

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 26-ENV-00065

3 Seminary Lane CU Eligibility

ENTRY ORDER

Title: Motion to Dismiss for Lack of Standing (Motion: #1)

Filer: Liam L. Murphy, Esq.

Date: August 26, 2026

Village of Old Bennington's Response in Support of Applicant's Motion to Dismiss, filed August 27, 2026, by Merrill Bent, Esq.

Appellant's Memorandum in Opposition to Applicant's Motion to Dismiss, filed September 14, 2026, by Marc Baetens, Pro Se

Applicant's Reply in Support of Its Motion to Dismiss, filed September 21, 2026, by Liam L. Murphy, Esq.

The motion is GRANTED.

This is an appeal by Marc Baetens (Appellant) from a July 2, 2026 vote of the Village of Old Bennington (Village) Board of Trustees (Board) concluding that the restoration and reuse of property located at 3 Seminary Lane, Bennington, Vermont (the Property), qualified for consideration under the Village's Interim Bylaws (Interim Bylaws). Applicant, the Walloomsac Property, LLC (Applicant), has moved pursuant to V.R.E.C.P. 5 and V.R.C.P. 12(b)(1) to dismiss the appeal for lack of standing, or in the alternative to dismiss or clarify Questions from the Statement of Questions. The Village joins Applicant's request. Appellant opposes the motion.

By way of background, pursuant to 24 V.S.A. § 4415, the Village adopted the Interim Bylaws on January 5, 2026. The purpose of the Interim Bylaws is to:

[E]nable the restoration, preservation and economically sustainable reuse of historic structures of recognized significance that have previously been used for nonresidential purposes but whose use has been discontinued, while maintaining the historic and predominantly residential character in the Village.

Interim Bylaws § 1.

Not all structures qualify for consideration under the Interim Bylaws. Under § 2, the Interim Bylaws:

[A]pply only to structures that meet all the following criteria:

- a. The structure is individually listed or is a contributing structure within the Old Bennington Historic District on the National Register of Historic Places;
- b. The structure was lawfully used for a nonresidential purpose prior to the adoption of current zoning regulations prohibiting such use;
- c. The nonresidential use was discontinued for a period exceeding the time otherwise allowed for continuation as a nonconforming use under the current Zoning Bylaws;
- d. The proposed reuse is substantially the same as the building's historic use or is a new use that would not adversely impact the character of the surrounding area or the broader, historic character of the Village; and,
- e. The structure or a substantial portion thereof has fallen into disuse and/or is in a deteriorating condition such that immediate preservation restoration is in the public interest.

Interim Bylaws § 2a–e.

Further, § 3 of the Interim Bylaws provides, in part, that:

For so long as these Interim Bylaws are in effect, a person seeking to restore and reuse such a structure for its prior or related nonresidential use shall apply to the Board of Trustees of the Village of Bennington for a Conditional Use Permit. The Board shall review the application pursuant to the standards of 24 V.S.A. § 4414(3) and applicable conditional use review criteria under the Village's existing Zoning Bylaws.

Interim Bylaws § 3.

Therefore, a determination of applicability is a prerequisite to conditional use review under the Interim Bylaws.

By application dated May 2, 2026, Applicant applied to the Village for a change of use of the Property from a residence to a “Six-bedroom inn/ancillary guest house in relation to The Walloomac Inn.” Appellant’s Exhibit B.¹ On July 2, 2026, the Board held a public hearing to consider the Applicant’s “application for a Conditional Use Permit under the Village’s Interim Bylaw.” Appellant’s Exhibit D p. 1. Appellant participated in the July 2, 2026 conditional use hearing and raised issues

¹ In conjunction with his notice of appeal, Appellant filed a Memorandum of Law in Support of Appeal that included Exhibits A through L. We refer to those exhibits in connection with this decision. Although Exhibit B does not expressly request conditional use approval, it appears undisputed that the application required conditional use review under the Interim Bylaws.

with the application. Presumably, he also heard the Village’s counsel explain to others in attendance that “[i]f the Trustees decided . . . [the Applicant’s] application met the five criteria, they would move on to deciding whether to grant it a Conditional Use Permit. They had a maximum of 45 days to deliberate and issue a written decision.” Id.² After closing the public hearing, the Board privately deliberated whether the application qualified for consideration under the Interim Bylaw. Id. Following these initial deliberations, the Board publicly voted 3 to 2 that the application qualified for consideration under the Interim Bylaws. Id. The Board indicated that it would “next deliberate the question of whether to grant the Conditional Use Permit for 3 Seminary Lane.” Id.

On July 15, 2026, Appellant filed a notice of appeal with this Court challenging the “Board of Trustees July [sic] 2, 2026 decision.” Thereafter, in an undated decision issued on July 22, 2026, the Board confirmed in writing its July 2 eligibility vote and granted Applicant’s request for conditional use approval, all supported by findings of fact and conclusions of law. The written decision issued on July 22, 2026, was not appealed.

Applicant has moved to dismiss the pending appeal of the Board’s July 2, 2026 eligibility determination, arguing that Appellant lacks standing as an interested person under 24 V.S.A. § 4465(b)(3).

“An interested person who has participated in a municipal regulatory proceeding authorized under [Title 24] may appeal a decision rendered in that proceeding by an appropriate municipal panel to the Environmental Division.” 24 V.S.A. § 4471(a); see also 10 V.S.A. § 8504(b) (“[A]n interested person, as defined in 24 V.S.A. § 4465, who has participated as defined in 24 V.S.A. § 4471 in the municipal regulatory proceeding under that chapter may appeal to the Environmental Division an act or decision made under that chapter by . . . a development review board . . .”). An “interested person” is defined, in part, as:

(3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.

24 V.S.A. § 4465(b)(3).

² The transcript of the meeting minutes in Exhibit D identifies an “MB” at various points. Based on the content of the remarks, the Court assumes MB is the Village’s counsel, Merrill Bent, not Appellant.

While conceding that Appellant participated below and, for the purposes of the pending motion, that he occupies property in the immediate neighborhood of the Property at issue, Applicant argues that Appellant has failed to “demonstrate a physical or environmental impact on [his] interest under the criteria reviewed.” Id. For the reasons discussed below, the Court agrees.

Standing is a “necessary component to the court's subject matter jurisdiction.”³ Bischoff v. Bletz, 2008 VT 16, ¶ 15. We evaluate a motion to dismiss for lack of standing under V.R.C.P. 12(b)(1) as motions to dismiss for lack of subject matter jurisdiction. See, e.g., Wool v. Office of Prof'l Regulation, 2020 VT 44, ¶ 9. When a V.R.C.P. 12(b)(1) motion is before this Court, we accept as true all uncontroverted facts set out by the nonmovant and construe them in the light most favorable to him or her. Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245.

We begin with a threshold issue. This Court only has subject matter jurisdiction over an appeal pursuant to 24 V.S.A. § 4471(a) if the decision or act appealed from is final. In re Saxon Ptnrs LLC BJ's Warehouse Sketch Plan, No. 5-1-16 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. July 15, 2016) (Walsh, J.). While the term “decision” is not statutorily defined, this Court’s precedent makes clear that not every municipal action qualifies. See, e.g., Id. Appealable decisions are defined by finality—they dispose of all matters before the municipal body that should or could be settled. Id.; see also Jordan v. State Agency of Transp., 166 Vt. 509, 513 (1997). Thus, mere commentary or guidance from the municipal body does not constitute a decision susceptible to appeal. Saxon Partners, No. 5-1-16 Vtec at 2 (July 15, 2016); see also In re Scott Farm Act 250, No. 48-4-17 Vtec, slip op. at 1–2 (Vt. Super. Ct. Envtl. Div. Aug. 22, 2017) (Walsh, J.) (citation omitted).

This Court has also considered the characteristics of municipal actions that can be appealed in the specific context of preliminary review orders issued as part of a multi-stage application process, such as subdivision review. See, e.g., In re Pintair Discretionary Permit, No. 54-5-15 Vtec, slip op. at 11 (Vt. Super. Ct. Envtl. Div. May 27, 2016) (Walsh, J.); In re Blackrock Constr. LLC Subdivision, No. 31-4-15 Vtec, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Apr. 21, 2016) (Walsh, J.). In such context, we look to whether the municipal panel is authorized or required to make a decision at a particular stage of review to determine whether a decision is final and appealable. See, e.g., In re Perras & Sons, Inc. Preliminary Plat, No. 29-2-06 Vtec, slip op. at 6–9 (Vt. Envtl. Ct. Oct. 18, 2006) (Durkin, J.).

³ 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 (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. V.R.C.P. 12(h)(3).

In this case, the act that Appellant appealed was the Board's July 2 vote that Applicant's application qualified for consideration under the Interim Bylaws. Appellant was present during the Village counsel's explanation at the July 2 hearing that this eligibility vote was the first step in a two-stage application process that also involved conditional use review. A decision on conditional use approval had not yet been rendered at the time that he filed his notice of appeal and, thus, the vote to apply the Interim Bylaw to the application was a preliminary step in the review process under the Interim Bylaws. However, based on the language of the Interim Bylaws, which specifically provides that they "apply only to structures that meet all of the following [eligibility] . . . criteria," and the Board's indication following the vote that it would "next deliberate the question of whether to grant the Conditional Use Permit," we conclude that while the eligibility determination and the conditional use review were part of a single municipal regulatory proceeding, the Board's eligibility vote was a final (albeit prerequisite) decision that the Board was authorized and/or required to make and that was, consequently, appealable to this Court.

Although we conclude that the Board's eligibility vote was an appealable final decision, a would-be appellant must have both constitutional and statutory standing to take an appeal. See In re Capitol Plaza 2-Lot Subdivision, Nos. 3-1-19, 4-1-19 Vtec, slip op. at 2–5 (Vt. Super. Ct. Env'tl. Div. Nov. 12, 2019) (Walsh, J.) (setting forth the constitutional and statutory standing requirements, as they relate to land use appeals). As noted above, under 24 V.S.A. § 4465(b)(3) an interested person is defined in part as a person who owns or occupies property "in the immediate neighborhood" of the project in dispute and "who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed." 24 V.S.A. § 4465(b)(3) (emphasis added). In his Opposition, Appellant clearly and unequivocally states that he is appealing the July 2 eligibility determination only and not the conditional use decision and he identifies "the particularized traffic and parking impacts asserted by Appellant on his immediately neighboring property" as the basis for his standing under § 4465(b)(3).

Setting aside the issue of whether Appellant, who appealed in his individual capacity, can raise issues regarding impacts to commercial property owned by an LLC (i.e., T4C Inn LLC) of which he is a member,⁴ there is a more fundamental problem with Appellant's standing claim—none of the

⁴ On the question of standing, Appellant has the burden of proof. Brod v. Agency of Nat. Res., 2007 VT 87, ¶ 9. Even if Appellant resides at and occupies the neighboring property, 21 West Road, owned by T4C Inn LLC (which has not been clearly established), he still has an obligation to demonstrate how the alleged impacts from traffic and parking have caused him an injury in his personal capacity. See Chompupong DRB Decision Appeal, No. 24-ENV-00092, slip op. at 3–4 (Vt. Super. Ct. Env'tl. Div. Sept. 22, 2025) (McLean, J.) (emphasis added).

“criteria reviewed” under Interim Bylaws § 2 (Applicability) relate in any way to traffic or parking. Those impacts may have relevance in a conditional use context, but Appellant fails to identify any way in which they relate to the eligibility criteria under the Interim Bylaws. Thus, as Applicant correctly observes, “because the injury . . . [Appellant] asserts is untethered from the criteria on appeal, he lacks standing under § 4465(b)(3).”

To determine whether a plaintiff has constitutional standing, the Court applies the test articulated in Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992), which the Vermont Supreme Court has expressly adopted. Hinesburg Sand & Gravel Co., Inc. v. State, 166 Vt. 337, 341 (1997). This test requires a plaintiff to establish three elements: (1) an injury in fact; (2) causation; and (3) redressability. Id. at 341. “Stated another way, a plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct, which is likely to be redressed by the requested relief.” Parker v. Town of Milton, 169 Vt. 74, 78 (1998). For the reasons discussed above, Appellant has not articulated a personal injury “fairly traceable” to the Board’s eligibility determination. Importantly, and because the injury is not considered within the context of the eligibility determination, he also has not demonstrated redressability for his claimed injuries from traffic and parking impacts.

Further, the Court concludes that Appellant’s alleged injuries are also not redressable because he failed to appeal the Board’s written approval of Applicant’s conditional use application. Since the approval was not appealed, that decision is now final and it cannot be challenged or collaterally attacked, directly or indirectly. 24 V.S.A. § 4472(a), (d). Such finality attaches to the unappealed zoning approval even where the approval is alleged to be void ab initio, ultra vires or where the municipal board (allegedly) lacked jurisdiction to issue a conditional use permit due to sovereign immunity. Levy v. Town of St. Albans Zoning Bd. of Adjustment, 152 Vt. 139, 142–43 (1989) (§ 4472 applies even when a zoning permit is alleged to have been void ab initio); City of S. Burlington v. Dep’t of Corr., 171 Vt. 587, 590 (2000).⁵ In other words, even if we were to find that Appellant had standing to challenge the Board’s eligibility determination and concluded on the merits that Applicant’s project was not eligible for review under the Interim Bylaw, the finality of the conditional use approval precludes this Court from taking any action to redress Appellant’s asserted injuries from

⁵ It appears to the Court that given our established precedents around divestiture of jurisdiction on appeal, the Trustees may have lacked the authority in this instance to render a determination on Applicant’s conditional use application following Appellant’s appeal of the eligibility vote. As noted above, however, this fact does not alter our legal conclusions with respect to the finality of the unappealed July 22, 2026 decision, which both confirmed eligibility and granted conditional use approval.

traffic and parking impacts. Accordingly, Appellant lacks both statutory and constitutional standing and his appeal must be dismissed.

For these reasons, Applicant's Motion to Dismiss is GRANTED.⁶ This concludes the matter before the Court. A Judgment Order accompanies this decision.

Electronically signed on September 24, 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

⁶ Applicant's motion also sought dismissal in part or to limit and clarify the Statement of Questions as alternative relief. In light of this decision, those requests are MOOT.