will block the visibility of southbound through traffic for drivers at the Route 3 stop bar. Once the southbound bound vehicle emerges from behind the truck, there will be only 37 feet separating the eastbound car from the southbound car. A car traveling at 35 mph covers 51 feet in a second. As you know, drivers speed up as they approach the intersection because there is a substantial hill on the other side. Just one eastbound driver who ventures into the path of a southbound vehicle in the through lane will be one too many.

We ask that the Town commence an enforcement action to prevent commencement of construction. Please inform us of your decision within ten days of today. Thanks.

Sincerely,

Jim

James A. Dumont, Esq.

cc: Mark Seltzer, Esq.