

SUPREME COURT OF VERMONT

In re Application of Beach Properties, Inc.

200 Vt. 630 (2015) · Decided October 16, 2015

SUMMARY

The Vermont Supreme Court reviewed appeals arising from the Public Service Board's approval of a photovoltaic net-metering system for Basin Harbor Club. The court held that an adjoining landowner who actively participated in the proceeding and was treated as a party could qualify as a de facto party despite not formally moving to intervene. It reversed the Board's dismissal of the landowner's motion for reconsideration and remanded for consideration of that motion on the merits, while dismissing the other appeal as untimely.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Morse, J. (Ret.), Specially Assigned; Dooley; Morse; Reiber; Robinson; Skoglund
JURISDICTION	Vermont
DECIDED	October 16, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeals from Public Service Board orders granting Basin Harbor Club a certificate of public good for a photovoltaic net-metering system and denying Mary McGuire's motion for reconsideration.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mary McGuire, Douglas Grover v. Basin Harbor Club

TOPICS

appellate procedure

appellate jurisdiction

agency adjudication

administrative law

judicial review of agency action

PRACTICE AREAS

administrative law

appellate procedure

environmental law

civil procedure

QUESTIONS PRESENTED

1. Whether Grover's appeal was timely when his motion for reconsideration was filed after the applicable deadline.
2. Whether McGuire had standing to appeal and to file a motion for reconsideration despite not formally moving to intervene before the Public Service Board.
3. Whether McGuire's participation and the Board's treatment of her submissions established de facto party status.

HOLDINGS

1. Grover's appeal was untimely because his motion for reconsideration was not timely filed and therefore did not toll the thirty-day appeal period; the Supreme Court lacked jurisdiction to consider his appeal.
2. A nonparty may be recognized as a de facto party for purposes of appeal in exceptional circumstances when the person actively participated in the proceeding, has a personal stake in the outcome, and the equities favor hearing the appeal.
3. McGuire qualified as a de facto party because she was an adjoining landowner who received notice, actively participated through extensive comments and exhibits, raised substantial issues addressed by the Board, was treated as a party during the proceeding, and was not prejudiced by the absence of a formal intervention motion.

KEY QUOTATIONS

“We thus conclude that the equities for treating McGuire as a de facto party weigh strongly in her favor; that she actively participated in the proceeding; and that, regardless of the Board’s ultimate decision concerning the project’s aesthetic impact, she had a strong, personal stake in the outcome.” (at 641)

“We do not hold that any and all participants in such proceedings may attain party status without the need to formally move to intervene.” (at 641)

FACTUAL BACKGROUND

Basin Harbor Club applied for a certificate of public good to install twenty-five pole-mounted, sun-tracking solar panels on a twenty-acre field in Ferrisburgh, Vermont. Adjoining landowners Mary McGuire and Douglas Grover submitted extensive comments, requested a hearing, and raised statutory, aesthetic, environmental, economic, health, safety, and historic-resource concerns. The Board solicited detailed responses from Basin Harbor Club, required a solar-glare analysis, addressed the neighbors' concerns in its decision, and granted the certificate.

PROCEDURAL HISTORY

The Public Service Board granted Basin Harbor Club's certificate of public good and later dismissed McGuire's motion for reconsideration because she had not formally intervened and allegedly lacked party status. McGuire and Grover appealed. The Supreme Court of Vermont held that Grover's appeal was untimely, but that McGuire qualified as a de facto party and was entitled to have her motion for reconsideration considered on the merits.

DISPOSITION

REMAND INSTRUCTIONS

The Public Service Board must consider McGuire's motion for reconsideration on its merits. The court did not reach McGuire's challenges to the certificate of public good, and the parties remained free to file a timely appeal from the Board's decision on remand.

CASES CITED

- Fagnant v. Foss, 2013 VT 16A, ¶ 10, 194 Vt. 405, 82 A.3d 570
- Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶ 8, 178 Vt. 61, 869 A.2d 157
- Marino v. Ortiz, 484 U.S. 301, 304 (1988)
- SEC v. Forex Asset Management LLC, 242 F.3d 325, 329-330 (5th Cir. 2001)
- In re Orshansky, 804 A.2d 1077, 1090 (D.C. 2002)
- Carhart v. Carhart-Halaska Int'l, LLC, 788 F.3d 687, 690 (7th Cir. 2015)
- In re Siler, 571 F.3d 604, 608 (6th Cir. 2009)
- Curtis v. City of Des Moines, 995 F.2d 125, 128 (8th Cir. 1993)
- Corbett v. Related Cos. Ne., Inc., 677 N.E.2d 1153, 1155-1156 (Mass. 1997)
- Federated Mut. Ins. Co. v. McNeal, 943 So. 2d 658, 662-663 (Miss. 2006)
- In re New Cingular Wireless, 2012 VT 46, ¶ 4, 192 Vt. 20, 54 A.3d 141
- Bucklin v. Beals, 38 Vt. 653, 662 (1866)
- Osborn v. Osborn, 147 Vt. 432, 433, 519 A.2d 1161, 1163 (1986)