

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 25-ENV-00123
No. 25-ENV-00124

3 East Main Street Zoning Permit #2025-022/5 East Main Street Zoning Permit #2025-023

DECISION ON MOTION TO RECONSIDER

Title: Motion for Reconsideration of Decision on Non-Attorney Representation

Filer: Eric Silverstein, Agent for Appellant

Filed Date: July 24, 2026

Memorandum in Opposition to Motion for Reconsideration, filed by Edward G. Adrian, Esq.,
counsel for Town of Wilmington, on July 27, 2026

Reply in Support of Motion for Reconsideration, filed by Eric Silverstein, on July 27, 2026

The motion is DENIED.

These coordinated matters involve appeals, both filed December 16, 2025, from the Town of Wilmington (Town) Development Review Board's denial of two permits for demolition of existing structures located at 3 and 5 East Main Street, Wilmington, Vermont. The Town is represented by Edward G. Adrian, Esq. The Appellant, 3-5 East Main Street, LLC, has appeared through its agent, Eric Silverstein. By Decision on Motions, dated July 24, 2026, the Court denied Appellant's Motion for Permission for Non-Attorney Representation. Appellant has asked the Court to reconsider that decision.¹ The Town opposes the reconsideration request.

As an initial matter, both Appellant and the Town correctly observe that the Court prematurely issued its Decision on Motions. We apologize for this oversight and have considered the merits of Appellant's reply in this Decision.²

In our prior denial, we cited to the four factors relevant to non-attorney representation discussed in Vermont Agency of Nat. Res. v. Upper Valley Regional Landfill Corp., 159 Vt. 454 (1992). We concluded, consistent with the Town's analysis, that "Appellant offers no evidence that it cannot afford counsel or has attempted to obtain pro bono counsel; no competent proof that Mr. Silverstein

¹ The Motion for Reconsideration, filed after the Court's Decision on Motions, is signed by Mr. Silverstein as "Member and Manager, Agent for Appellant." Despite its denial of the Motion for Permission for Non-Attorney Representation, the Court hereby authorizes Mr. Silverstein to represent the LLC, on a limited basis, in connection with its filings to date, including the notice of appeal, Statement of Questions (as amended), Motion for Permission for Non-Attorney Representation, and Motion for Reconsideration.

² The deadline for a reply to the Town's opposition was July 27, 2026. We consider Appellant's reply filing on its merits, without reference to the usual requirements for reconsideration under V.R.C.P. 59(e).

is authorized to represent and bind the LLC in this litigation; and no showing that he possesses the legal knowledge and litigation skills necessary to conduct a de novo zoning appeal without burdening the Town or the Court.” Opposition at 1. Therefore, we gave Appellant 30 days from the date of the July 24, 2026 Decision on Motions to secure representation by an attorney admitted in Vermont.

In its reply filing, Appellant submits, as Exhibit A, written consent from the LLC’s manager of record for Mr. Silverstein to represent and bind the LLC in these dockets. This satisfies Upper Valley’s authorization requirement but does not address the remaining factors noted above.

Appellant argues that Upper Valley’s requirement that a party seeking non-attorney representation demonstrate that it cannot afford counsel and has attempted (and failed) to obtain pro bono counsel does not, or should not, apply given the language of 11A V.S.A. § 3.02(1), the statutory standard for permitting a Vermont for-profit corporation to appear through a non-attorney representative. 11A V.S.A. § 3.02(1(A)-(C); see also 11A V.S.A. § 1.40(4). Appellant observes that the statute does not contain a “financial condition” and suggests that the absence of the “ability-to-afford” requirement in the statute, which post-dates Upper Valley, either controls directly or should guide the exercise of the Court’s discretion.

Having re-examined both the statute and caselaw, the Court concludes that the Upper Valley factors control the analysis here. Appellant is a limited liability company. By contrast, 11A V.S.A. § 3.02(1(A)-(C) establishes the standard for non-attorney representation of a Vermont for-profit corporation. The statute expressly does not apply to limited liability companies.³ See In re Morales, 2016 VT 85, ¶ 13–14 (distinguishing common law standards for non-attorney representation of unincorporated organization and statutory standards for non-attorney representation of corporation). The tests for non-attorney representation of corporations, as opposed to other types of unincorporated organizations or business entities, while similar, are not identical.⁴ Accordingly, we conclude that a limited liability company seeking authorization for non-attorney representation, like Appellant here, must demonstrate that it cannot afford to hire counsel and cannot secure counsel on a pro bono basis. 159 Vt. 458 (1992).

Appellant has not demonstrated that it cannot afford to hire counsel nor secure counsel on a pro bono basis. Instead, Appellant asks for a further opportunity to make such a showing if the Court determines that it is necessary under the controlling law. We are not inclined to provide Appellant with an additional opportunity to cure the deficiency in its filing.

Having been alerted to the Upper Valley factors by the Court’s February 24, 2026 Entry Order, Appellant filed its original Motion for Permission for Non-Attorney Representation on March 5, 2026, without making the required showing on several of the listed factors. Thereafter, during a status

³ To the extent that dicta from our decision in 4659 Main Street Certificate of Compliance, No. 25-ENV-00077, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Nov. 13, 2025) (McLean, J.), suggests that 11A V.S.A. § 3.02(1)(A)-(C) includes limited liability companies, or that the test for whether a non-attorney can represent a corporation is exactly the same under the statute and case law, we clarify here that the statute applies only to certain corporations, and not to limited liability companies.

⁴ We note that a panel of the Vermont Supreme Court has also referenced 11A V.S.A. § 3.02(1) without distinguishing between its applicability to corporations and other types of business entities, like limited liability companies. See e.g., Flat Fee, LLC v. Nw. Vermont Realtor Ass’n, 2025 WL 1621495 (Jun. 6, 2025).

conference on July 13, 2026, the Court expressed concern that the Upper Valley factors had not been satisfied. Appellant then supplemented his filing on July 24, 2026, relative to certain factors, but did not address the financial component of the Upper Valley test. On July 27, 2026, despite knowing the Town's position that the new authorization "does not cure the complete absence of evidence that the LLC cannot afford counsel or obtain counsel on a *pro bono* basis," Appellant still did not provide evidence to demonstrate compliance with the financial factor. Instead, Appellant requests leave to file financial information "if the Court concludes the financial factor applies." The Court does not understand why, given the foregoing, Appellant did not anticipate that the Court may apply the Upper Valley factors as written and proactively supply the information that it now seeks a further opportunity to submit. Appellant's request is not reasonable under the circumstances, nor consistent with typical motion practice under the Civil Rules, which do not anticipate what the Town somewhat aptly characterizes as "serial supplementation." See V.R.C.P. 7(b).

The Court also remains concerned that Mr. Silverstein has not satisfied the requirement to demonstrate he possesses adequate legal knowledge and skill to represent Appellant without unduly burdening the Town or the Court. While Mr. Silverstein's written submissions on behalf of Appellant have been well organized, clear and generally consistent with Court rules, litigation practice before the Environmental Division is specialized in nature. It requires familiarity with our standards of review, discovery and motion practice, both the Civil Rules and Vermont Rules for Environmental Court Proceedings, the organized presentation of witnesses and exhibits, and making and responding to evidentiary objections, among other things. Thus, while Mr. Silverstein's written submissions do demonstrate some commendable ability, these filings alone do not show that he has the legal knowledge and skills to represent the LLC in every respect without creating undue burdens. The Court's observations of the tone and tenor of the parties' recent interactions during the July 13 status conference inform our conclusion here.⁵ During that conference, it was apparent that clear, timely communication between the parties had presented challenges, with both sides expressing a measure of frustration with the other for various reasons. This would likely be an ongoing issue in this litigation. The Court understands that it can be quite challenging—due to stress, heightened emotions, mounting costs, etc.—to engage in litigation involving property in which one has an ownership interest and/or substantial financial investment. These challenges often lead to unnecessary acrimony and recrimination(s) that burden the litigation process (the beginnings of which we have already witnessed), when what is needed is calm, dispassionate evaluation of the legal issues. We believe these issues can be substantially reduced or eliminated through the involvement of experienced counsel.⁶

Appellant asks that we consider allowing Mr. Silverstein to represent the LLC during pre-trial proceedings and that we revisit the issue of counsel in advance of any merits hearing. The Town states that the pre-trial proceedings here would "encompass the most consequential aspects of civil litigation" and it opposes the request. The Court agrees that much of the legal work in these matters will occur pre-trial and that, for the reasons discussed, it is not reasonable or appropriate to authorize further non-attorney representation beyond what we have already allowed.

⁵ Notably, during that status conference Mr. Silverstein reported to the Court that he had been speaking with an attorney and was considering retaining legal counsel, suggesting to the Court that he perhaps he too saw the benefit of experienced legal representation.

⁶ The Town notes that Mr. Silverstein, given his knowledge of the properties at issue, is likely to be the central fact witness in this case, which increases the risk that factual assertions will be presented as advocacy. Although we have occasionally allowed self-represented parties to testify in narrative form, we agree that it is not ideal and that Appellant's presentation of the evidence and legal argument would likely be greatly enhanced through the involvement of counsel.

For the foregoing reasons, Appellant's motion for non-attorney representation/reply filings, as reconsidered, fail to adequately demonstrate that the factors listed in Upper Valley for non-attorney representation have been met in these coordinated cases. Therefore, Appellant's motion for reconsideration is **DENIED**. Appellant shall have 30 days from the date of this Decision to secure representation by an attorney admitted in Vermont.

Electronically signed on July 31, 2026, pursuant to V.R.E.F. 9(d).

A handwritten signature in blue ink, appearing to read "Joseph S. McLean", with a stylized flourish at the end.

Joseph S. McLean
Superior Court Judge
Environmental Division