

VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
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Docket No. 26-ENV-00035

Zoning Permit #2025-46-ZP Appeal Dismissal

ENTRY REGARDING MOTION

Title: Motion to Dismiss
Filer: Shane Elwell, pro se
Filed Date: May 4, 2026

Appellant's Opposition to Motion to Dismiss, filed June 16, 2026 by George Abad, pro se
Appellee's Reply to Appellant's Opposition, filed July 2, 2026 by Shane Elwell¹

The motion is DENIED.

This matter involves an appeal of the Town of Warren (Town) Development Review Board (DRB)'s February 16, 2026 decision upholding a zoning permit for construction of a single-family home on Fern Road, Warren, Vermont (the Property).²

On March 18, 2026—30 days from the date of the Town DRB's decision—Appellant George Abad (Appellant) emailed the Environmental Division in an effort to appeal the decision issued February 16, 2026. The March 18 email states in relevant part:

hello, my name is George Abad and I am appealing the Warren Towne DRB decision of February 16, 2026. I have been trying to file through the Vermont e-file and am unable to enter or update payment information on the Tyler technology site. I have called the Environmental Court for help and also the Environmental Court helpline which has no answer. I was advised to file by email from the Environmental Court and request payment by phone. I have enclosed a copy of the Warren DRB decision and filing the appeal through you.

Upon receipt, Court staff informed Appellant via email that his submission only contained the relevant DRB decision, not a notice of appeal; Court staff attached to its email a blank copy of the Environmental Division's notice of appeal form. Acting in accordance with V.R.E.F. 5(d)(4) and 5(d)(5), Court staff informed Appellant that submission of "a corrected version" within 7 days would allow him to retain his original date of submission. V.R.E.F. 5(d)(4).

¹ The Court will construe Appellee's second Motion to Dismiss as a reply to Appellant's opposition.

² The DRB's decision was signed by two members on February 2, 2026, and by a third member, presumably representing action by a majority of the Board, on February 16, 2026. See 1 V.S.A. § 172.

Appellant resubmitted a copy of the DRB's decision on March 25, 2026 at 12:49 P.M. Once again, Court staff found this submission lacked the requisite notice of appeal and, consequently, it rejected the filing. Staff again attached the notice of appeal form to its email and informed Appellant that submission of a corrected filing by midnight on that day would allow him to retain his March 18 filing date. At 7:15 P.M. on March 25, 2026, Appellant submitted a completed notice of appeal form and related exhibit (i.e., the DRB decision). On May 4, 2026 Applicant/Appellee Shane Elwell (Applicant) moved to dismiss this appeal on the grounds that Appellant's Notice of Appeal was untimely, and as a result, outside this Court's jurisdiction.

Vermont Rule of Appellate Procedure 3(d)(1) provides a notice of appeal must: "(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice . . . (B) designate the judgment, order, or part thereof being appealed; (C) name the court to which the appeal is taken; (D) indicate if the appeal is from a proceeding under Chapter 51 and 53 of Title 33; and (E) be signed by the appellant or the appellant's attorney." V.R.A.P. 3(d)(1). However, an Appellant's failure to meet these requirements is not automatically fatal to the validity of their appeal. Instead, the Court has discretion to "take any appropriate action, including dismissal." V.R.A.P. 3(b)(1)(D).³ The Court's discretion is largely shaped by V.R.A.P. 3(d)(4), which states: "An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice." V.R.A.P. 4(a)(1) requires a notice of appeal that meets the requirements of V.R.A.P. 3 be submitted within 30 days of entry of the judgment or order an individual wishes to appeal. V.R.A.P. 4(a)(1); see also 10 V.S.A. § 8504(b)(1) (requiring an appeal within 30 days of the act or decision below); V.R.E.C.P. 5(b)(1); In re Gulli, 174 Vt. 580, 583 (2002) ("Failure to file timely notice of an appeal brought under § 4471 deprives the environmental court of jurisdiction over that appeal.").

In evaluating Applicant's motion to dismiss the appeal as untimely, we remain mindful of the Vermont Supreme Court's holding that "appeal rights must be liberally construed in favor of persons exercising those rights." Atwood Planned Unit Dev., 2017 VT 16, ¶ 19 (quotation omitted); See also In re Shantee Point, Inc., 174 Vt. 248, 259 ("[i]f a litigant files in a timely fashion a document that specifically indicates an intent to appeal and gives sufficient notice of that intent, there is compliance with the requirement to file a notice of appeal.") (citation omitted). "An error in compliance with V.R.A.P. will affect the validity of an appeal only if it is prejudicial to another party." Shantee, 174 Vt. 259.

In this case, Appellant's initial March 18 email filing established his intent to appeal and provided sufficient notice of that intent to the Court. In that email, in accordance with Appellate Rule 3(d)(1)'s requirements, Appellant: (A) specifies the parties taking the appeal (himself), (B) designates the judgment being appealed ("the Warren Towne [sic] DRB decision of February 16, 2026") and (C) names the court to which the appeal is being taken by directly addressing this Court. Appellant failed to include his signature in the email, as required by V.R.A.P. 3(d)(1)(E),⁴ but he corrected this error in his March 25 filing, and the Court finds it was not prejudicial to Applicant. See Shantee, 174 Vt. 259

³ Under Appellate Rule 3(b)(1)(D), only the failure to timely file a notice of appeal affects the appeal's validity. V.R.A.P. 3(b)(1)(D). Similarly, Rule 5(b)(1) of the Vermont Rules of Environmental Court Proceedings states that "[f]ailure of an appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal but is ground only for such action as the court deems appropriate, which may include dismissal of the appeal." V.R.E.C.P. 5(b)(1).

⁴ V.R.A.P. 3(d)(1)(E) is not relevant to this appeal.

(stating that an imperfect notice of appeal accompanied by a letter clarifying the relevant details represented the “functional equivalent” of a valid notice of appeal.)

Despite Appellant’s failure to file a notice of appeal in a traditional form within 30 days of the DRB’s decision, his March 18 email to the Court, submitted within the requisite 30-day timeframe, was sufficient to indicate an intention to appeal and notify this Court of that intent. Accordingly, for the reasons discussed above, the March 18 email was a valid notice of appeal and vested jurisdiction in this Court. Therefore, the motion to dismiss must be denied.

For the foregoing reasons, the Motion to Dismiss is **DENIED**.

Electronically signed this July 17, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in blue ink, appearing to read "Joseph S. McLean". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph S. McLean
Superior Court Judge
Environmental Division