

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00042

Barre City Public Works Garage

ENTRY REGARDING MOTION

Motion: Motion to Dismiss

Filer: David W. Rugh, Esq., Zachary I. Handelman, Esq., Attorneys for City of Barre

Filed Date: June 5, 2026

Memorandum in Opposition, filed on June 15, 2026, by Denise Lavallee, pro se

Reply to Memo in Opposition, filed on June 30, 2025, by David Rugh

The motion is GRANTED.

This is an appeal of a March 9, 2026 Town of Barre (Town) Development Review Board (DRB) decision approving the City of Barre (City)'s application for minor site plan approval in order to convert an existing warehouse building into a public works garage located at 277 Morrison Road, Barre, Vermont (the Property). The City moves to dismiss the appeal as untimely.

Legal Standard

When reviewing a motion to dismiss for lack of subject matter jurisdiction, we accept the uncontroverted facts as true and construe them in the light most favorable to the nonmoving party. Rheume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245. "A court may consider evidence outside the pleadings in resolving a motion to dismiss for lack of subject matter jurisdiction." Vermont Hum. Rts. Comm'n v. Town of St. Johnsbury, 2024 VT 71, ¶ 6 (citing Conley v. Crisafulli, 2010 VT 38, ¶ 3, 188 Vt. 11).

Background

Denise Lavallee (Appellant) mailed materials to the Environmental Division which arrived on April 6, 2026. Her mailing contained multiple filings, including an 8-page letter addressed to the Environmental Review Board/Land Use Review Board (LURB). Although the letter referenced an

included copy of the Town DRB's March 9 decision, it discussed multiple DRB and Act 250 proceedings and did not specifically indicate an intent to appeal any individual decision.

In addition to the March 9 decision and aforementioned letter, Appellant filed: 1) a petition requesting reconsideration of the project; 2) a document referencing criteria from § 4.17 of the Town's Zoning Bylaws and Appellant's interpretation of how those criteria apply to the Project; 3) the Town Planning Commission's decision on the City's request for an additional curb cut at the Property; 4) a letter to the Town Manager; and 5) several additional exhibits. None of these items qualified as a notice of appeal pursuant to V.R.E.C.P. 5(b). Upon receipt of the April 6 materials, Court staff reached out to Appellant the same day via email to inquire whether Appellant's filing was intended to be an appeal of a municipal decision and/or was intended for a different state entity, and attached the form for filing notices of appeal with this Court. On April 10—32 days after the Town DRB's decision—Appellant properly filed a Notice of Appeal in this matter.

The Town moves to dismiss this appeal, arguing that this Court lacks jurisdiction because Appellant's filing is untimely. In response, Appellant argues that the materials she submitted on April 6 should be construed as a notice of appeal, and thus her appeal is timely. She points to the letter sent to her by this Court on April 15, 2026, acknowledging receipt of her April 6 submission as evidence that her appeal was timely.

Discussion

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). An Appellant's failure to meet these requirements is not, however, 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).¹ 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."

¹ 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).

V.R.A.P. 4(a)(1) requires a notice of appeal that meets the requirements of V.R.A.P. Rule 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 the Town’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 April 6 filings do not meet the requirements of V.R.A.P. Rule 3/V.R.E.C.P. Rule 5. Those rules make clear that the operative document as it relates to finality and this Court’s jurisdiction is the appellant’s notice of appeal, regardless of the content or volume of other documents a party may submit. Moreover, Appellant did not file any motion pursuant to V.R.A.P. Rule 4 that would allow the Court to extend or reopen the time for her to file an appeal. In re 267 Summer Point CU Appeal, No. 21-ENV-00105, slip op. at 3, (Vt. Super. Ct. Env’tl. Div. Aug. 29, 2022) (Walsh, J.).

The documents submitted on April 6 lack critical information required for the Court to construe them as a notice of appeal. Specifically, the April 6 documents fail to clearly indicate the municipal decision being appealed from and to name the court to which the appeal is taken. To be clear, this is not to say that there is no mention of the March 9 DRB decision in Appellant’s materials. Rather, that decision is discussed alongside other DRB decisions (“Oct 8, 2025, February 11th, and 25th, and March 18th, 2026”), as well as ongoing Act 250 proceedings, with no indication of which of these decisions Appellant wishes to appeal. Further, the heading at the top of the document states that it relates to “ERB/LURB Proposed Barre City Municipal Garage Appeal.” Although the address of the Environmental Division of the Vermont Superior Court is listed on the letter, the letter begins by addressing either the LURB or the former Environmental Board.²

² “In 2004, the Environmental Board and Water Resources Board were combined into a single entity, the Natural Resources Board. As part of the 2004 amendments, all appeals of District Commission decisions, as well as permit

The ambiguity created through: 1) the inclusion of multiple potentially appealable DRB decisions and 2) the lack of clarity around the letter's intended recipient necessarily means this Court cannot find these filings to meet the requirements of V.R.A.P. Rule 3/V.R.E.C.P. Rule 5, no matter how liberal our construction. Putting aside the fact that these rules explicitly enumerate these items as components of a valid notice of appeal, the rules also make clear that specific timelines govern this Court's jurisdiction to hear appeals from municipal panels. Without a clear indication of the date and decision an appellant wishes to challenge, this Court cannot determine whether it has authority to hear the matter. The same can be said of a letter that appears to be addressed primarily to the LURB but includes this Court's address on the first page. In past instances where this Court has found intent to appeal, the decision being appealed from and the body the appellant wished to hear the appeal were clear. See, e.g., Zoning Permit #2025-46-ZP Appeal Dismissal, No. 26-ENV-00035, slip op. at 2 (Vt. Super. Ct. Envtl. Div. July 17, 2026) (McLean, J.). These shortcomings cannot be cured through the submission of other miscellaneous materials.³ As such, there was no timely notice of appeal in this case, and Appellant's appeal was untimely. Therefore, motion to dismiss must be granted.

Conclusion

For the foregoing reasons, the motion to dismiss is **GRANTED**. This concludes the matter before the Court. A Judgment Order is issued concurrently with this Entry Order.

Electronically signed July 21, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" and last name "Walsh" written in a cursive-like script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

decisions of the Agency of Natural Resources, are now heard by the Superior Court, Environmental Division. Act 181 of 2024 renamed and restructured the Board, creating a 5-member full-time professional Land Use Review Board (LURB) to supervise staff, provide guidance to district commissions, transition the program to a new system of location-based jurisdiction, and to define natural resource areas for additional protections.” “Act 250 Program and History,” <https://act250.vermont.gov/act250-program>, accessed July 20, 2026.

³ Appellant's proffer of the Court's April 15 notification letter to her is also unavailing. When an appellant first files in the Court's electronic filing system, Court staff automatically send out a form letter notifying that individual the documents sent to the Court were received on a certain date, along with instructions for further participation in the matter. The letter is generated without reference to the content of the documents and in no way represents a conclusion that the appeal is valid. This is particularly true in light of the fact that Court staff immediately responded to Appellant's submission seeking clarifying information, which Appellant provided on April 10, five days prior to her receipt of the notification letter.