

James Carroll

From: James Dumont <dumont@gmavt.net>
Sent: Wednesday, June 15, 2022 10:46 AM
To: David Cooper
Cc: James Carroll; Michele Cyr; Angela LaFlamme; alechner; Jim@dumontlawvt.com
Subject: Re: Bicknell Trust Appeal Application # 22-028

Dear Jim:

I write in response to Attorney Cooper's letter to you objecting to a site visit to his client's premises other than visits by less-than-all the ZBA members at one time, and with no participation by interested persons or the public. His letter is, frankly, outrageous.

I have participated in more zoning matters than I care to enumerate. Site visits are routine, whether at the ZBA level or the court level. There has never been a site visit that involves only the tribunal and not the parties. That is for good reason. A site visit involves both communications and observations of visual evidence, neither of which, by law, can be reserved to the tribunal. Every opportunity for communication and observation of the evidence has to be available to all the parties. The site visit that Attorney Cooper proposes would be an extended, off-the-record series of ex parte communications and offerings of visual evidence. Under Supreme Court precedent, if Attorney Cooper's approach were to be adopted, no member of the ZBA who had engaged in the ex parte communication and observations would be allowed to participate in the decision unless he or she were to affirm that the visit, and everything they heard and saw during the visit, plays no part in their decision. Everything the ZBA learns during the site visit would have to be disregarded. If that were to be the case, why hold the site visit?

On behalf of my clients, I requested the site visit. I requested a site visit so that we can have an orderly, fair and fact-based ruling by the ZBA. Were the ZBA to proceed forward with the ex parte site visit, and were the ZBA to use, in any way, the information obtained during the site visit, the proceeding will become anarchic, unfair, and unlawful. unle

If Attorney Cooper is genuinely worried about liability for an accident during the site visit, his worry would apply just as much to ZBA member injury as to injury to interested persons. It is hard to imagine what liability there could be. However, I and others would be happy to sign a reasonable waiver of liability, stating that any accident or injury that occurs on the Bicknell property have would not be the basis for any claim against the Bicknell Trust unless the Trust were shown to have intentionally or maliciously caused harm.

I do not have addresses or email addresses for all who participated in the ZBA hearing, and who may be seeking to become interested persons. Therefore I ask that Attorney Cooper's letter and this reply be posted on the ZBA website. Thanks.

Sincerely,

Jim

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