

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00085

Essex County Courthouse Amended Zoning Permit

ENTRY ORDER

Title: Motion for Immediate Stay and Expedited Consideration

Filer: Trevor Colby, Pro Se

Filed Date: September 4, 2026

The Motion for Expedited Consideration is GRANTED. The Motion for Immediate Stay (pursuant to Rule 65(a)) is DENIED.

This matter involves an appeal by Trevor Colby (Appellant) from the Town of Guildhall (Town) Appropriate Municipal Panels' (AMPs) August 27, 2026 decision approving, with conditions, certain amendments to a February 13, 2025 decision of the AMPs authorizing an addition and renovations to the Essex County Courthouse.¹ Appellant's appeal largely focuses on proposed changes to the rear parking/access area. Appellant moves for Immediate Stay and Expedited Consideration of his stay request. While we GRANT Appellant's request for expedited consideration, his Motion for Immediate Stay is DENIED.

By way of background, at 3 p.m. on Friday, September 4, 2026, Appellant filed a notice of appeal from the AMPs' decision approving, with conditions, certain amendments to a prior decision by the AMPs authorizing an addition and renovations to the Essex County Courthouse. Together with his notice of appeal, Appellant has filed a Motion for Immediate Stay and Expedited Consideration. On Wednesday, September 9, 2026, Appellant contacted Court staff inquiring regarding the status of his motion and indicating that construction allegedly impacting Appellant is scheduled to begin this week. The Applicant, Essex County, has not yet entered an appearance in this matter—let alone filed a response to the motion—and the time has not yet run for it to do so. Appellant's motion does not specifically request or identify any legal basis for this Court to take up his motion on an ex parte basis. However, considering Appellant's pro se status and reading his motion for stay liberally, we construe the motion as one seeking ex parte relief in the nature of a temporary restraining order (TRO) pursuant to V.R.C.P. 65(a). This Court has authority to grant such ex parte relief in appropriate circumstances under 24 V.S.A. § 4472(a) (establishing that Environmental

¹ Although he appears to sign all filings in his individual capacity, Appellant is the elected Essex County Sheriff and he makes certain representations in his submissions relative to the facilities and operations of Essex County Sheriff's Department.

Division “[w]hether proceeding on the record or de novo, shall have and may exercise all powers and authorities of a Superior Court”).

Vermont Rule of Civil Procedure 65(a) provides in pertinent part that:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party’s attorney only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition. The verification of such affidavit or verified complaint shall be upon the affiant’s own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period.

V.R.C.P. 65(a) (emphasis added).

Typically, TROs are entered ex parte, before the opposing party has notice and an opportunity to contest it. *Id.* The purpose of such an order is usually “to preserve the status quo until there is an opportunity to hold a hearing on the application for a preliminary injunction.” 11A Charles Wright, et al., Fed. Prac. & Proc. Civ. § 2951 (3d ed.). Since it is entered prior to notice and a hearing, a TRO is truly extraordinary relief. See *id.* (“The issuance of an ex parte temporary restraining order is an emergency procedure and is appropriate only when the applicant is in need of immediate relief.”).

We begin our analysis by observing that Appellant’s motion is supported by a declaration based on his personal knowledge. Under V.R.C.P. 43(h), “[w]hen a rule or court order requires the filing or service of an affidavit or a statement signed under oath, a party may instead file or serve a document signed under penalty of perjury with language immediately above the signature in substantially the following form:

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or to other sanctions in the discretion of the court.

Motion/Declaration, p. 8.

Appellant’s declaration contains the requisite language and meets the requirements of Rule 43(h). The declaration does not, however, clearly identify specific facts demonstrating “that immediate and irreparable injury, loss, or damage will result” to Appellant “before the adverse party or that party’s attorney may be heard in opposition.” Instead, the declaration states, in part, that: (1) the Sheriff’s Department presently has six full-time and four part-time staff, in addition to law-enforcement vehicles and operational equipment that use the rear parking area”; (2) the AMPs’ decision “states that the amended parking plan will provide nine rear parking spaces . . . a reduction of thirteen spaces . . . [and] records . . . [Appellant’s] testimony that this reduction will shift parking for persons working at and using the Sheriff’s Department from the rear of the building to the front along Courthouse Drive”;

(3) “[t]he amended design also includes a retaining wall, grading and stormwater-drainage work and changes to parking and access immediately behind and adjacent to the Sheriff’s Department . . . [which] changes affect the area [Appellant uses] for Sheriff’s Department operations and the direct route from the rear parking area to the Sheriff’s Department entrance”; (4) Appellant “observed excavation begin in the area for the retaining wall . . . [and] have been advised or understand from the construction schedule that concrete work for the retaining wall is expected to begin during the week of September 8-13, 2026”; and (4) “[i]f the retaining wall is poured and the grading, drainage, parking, and access configuration are changed before the Court can act on the stay request, restoring the present condition would require additional construction and would disrupt ongoing Sheriff’s Department operations.” Declaration at ¶ 4, 7–10. Taken individually and collectively, the averments in Appellant’s declaration do not meet Rule 65(a)’s requirement to demonstrate that “immediate and irreparable injury, loss or damage” will result to Appellant if the Court does not act before the Applicant or its counsel may be heard.

Like a preliminary injunction, a motion for a TRO requires the Court to evaluate the threat of irreparable harm to the moving party. An irreparable harm is that which cannot be adequately measured or compensated by money damages. Black’s Law Dictionary, irreparable injury (11th ed. 2019). The Court considers whether the alleged injuries are likely and whether they would have an adequate remedy at law. In re Lathrop Ltd. P’ship I, et al., Nos. 122-7-04 Vtec, 210-9-08 Vtec, 136-8-10 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Nov. 14, 2013) (Durkin, J.). As a general rule, allowing an applicant to move forward with construction while a permit is being challenged in this Court does not lead to irreparable harm. In re Mahar CU Appeal, No. 113-9-15 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Dec. 2, 2016) (Durkin, J.). Injuries from noise, dust, and increased traffic caused by temporary construction activity can all be remedied by law. Lathrop I, Nos. 122-7-04 Vtec, 210-9-08 Vtec, 136-8-10 Vtec, slip op. at 3 (Nov. 14, 2013) (Durkin, J.). Similarly, any injuries arising from the added burden of, and/or disruption associated with, parking in a new location or of developing a new access path (or plan) are potentially remedied at law.² In addition, this Court has authority to order remediation of any project constructed without final permit approval should the Court ultimately determine that the permit should not have been issued. This includes potentially ordering the removal of buildings—or portions of buildings—and other structures constructed while this appeal is pending. Id. (citing Vill. of Ludlow v. Tofferi, et al., No. 213-11-98 Vtec (Vt. Envtl. Ct. Jan. 18, 2002) (Wright, J.)). Consequently, while we make no final determinations on the issue of irreparable harm other than to conclude that Appellant’s declaration fails to justify the issuance of a TRO through compelling evidence of irreparable harm, we note that such harm may be difficult to prove in the context of this case.

Accordingly, to the extent that Appellant’s Motion for Immediate Stay seeks an ex parte TRO pursuant to V.R.C.P. 65(a), his motion for such relief is **DENIED**. The Court will, however, set this matter for a prompt hearing on a motion for preliminary injunction and will separately evaluate whether Appellant is entitled to the extraordinary remedy of preliminary injunctive relief. In addition to the requested stay, the parties should be prepared to discuss two additional issues at the hearing:

² In this case, Appellant’s declaration fails to demonstrate how or why any such harms cannot be remedied at law.

(1) Appellant's standing and (2) Appellant's potential nonattorney representation of a third party, the Essex County Sheriff's Department.³

Electronically signed on September 11, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division

³ A party's standing is an indispensable part of subject matter jurisdiction, and this Court has “an independent obligation to determine whether subject matter jurisdiction exists.” In re Charron 13-Lot PUD Preliminary Plat, No. 24-2-19 Vtec, slip op. at 1 n.1 (Vt. Super. Ct. Envtl. Div.) (June 7, 2019) (Durkin, J.) (quoting Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006)); Brod v. Agency of Nat. Res., 2007 VT 87, ¶ 8, 182 Vt. 234 (citation omitted). “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter,” this Court must respond accordingly. Here, the Court has questions regarding whether Appellant has statutory and/or constitutional standing to appeal. Regarding Appellant's potential representation of the interests of the Sheriff's Department in this appeal, a nonattorney must typically file a motion to represent an entity or organization, with consideration given to the factors identified in Vermont Agency of Natural Resources v. Upper Valley Regional Landfill Corp., 159 Vt. 454 (1992). However, consideration must also be given to the prohibition set forth in 24 V.S.A. § 305 against a sheriff appearing in any court as counsel, except in his or her own cause.