



Kendall Act 250 Application 3R1135

DECISION ON MOTIONS

In this matter, Rachel and Meridith Kendall (Applicants) appeal a November 10, 2025 decision by the District #3 Environmental Commission (District Commission) denying in part Applicants' application to host events, including weddings, with associated infrastructure, at their properties having an address of 17 and 20 Kendall Road, Strafford, Vermont (the Property).¹

Neighboring property owners Gertrud and Robert Fondren, Linda Titus and the Linda Gail Titus Living Trust, and Stephanie and Stephen Willbanks (together, Neighbors), the Town of Strafford (Town), and the Land Use Review Board (LURB) have also appeared in this matter.² Presently before the Court are Applicants' and Neighbors' cross-motions for partial summary judgment.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering a motion for summary judgment, the nonmoving party receives the benefit of all reasonable doubts and inferences. Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332.

¹ The District Commission approved the aspect of the Applicants' project to use existing buildings for women's wellness, including regular yoga classes. That aspect of the decision was not appealed to this Court.

² Robert A. Bushnell has also appeared as an interested party.

Factual Background

We recite the following facts solely for the purpose of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts trial. Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.).

1. Rachel Kendall and Meredith Kendall own property at 20 Kendall Road and 17 Kendall Road, respectively, in Strafford, Vermont.

2. On December 2, 2024, Applicants submitted an Act 250 application to use the Property for women's wellness, including yoga classes, with up to 25 guests and as a commercial events venue to host weddings, receptions and musical events.

3. That application was deemed complete on March 3, 2026.

4. The event venue portion of the project is the sole aspect pending before the Court.

5. The event venue will use an existing structure on the Property, as well as a newly constructed second structure.

6. Applicants propose construction of two tent sites, an outdoor performance gathering area, an outdoor food preparation area, and a 105-space parking area to support the event venue.

7. Applicants propose to host events for up to 200 people. These large events would be limited to no more than 12 days per year occurring Thursday through Sunday from May to October. To the extent that any additional days would be associated with a wedding or event, those days would be restricted to 25 or fewer people.

8. The above parameters for the events are set forth in Applicants' wastewater permit, WW-3-9460-4, issued by the Agency of Natural Resources (ANR).

9. Outdoor amplified music would occur until 10:30 PM.

10. Inclusive of preparation and breakdown, the hours of operation are 7:00 AM to 11:00 PM for events.

11. The Town has adopted the Strafford Town Plan, dated October 13, 2021. Ex. J (Town Plan).

12. The Property is in the Rural Residential I land use area (RRI) as defined by the Town Plan.

13. The purpose of the RRI "is to provide for low-density residential development, while allowing for continued agricultural and forestry operations, and some limited commercial uses that are in keeping with the pastoral landscape and provide services or sources of employment." Town Plan at 65.³

³ The Court refers to the page number included within the body of the PDF of the Town Plan in its citations.

14. In the RRI district, included under “Policies,” is paragraph 4. Paragraph 4 states:

No commercial development shall be permitted except for the following: small professional offices, inns, development directly related to agricultural, forestry and recreational uses and home occupations such as wholesale operations, internet marketing, carpentry, woodworking, and vehicle and small engine repair.

Town Plan at 66 (hereinafter Paragraph 4).

15. On November 10, 2025, the District Commission approved the women’s wellness and yoga aspect of the project but denied the larger outdoor events portion.

16. Applicants timely appealed to this Court.

Discussion

The pending cross-motions only concern Applicants’ Question 4 of their Revised Statement of Questions. Question 4 asks:

Does that portion of the Project inclusive of weddings, receptions, musical events and related infrastructure, including a parking area on Meredith Kendall’s Property, an outdoor performance area, tent sites, and an outdoor food preparation area, comply with Criterion 10 as it relates to the Local and Regional Plans?

Revised Statement of Questions (filed Jan. 13, 2026).

Criterion 10 requires that developments be “in conformance with a duly adopted local or regional plan.” 10 V.S.A. § 6086(a)(1). For a town or regional plan’s language to be binding on applicants under Criterion 10, the language in the plan must be mandatory, not simply aspirational. In re Rivers Dev., LLC, Nos. 7-1-05, 68-3-07 Vtec, slip op. at 9 (Vt. Env’tl. Ct. Jan. 8, 2008) (Durkin, J.). Thus, only language that sets forth a specific policy in clear and unqualified terms will create a mandatory standard enforceable through Criterion 10. In re John A. Russell Corp., 2003 VT 93, ¶ 16, 176 Vt. 420. Conversely, noncompliance with “broad policy statements phrased as ‘nonregulatory abstractions’” does not violate Criterion 10. Id. (quoting In re Molgano, 163 Vt. 25, 31—3 (1994)).

The Court further notes that town plans are “a general guideline to the legislative body, an overall guide to community development.” Smith v. Winhall Planning Comm’n, 140 Vt. 178, 183 (1981). As such, “the specific implementation [of the plan] is the part adopted in the zoning regulations. The regulations control the plan.” Id. (citations omitted) (emphasis added). While Criterion 10 and the established precedent sets forth means by which a town plan may be regulatory for Act 250 purposes, it bears noting that town plans are, generally, planning documents.

When interpreting a provision of a plan under Criterion 10, “we must view the provision in the context of the . . . plan as a whole, bearing in mind the legislative goals that regional plans must

serve.” In re B & M Realty, LLC, 2016 VT 114, ¶ 36 (citing In re Tyler Self-Storage Unit Permits, 2011 VT 66, ¶ 12). Thus, the Court “construe[s] provisions set out in local and regional plans to effect the intent of the drafters, relying on the plan’s plain language where it is clear, and reading that plain language in context of the whole plan.” In re Diverging Diamond Interchange SW Permit, et al., Nos. 50-6-16, 169-12-16 Vtec, slip op. at 31 (Vt. Super. Ct. Envtl. Div. Oct. 11, 2017) (Walsh, J.) (citing B & M Realty, 2016 VT 114, ¶ 36).

The Property is located within RRI as defined by the Town Plan. The purpose of the RRI “is to provide for low-density residential development, while allowing for continued agricultural and forestry operations, and some limited commercial uses that are in keeping with the pastoral landscape and provide services or sources of employment.” Town Plan at 65. In the RRI district, included under “Policies” is Paragraph 4, which states that:

No commercial development shall be permitted except for the following: small professional offices, inns, development directly related to agricultural, forestry and recreational uses and home occupations such as wholesale operations, internet marketing, carpentry, woodworking, and vehicle and small engine repair.

Town Plan at 66.

The parties do not dispute that Paragraph 4 is mandatory. The Court agrees. Paragraph 4 begins with a clear prohibition on commercial development, using the word “shall,” unless the development meets the exceptions following the prohibition. See B & M Realty, 2016 VT 114, ¶ 35 (recognizing that “[m]andatory language includes terms like ‘must’ and ‘shall’ and . . . sets forth a requirement rather than a recommendation.”). There is, however, dispute between the parties about whether Paragraph 4 sets forth a policy in “clear and unqualified terms” to be enforceable under Criterion 10. Applicants argue that there is no language expressly prohibiting the type of commercial event venue that they propose, such that the provision is not clear as to its proposed use and unenforceable against Applicants in this appeal. The Court disagrees. That Paragraph 4 does not identify the specific use at issue in this matter does not make the provision inherently unclear or qualified as a whole. Paragraph 4 creates an express prohibition on all commercial development within the RRI with exceptions for certain identified uses. Therefore, the issue for the Court’s analysis is whether Applicant’s project falls within the uses identified in Paragraph 4. Notably, whether the event venue aspect of the project constitutes “development directly related to . . . recreational uses,” such that it is allowable under the Town Plan. If it does not, then Paragraph 4 expressly and unqualifiedly

prohibits the use in the RRI. The Court therefore must determine the interpretation of this term and whether the term creates an ambiguity such that it is unenforceable under Criterion 10.

The Town Plan does not define “recreational uses” therein, nor does Paragraph 4 include a demonstrative list of what types of uses would be “recreational uses” thereunder. Despite the lack of definition, Neighbors point to other areas within the Town Plan that relate to “recreation” to argue that “recreation” is defined by the Town Plan and assert that recreation is functionally limited to various levels of outdoor recreational activities such as skiing, hiking, and bicycling. Notably, however, the provisions cited clearly relate to outdoor recreational areas and activities. For instance, the language cited in the “Recreation and Access” subsection is within the overall section “Culturally and Naturally Significant Open Space Areas.” See Town Plan at 53. Similarly, the “Recreational Fields” section relates to outdoor public recreational areas. See Town Plan at 18. Finally, the Town Plan notes uses of public highways and rights of way for “outdoor recreation.” *Id.* at 28-29. Thus, these provisions are not helpful in guiding the definition of “recreational uses” in Paragraph 4 because Paragraph 4 is not specific to outdoor recreational uses or areas.

In the absence of any definition within the Town Plan, the Court therefore turns to dictionary definitions to assist the interpretation of Paragraph 4. See Pease v. Windsor Dev. & Review Bd., 2011 VT 103, ¶ 17, 190 Vt. 639 (mem.); see also State Agency of Dev. & Cmty. Affairs v. Bisson, 161 Vt. 8, 11 (1993) (“[W]ords not defined in statute are to be giving their plain and ordinary meaning, which can be taken from a dictionary.”). Merriam-Webster defines “recreational” as “of, relating to, or characteristic of recreation.” Merriam-Webster Dictionary, recreational (online) (last accessed Oct. 7, 2026). “Recreation” is defined as “a refreshment of strength and spirits after work.” Merriam-Webster Dictionary, recreation (online) (last accessed Oct. 7, 2026).⁴ Black’s Law Dictionary defines “recreational land use” as one “involving sports or amusements such as motocross, go-cart tracks, swimming pools, golf courses, etc.” Black’s Law Dictionary (12th ed. 2024), land use.⁵

None of these definitions limit “recreation” or “recreational” to “hobbies,” outdoor recreation, or, more specifically, the largely passive outdoor pursuits that Neighbors assert Paragraph

⁴ Applicants cite to the “Simple Definition” of both “recreation” and “recreational” as provided by the Merriam-Webster online dictionary. These definitions state that “recreation” is defined as “something people do to relax or have fun: activities done for enjoyment” and “recreational” is defined as “done for enjoyment.” See Merriam-Webster Dictionary, recreation and recreational (online - simple definition) (last accessed Oct. 7, 2026). The website states that the “[a] Simple Definition is from our Learner’s Dictionary to help you understand the meaning faster.” *Id.* Functionally, these definitions appear to be more colloquial than the formal entries in the dictionary. While helpful for context, the Court relies upon the traditional entries for the purpose of interpretation.

⁵ Notably, the word “including,” in the statutory interpretation context, “is ordinarily a word of enlargement, not one of limitation.” Vt. Ass’n of Realtors, Inc. v. State, 156 Vt. 525, 531 (1991) (citations omitted).

4 relates to. The plain meaning of “recreation” and/or “recreational” do not support this limited interpretation. “Recreation” and/or “recreational” are substantially broader and include activities, indoor or outdoor, passive or active, athletic in nature or not, that are done for enjoyment, amusement, or for refreshment of strength and spirits.⁶ Weddings and musical performances fall within this broad definition of “recreation” in that they contain dancing, socializing, and often music. If the Town wanted to limit the types of recreational activities addressed by Paragraph 4 or allowable in the RRI, it could have included a definition of “recreational use” that set forth the limited parameters of the word as used in the Town Plan or could have provided demonstrative examples of such activities within Paragraph 4. It did not do either. The Court therefore concludes that the plain language of Paragraph 4 does not prohibit a wedding or event space and supporting infrastructure as a commercial use because it falls within “development directly related to . . . recreational uses . . .”

To the extent that there is any ambiguity in the Town Plan, the Court may look to the Town’s Bylaws. See John A. Russell Corp., 2003 VT 93, ¶ 20 (citing Molgano, 163 Vt 25, 30). While the Bylaws contain a definition of “Outdoor Recreation Facilities,” the Town Plan does not use the term “outdoor recreation facilities.”⁷ This definition is therefore irrelevant. Further, the Bylaws contain no definition of “recreational use.”⁸ Thus, to the extent that there is any ambiguity in the Town Plan that allows the Court to review the Bylaws, the Bylaws are not helpful in resolving that ambiguity. The Town Plan would, in such an instance, be ambiguous, failing the requirement that to be

⁶ The Court notes that, in a previous decision from 2011, this Court rejected an argument that an activity met the definition of “outdoor recreation” because the participants enjoyed the activity. See In re Bowen Conditional Use Application, No. 93-6-10 Vtec, slip op. at 7 (Feb. 10, 2011) (Wright, J.). Neighbors appear to assert this decision stands for the principle that enjoyment may never been used as a consideration when determining if a use was recreational. Neighbors ignore, however, that in Bowen, the Court wrote that the determination of whether a use was “outdoor recreation” was “whether the activity is objectively similar to those activities listed in the definition.” Id. Thus, the Court concluded that the analysis was based on whether a use met a specific definition in which subjective enjoyment was not relevant. Here, the Court has no specific definition of “recreational use” in the Town Plan or demonstrative uses in Paragraph 4. The Court is therefore left with the plain meaning of the word “recreational” and the concepts of enjoyment, amusement, and refreshment. While these concepts may be subjective and broad, they are the sole definitions before the Court. To limit those plain meaning definitions as Neighbors propose would be to read in limiting language that is not within the Town Plan.

⁷ The inclusion of “outdoor recreational facilities” or “outdoor recreation” in some town documents or portions thereof, but the exclusion of these phrases in Paragraph 4, in favor of the broader “recreational uses” is also instructive. See In re Munson Earth Moving Corp., 169 Vt. 455, 465 (1999) (“Where the Legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that the Legislature did so advisedly.”) (citations omitted).

⁸ The parties dispute the applicable zoning regulations to this application: the 2007 Town Zoning Ordinance or the 2023 Town Unified Bylaw. The Court need not resolve this dispute because neither iteration of the regulations defines “recreational use” and the definition of “outdoor recreation facilities” is the same.

enforceable under Criterion 10 the language must be “clear and unqualified, and creates no ambiguity.” In re MBL Assoc., 166 Vt. 606, 607 (1997) (mem.).⁹

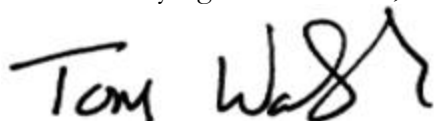
Because the Court concludes that the event venue is a “recreational use” under the plain language and therefore complies with Criterion 10, the Court need not address the dispute between the parties, notably Applicants and the Town, concerning the import of a letter of the prior Town Zoning Administrator relating to the project’s conformance with the Bylaws and Town Plan in this Act 250 appeal.¹⁰

Thus, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law on Question 4 and we answer that Question in the affirmative. Applicants’ motion is therefore **GRANTED** and Neighbors’ motion is **DENIED**.

Conclusion

For the foregoing reasons, Applicants’ motion is **GRANTED** and Neighbors’ motion is **DENIED**. In so doing, the Court concludes that the event venue aspect of the project complies with Criterion 10. The conclusion does not resolve the pending dispute. Thus, the Court will concurrently set this matter for a status conference to discuss how this matter shall proceed to resolution.

Electronically signed October 8, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

⁹ The requirement that local plan language be unambiguous to be enforceable under Criterion 10 must be read in the context of land use regulations as a whole. When construing land use regulations, “any uncertainty must be decided in favor of the property owner.” In re Vitale, 151 Vt. 580, 584 (1989); see also In re Winham Windsor Housing Tr. JO Appeal, 2024 VT 73, ¶ 12 (citations omitted).

¹⁰ The Court notes that there is a separate related appeal from the Town’s Zoning Board of Adjustment’s denial of Applicant’s conditional use permit application for this project. That matter remains pending and has not been finally adjudicated. Thus, there is no final interpretation of Paragraph 4 by the Town as it relates to the project.