Vermont Superior Court
Filed 10/21/26
Environmental Division

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00026

Firefly Demolition Approval

DECISION ON MOTION FOR SUMMARY JUDGMENT ON REMAINING QUESTIONS

Title: Appellee's Motion for Summary Judgment on Remaining Questions

Filer: David R. Cooper, Esq., and Rodney E. McPhee, Esq., counsel for Appellee/Applicant

Filed Date: July 10, 2026

Appellants' Memorandum in Opposition to Applicant's Motion for Summary Judgment on Questions #1-7, filed by David K. Mears, Esq., on August 31, 2026

Appellants' Amended Memorandum in Opposition to Applicant's Motion for Summary Judgment on Questions #1-7, filed by David K. Mears, Esq., on September 3, 2026

Appellee's Reply to Appellants' Amended Memorandum in Opposition to Applicant's Motion for Summary Judgment on Remaining Questions, filed by David R. Cooper, Esq., on September 11, 2026

Town of Manchester's Reply to Appellant's [sic] Opposition to Appellees' [sic] Motion for Summary Judgment on Remaining Questions, filed by Merrill E. Bent, Esq., on September 14, 2026

Appellants' Surreply Memorandum in Opposition, filed by David K. Mears, Esq., on September 17, 2026

Appellee's Surreply to Town of Manchester's Reply to Appellants' Opposition to Appellee's Motion, filed by David R. Cooper, Esq., on September 18, 2026

Town of Manchester's Opposition to Appellants' Motion to File Sur-Reply, filed by Merrill E. Bent, on September 18, 2026

Appellee's Opposition to Appellants' Motion for Leave to File Surreply, filed by David R. Cooper, Esq., on September 18, 2026

Applicant's Response to Appellants' Surreply, filed by David R. Cooper, Esq., on September 22, 2026

Town of Manchester's Response to Court's Order Allowing Appellants' Surreply, filed by Merrill E. Bent, Esq., on September 22, 2026

The motion is GRANTED.

This matter involves an appeal from the Town of Manchester (Town) Development Review Board's (DRB's) approval of a permit for the demolition of a structure located at 575 Depot Street, Manchester, Vermont (the Property), also called the "Firefly" building (the Firefly). Appellants Terry Lindsey, Robin Lane and Kris Slethaug (together, Appellants) are represented by Attorney David K. Mears. Appellee/Applicant 557-575 Depot Street, LLC (Applicant) is represented by David R. Cooper, Esq., and Rodney E. McPhee, Esq. Attorney Merrill E. Bent represents the Town.

On March 20, 2026, Appellants, then self-represented, filed a 9-Question Statement of Questions. On April 14, 2026, Applicant moved for partial summary judgment on Questions 8 and 9, which the Court granted by Entry Regarding Motions dated June 23, 2026. In re Firefly Demolition Approval, No. 26-ENV-00026 (Vt. Super. Ct. Envtl. Div. June 23, 2026) (McLean, J.) (the June Entry Order).

On July 10, 2026, Applicant moved for summary judgment on the remaining Questions 1 through 7. Appellants oppose the motion. The Town generally supports the motion, although it takes a different view of which provisions of the Manchester Land Use and Development Ordinance (the Ordinance) apply in these circumstances than Applicant.

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). In determining whether there is a dispute over a material fact, "we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A). The party opposing a motion for summary judgment "cannot simply rely on mere allegations in the pleadings to rebut credible documentary evidence or affidavits . . . but must respond

with specific facts that would justify submitting [their] claims to the factfinder." Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15 (citing Gore v. Green Mtn. Lakes Inc., 140 Vt. 262, 266 (1981); V.R.C.P. 56(e); State v. G.S. Blodgett Co., 163 Vt. 175, 180 (1995)). If a party fails to properly address another party's assertion of fact as required by Rule 56(c), the court may consider the fact undisputed for purposes of the motion or may grant summary judgment if the motion and supporting materials show that the movant is entitled to it. V.R.C.P. 56(e).

Factual Background

We recite the following factual background and procedural history, which we consider to be undisputed unless otherwise noted, based on the record now before us and for the purpose of deciding the pending motion. The following are not specific factual findings relevant outside the scope of this decision on the pending motion. See Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (citing Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.)).

1. Applicant owns real property located at 557 and 575 Depot Street in the Town.[1] The Property is situated at the corner of Depot Street and Highland Avenue.

2. The Property is approximately .65 acres and is presently developed with a single-story gas station and a vacant two-story building known as the Firefly.

3. The Town duly adopted the effective zoning regulations contained in the Ordinance on May 29, 2018. The Town also has a duly adopted municipal plan, the "Manchester Town Plan, 2025" (Town Plan).

4. As defined by the Ordinance, the Property is located both within the Town Center Zoning District (TC District) and the Design Review Overlay District (DRO). The Property abuts, but is not located within, one of the Town's historic districts, as identified in the Manchester Town Plan.

5. On April 1, 2025, Applicant and Snowdon, LLC, jointly submitted an application for a zoning permit to authorize the re-development of the Property as a Valvoline Instant Oil Change facility (the Valvoline Application).[2] That project generally involved the demolition of the Firefly building and construction of a new oil change facility on the Property.

6. As part of the Valvoline Application, Applicant submitted proposed site plans to the Town showing the Property as it would appear after the Firefly had been removed and the Valvoline

[1] Mark Greenberg is the sole member and agent of Applicant.

[2] The Town designated the Valvoline application as Permit Application NS-2025-18.

facility had been constructed. The site plan sheets pertaining to the proposed demolition included a plan titled "Existing Conditions/Demolition Plan" (Sheet C-201) prepared by Bohler Site Civil and Consulting Engineering (Bohler), as well as other site plan sheets depicting soil erosion and sediment control notes and details and landscaping plans.

7. The Town's Design Advisory Board reviewed the site plans provided and recommended that the DRB approve the site plans subject to certain amendments agreed to by Applicant.

8. On October 15, 2025, Applicant applied to the Town seeking approval only to demolish the Firefly (the Firefly Demolition Application).

9. By decision dated January 15, 2026, the DRB denied the Valvoline Application.

10. As part of its consideration of the Firefly Demolition Application, which it ultimately approved, the DRB subjected the application to site plan review. In connection with that review, the DRB was aware of, and specifically referenced, the site plan documents prepared and submitted in furtherance of its review of the Valvoline Application.

11. The Firefly is presently not being put to any active use.[3]

12. The Firefly does not currently qualify as a historic structure. It is not listed individually or as a contributing structure in any historic district, nor is it listed in either the National or Vermont Registers of Historic Places. The United States Secretary of the Interior has taken no action to list the Firefly on the National Register of Historic Places or to treat the Firefly as contributing to the historic significance of a registered historic district or a district preliminarily determined to qualify as a registered historic district. The Firefly also is not individually listed on any State or local inventory of historic places.

13. As part of this de novo proceeding, Applicant has submitted a further site plan, titled "Building Demolition" (Sheet D1), prepared by Bohler and showing the Property and its features, including proposed landscaping, after demolition of the Firefly.

14. Applicant intends to remove all structural materials and debris from the Property and to restore the site to its natural grade within 60 days of demolition. In addition, Applicant will add groundcover and landscaping to the Property in accordance with the Bohler site plans.

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[3] The parties dispute the condition of Firefly and who or what is responsible for that condition. This dispute is not material to any issue before the Court. The Court is aware of a video depicting Mr. Greenberg spray painting words and images on the side of the Firefly facing one of the Appellants' businesses. While the Court does not condone this behavior, which is unreasonable and unnecessarily provocative, it is not relevant to any issue on appeal.

15. On February 3, 2026, the DRB approved the Firefly Demotion Application.

16. Appellants timely appealed that decision to this Court.

Statement of Questions

Appellants' Statement of Questions originally contained nine Questions. The June Entry Order adjudicated Questions 8 and 9. Thus, Questions 1 through 7 remain pending before the Court. They ask:

> 1. Town Center District
>
> Does the 557-575 Depot Street, LLC's ("Applicant") proposed demolition of the existing structure at 575 Depot Street as described in its application dated October 24, 2025 ("Application") comply with the Manchester Land Use and Development Ordinance ("MLUDO") § 4.3 (Town Center District), including standards intended to reinforce pedestrian-scale development, streetscape continuity, and the character of the district?
>
> 2. Site Design Standards
>
> Does the Applicant's proposed demolition of the existing structure at 575 Depot Street as described in its Application comply with the MLUDO § 9 Site Design Standards, including standards intended to prevent adverse off-site impacts such as noise, vibration, odors, lighting, visual disruption of the streetscape, loss of pedestrian-scale enclosure, and impacts to adjacent properties, including nearby residential properties?
>
> 3. Site Plan
>
> Did the Applicant meet the requirement to submit a Site Plan with the Application as required in MLUDO §§ 2.10 and 3.2?
>
> 4. Town Plan Consistency
>
> Is the Applicant's proposed demolition of the existing structure at 575 Depot Street as described in its Application consistent with the goals and policies of the Manchester Town Plan, as required by MLUDO § 3.2, including policies encouraging preservation and adaptive reuse of buildings contributing to community character and walkable development patterns?
>
> 5. Traditional Settlement Patterns
>
> Is the Applicant's proposed demolition of the existing structure at 575 Depot Street as described in its Application consistent with the preservation of traditional settlement patterns reflected in the purposes of the Town Center District and in Vermont planning goals under 24 V.S.A. §4302?
>
> 6. Design Review Overlay District

> Does the Applicant's proposed demolition of the existing structure at 575 Depot Street as described in its Application comply with the Design Review Overlay District requirements in MLUDO §§3.4 and 5.1?
>
> 7. Demolition and Historic Preservation Requirements
>
> Does the Applicant's proposed demolition of the existing structure at 575 Depot Street as described in its Application comply with the Demolition and Historic Preservation requirements in MLUDO § 6.8?

Statement of Questions (filed Mar. 20, 2026).

Discussion

As a preliminary matter, the Court addresses the issue of what Ordinance standards apply to a so-called "demolition only" project. Applicant argues that the provisions of the Ordinance that pertain to "development" or "land development" do not apply to the present application which seeks demolition only because the definition of development and land development does not include demolition. Thus, for example, Applicant states that the Firefly Demolition Application is not subject to site plan review or design review because those reviews are only triggered by land development. Appellants and the Town disagree. For the reasons discussed below, the Court concludes that demolition-only projects are not subject to those Ordinance provisions that apply to land development.

We interpret a zoning ordinance using the familiar rules of statutory construction. In re Appeal of Trahan, 2008 VT 90, ¶ 19. We will "construe words according to their plain and ordinary meaning, giving effect to the whole and every part of the ordinance." Id. If the plain language resolves the interpretive conflict, "there is no need to go further, always bearing in mind that the paramount function of the court is to give effect to the legislative intent." Lubinsky v. Fair Haven Zoning Bd., 148 Vt. 47, 49 (1986). However, if the plain language is ambiguous, we are directed to employ an interpretation that shows the least interference with property ownership. See In re Appeal of Bennington Sch., Inc., 2004 VT 6, ¶ 12, 176 Vt. 584 ("Because land use regulation is in derogation of the common law, any ambiguity is resolved in favor of the landowner.") (quoting In re Miserocchi, 170 Vt. 320, 324 (2000)).

The Ordinance defines "development," in relevant part, as:

> [T]he division of a parcel into two or more parcels or a boundary line adjustment between parcels; the installation, construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure; any mining, excavation, or land fill; or any change of use of any building or other structure, or

> land, or extension of use of land. Note that this definition of development applies throughout this ordinance. The definition of development in 12.5 additionally applies to Section 5.3 only.

Ordinance, § 13.5.[4]

"Demolition" is separately defined in Ordinance § 13.5 as "[t]he destruction and physical removal of any structure or portion of a structure." Nothing in the Ordinance's definition of "development" expressly references "demolition." The question for the Court is whether the definition of development should be construed to include demolition and, by extension, whether various sections of the Ordinance that reference development, but not demolition, should be read to include demolition as well.

Under 24 V.S.A. § 4411(a)(2), a Vermont municipality, through its zoning bylaws, "may permit, prohibit, restrict, regulate, and determine land development, including the following: . . . dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures." 24 V.S.A. § 4111(a)(2) (emphasis added). Both Ordinance Article 13 and 24 V.S.A. § 4303(10) define "land development," in pertinent part, as "the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure . . . and any change in the use of any building or other structure, or land, or extension of use of land." Noticeably absent from the Ordinance's definition of "land development" is the demolition, razing or removal of buildings or other structures.

Pursuant to 24 V.S.A. § 4411(a)(2), the Town could have included demolition, razing, or removal of buildings in its definition of "land development." However, it did not do so. The absence of these terms from the Ordinance's definition of development indicates that the Town chose not to include those activities within the relevant definition(s). See In re Okemo LLC PUD Amendment (Ranta Barn Demolition), No. 221-11-09 Vtec, slip op. at 4–6 (Vt. Super. Ct. Envtl. Div., April 5, 2012) (Durkin, J.) (interpreting a similar definition of "land development" and § 4411(a)(2) in the context of a demolition application). The omission of any such term from the enumerated list of actions constituting "development" or "land development" under the Ordinance unambiguously indicates the Town's intent not to include the demolition, razing or removal of a structure or building as forms of development or to regulate the same as development under the Ordinance. In other words, by the plain language of the Ordinance, while the "installation, construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure" all

[4] Under § 13.13 of the Ordinance the definition of "land development" is the same as "development."

constitute forms of development (and are regulated as such), the razing or removal of a building or structure does not.[5] Hopkinton Scout Leaders Ass'n v. Town of Guilford, 2004 VT 2, ¶ 6 (citing Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 617 (2000) (mem.) ("We look first to the plain meaning of the statutory language, and if it is clear and unambiguous, we will apply it, without resorting to statutory construction or additional determination of legislative intent.").

The Town attempts to distinguish the pending application and the Ordinance from Okemo LLC PUD Amendment by observing that the issue in that case involved whether or not the underlying demolition application required a zoning permit, whereas a zoning permit is expressly required for demolition under Ordinance § 6.8.1. This is not a meaningful distinction for the purposes of the foregoing analysis. The initial question before the Court is not whether the Firefly Demolition Application requires a zoning permit, generally. In fact, Ordinance § 6.8.1 makes clear that the demolition application must obtain a zoning permit, just as a zoning permit is required for all non-exempt land development under § 1.1.5. Instead, the question is whether demolition alone, as proposed by the Firefly Demolition Application, is "land development" as defined by the Ordinance. That demolition and land development both require a zoning permit does not bring demolition into the definition of land development or fundamentally alter the analysis above. In other words, under the Ordinance, both demolition and land development require a zoning permit, but that does not mean that demolition is a form of land development. Instead, they are distinct concepts/activities under the Ordinance and are regulated differently thereunder. Thus, Okemo is instructive as it relates to the interpretation of similar definitions of "land development" and § 4411(a)(2).

The Court therefore concludes that "demolition" alone does not constitute "land development" as defined by the Ordinance. With this conclusion in mind, the Court moves to the pending motion on the Questions remaining before the Court.

I. Question 1

Appellants' Question 1 asks whether the Applicant's Firefly Demolition Application complies with Ordinance § 4.3 (Town Center District), including standards intended to reinforce pedestrian-scale development, streetscape continuity, and the character of the district.

[5] We also reject the argument that demolition, razing and removal are activities covered by some other term or phrase, such as "structural alteration" or "change in the use of land," within the definition of land development. In Okemo, those terms were also included within the definition of "land development" and the Court nonetheless concluded, based on that definition, that "the Town did not include demolition or removal of a structure or building in the activities requiring a zoning permit." Okemo, supra, slip op. at 5.

Ordinance § 4.3 states:

> 4.3.1 Town Center District (TC)
>
> Purpose. The Town of Manchester intends for the Town Center District to provide an area for the most intensive commercial activity and mixed-use development in Manchester. Proposed land development must conform to design standards in order to enhance neighborhood commercial scale, pedestrian activity, and architectural character. The purpose of this district is to:
>
> (1) Promote the long-term economic and social vitality of Manchester's town center;
>
> (2) Support the town's visitor-based economy, as well as providing for the daily needs and services of the community;
>
> (3) Provide economic development opportunities through retail, dining, service, office and other compatible commercial and light industrial uses;
>
> (4) Encourage creation of housing within walking distance of employment, service and retail opportunities;
>
> (5) Encourage mixed-use infill and redevelopment that increases the value of buildings and property;
>
> (6) Ensure that new buildings are compatible with the architectural framework of Manchester's town core and preserve a human scale; and
>
> (7) Promote a quality, urban streetscape and pedestrian-friendly environment.
>
> 4.3.2 Uses. Section 4.17 establishes the permitted and conditional uses for this district. In addition, industrial uses must include a retail space from which at least 50% of the products manufactured on the premises are sold direct to consumers.
>
> 4.3.3 Drive Through Services. All drive-through service will require conditional use approval in the Town Center District.
>
> 4.3.4 Dimensional Standards. Section 4.18 establishes the dimensional standards for this district. New principal buildings must be constructed with a functional second story.
>
> 4.3.5 Density Standards. Section 4.18 establishes allowed residential density for this district. 4.3.6 Character Examples. The images below are intended to illustrate the form and character of development that is appropriate and desired in this district: [images omitted].

It is not clear from Question 1 precisely what section or subsection of § 4.3 Appellants contend the application does not comply with. The Question, however, suggests that they are focused, in part, on the "Purpose" section (4.3.1). Regarding those purpose provisions, this Court has already stated in its June Entry Order that:

> While these statements can serve as helpful guides to a Town's priorities and policy interests, "municipal bylaw statements of purpose have 'no direct regulatory effect." Down River Investments, LLC CU, No. 139-12-18 Vtec, slip. op. at 4, (Vt. Super. Ct. Envtl. Div. June 30, 2020) (Durkin, J.) (quoting In re Meaker, 156 Vt. 182, 185 (1991)). Thus, requirements like those in § 4.3.1 to '[e]nsure new buildings are compatible with the architectural framework of Manchester's Town Core and preserve a human scale' or 'promote a . . . pedestrian-friendly environment' do[] not constitute enforceable regulatory language. Id.

No. 26-ENV-0026, slip op. at 4 (June 23, 2026) (McLean, J.).

The above statement is the law of the case for the purpose of determining the enforceability of § 4.3.1(1)–(7). See Coty v. Ramsey Assocs., 154 Vt. 168, 171, 573 A.2d 694, 696 (1990) (quotations omitted). Again, it is well established that statements of purpose do not constitute enforceable regulatory standards. Further, to the extent that § 4.3.1 requires proposed land development to conform to design standards, demolition does not constitute a form of land development and, therefore, that language is inapplicable. Appellants point to no other independently enforceable provisions of § 4.3.1 with which they contend the proposed demolition does not comply. Accordingly, the material facts are not in dispute and Applicant is entitled to judgment as a matter of law. Thus, we **GRANT** Applicant's Motion for Summary Judgment on Question 1.

II. Question 2

Question 2 asks whether the proposed demolition complies with "§ 9 Site Design Standards, including standards intended to prevent adverse off-site impacts such as noise, vibration, odors, lighting, visual disruption of the streetscape, loss of pedestrian-scale enclosure, and impacts to adjacent properties, including nearby residential properties?"

Ordinance § 9 contains so-called "site design standards," including performance standards (§ 9.3), landscaping standards (§ 9.4), outdoor lighting standards (§ 9.5) and parking and loading standards (§ 9.6). These standards are all in the nature of site plan review standards. See 24 V.S.A. § 4416. Under § 9.2 (Applicability), the Ordinance states that "Applicants must obtain site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any land development other than one- or two-family dwellings and accessory uses or structures to one- or two-family dwellings." Ordinance § 9.2 (emphasis added).

Therefore, by its plain language, § 9 only applies to land development that does not involve a one- or two-family dwelling. As discussed above, demolition is not "land development." Rather, demolition is a separately defined process with its own set of review procedures under the Ordinance. Ordinance § 6.8. As in Okemo, and as noted above, we specifically reject the argument that

demolition, razing and removal are activities covered by some other term or phrase, such as "structural alteration" or "change in the use of land," within the definition of land development. As Applicant observes, those terms were also included in the definition of land development in Okemo, yet this Court concluded there that demolition was not a form of land development. We take the same view in this case. Thus, § 9 does not apply to a demolition-only project and nothing in that section establishes an independent regulatory standard solely governing demolition. Thus, the material facts not being in dispute, Applicant is entitled to judgment as a matter of law on Question 2. Accordingly, we **GRANT** Applicant's motion on this Question.

III. Question 3

Question 3 asks whether Applicant met the requirement to submit a site plan with the Firefly Demolition Application as required by Ordinance §§ 2.10 and 3.2.

Section 2.10 provides in pertinent part that:

> All applicants for a zoning permit must submit a site development plan. The site development plan must conform to the specifications and include all required elements listed below, unless a specific requirement is waived in accordance with Section 2.9.5, or the proposed development is for a single-family or two-family use.

Ordinance, § 2.10.

It is undisputed that a demolition-only project requires a zoning permit under Ordinance § 6.8.1. Therefore, the proposed demolition requires a site development plan that complies with § 2.10 and its relevant requirements and provisions. As noted above, Applicant submitted the Bohler existing conditions/demolition site plan (Sheet C-201) to the DRB and has supplemented that site plan with a further demolition site plan as part of this de novo proceeding. Appellants have not identified anything required by § 2.10.1 that is missing from these plans.

Ordinance § 3.2 includes the application requirements and procedures applicable to site plan review. Section 3.2.1 (Applicability) states that "[a]ll land development other than that listed in Section 3.1.1 above requires site plan approval by the Development Review Board before the Zoning Administrator may issue a zoning permit." Ordinance § 3.2.1 (emphasis added).

As discussed above, a standalone demolition project is not "land development." Therefore, site plan review does not apply to this demolition only project. The requirement under § 2.10 that all applicants for a zoning permit submit a site development plan does not change this analysis. There is a distinction between a site development plan and site plan review. While a site development plan is required for site plan review, a requirement to submit the former as part of a zoning permit application

does not automatically trigger the latter. Further, § 3.1.1's exemption of certain types of land development (which are eligible for administrative review) from the requirement to obtain site plan approval does not bring demolition-only projects into the definition of "land development," thereby mandating that they obtain site plan approval. Again, demolition-only projects are not land development and, therefore, are not subject to site plan review.

Thus, the material facts are not in dispute and Applicant is entitled to judgment as a matter of law on Question 3. Its motion on this Question is **GRANTED**.

IV. Questions 4 and 5

Question 4 asks whether the proposed demolition is "consistent with the goals and policies of the Manchester Town Plan, as required by . . . [Ordinance] § 3.2, including policies encouraging preservation and adaptive reuse of buildings contributing to community character and walkable development patterns?" Similarly, Question 5 asks whether the project is "consistent with the preservation of traditional settlement patterns reflected in the purposes of the Town Center District and in Vermont planning goals under 24 V.S.A. §4302?"

As discussed above, Ordinance § 3.2 does not apply to a demolition-only project. Further, even if that were not the case, for the reasons set forth above, the purpose section of that provision (§ 3.2.2) does not establish independent regulatory standards that are enforceable in this proceeding. The same is true of the TC District purpose section, discussed above, and the planning goals set forth in 24 V.S.A. § 4302. Neither establishes independent regulatory standards applicable to the proposed demolition. Appellants concede as much, stating that "the Town Plan, and the provisions of state statute relating to municipal planning, standing alone do not provide sufficient specific criteria to allow the Court to rule in their favor on these questions." Appellants' Memorandum in Opposition at 15. The material facts are not in dispute and Applicant is entitled to judgment as a matter of law on Question 4 and 5. Applicant's motion for summary judgment is **GRANTED** on Questions 4 and 5.

V. Question 6

Question 6 asks whether the proposed demolition complies "with the Design Review Overlay District requirements in . . . [Ordinance] §§3.4 and 5.1." Section 3.4 addresses design review. Section 5.1 describes the Town's Design Review Overlay District and standards related to that overlay district.

Under Ordinance § 3.4.1 (Applicability):

> Land development within the Design Review Overlay District that involves exterior construction, modification or demolition of a building, sign, fence or wall, or modifications to the landscaping, exterior lighting, or on-site parking requires design review before the

> Zoning Administrator may issue a zoning permit or the Development Review Board may grant a development approval, as applicable.

Ordinance, § 3.4.1 (emphasis added).

Section 3.4.4 contains design criteria addressing architectural design (§ 3.4.4.A), site design (§ 3.4.4.B) and historic preservation standards (§ 3.4.4.C). It states:

> Before granting design plan approval, the Development Review Board or Zoning Administrator, with assistance from the Design Advisory Committee, . . . [must] conclude that the proposed development conforms substantially to the relevant goals and policies described in the Manchester Town Plan, as illustrated and described in Design Guidelines for Manchester's Commercial and Historic Districts, and the . . . design criteria [listed in subsections 3.4.4.A through 3.4.4.C].

Ordinance § 3.4.4 (emphasis added).

Reading the provisions of § 3.4 together, as we must, the Court does not construe § 3.4.1 as applying to the demolition of a building absent some other related land development. In other words, in the Design Review Overlay District, "land development . . . that involves . . . demolition of a building . . . requires design review," but standalone demolition does not. The demolition must be a component of, or otherwise related to or involved with, a form of land development to trigger design review. This interpretation is consistent with the remaining provisions of § 3.4. Other than landscaping and planting, there are no architectural or site design standards that appear applicable to a demolition-only project. Rather, those standards apply primarily to new or renovated buildings and infrastructure appurtenant or accessory to those buildings. See Ordinance §§ 3.4.4.A, 3.4.4.B. Regarding the historic preservation standards (§ 3.4.4.C), those provisions expressly apply to "any proposed land development involving a contributing historic structure," which is not the case here. Therefore, § 3.4 is inapplicable to this demolition-only project.

Nothing in Ordinance § 5 materially changes this analysis. Within the Design Review Overlay District:

> All land development for proposed permitted or conditional land uses listed in the base zoning district in Table 4.17 require design approval from the Development Review Board or Zoning Administrator, after review and comment by the Design Advisory Committee, and must conform to the standards of Section 5.1 except for . . . [certain listed activities including] . . . (6) Demolition of a noncontributing structure within a historic district.

Ordinance § 5.1.3 (emphasis added).

Further, § 5.1.5 states that

> Design review criteria that must be met by land development in this overlay district are found in Section 3.4. All proposed land development within this overlay district must incorporate frontage and facade elements that will contribute to a pedestrian-oriented streetscape, and must be compatible in form, massing, proportion and rhythm with its historic context. More specific, detailed guidance may be found in the Design Guidelines for Manchester's Commercial and Historic Districts (as most recently amended and incorporated into this ordinance by reference).

Ordinance § 5.1.5 (emphasis added).

As we have stated, standalone demolition is not "land development" and the design review criteria of § 3.4 do not apply to this project. The exemption for the demolition of noncontributing structures in a historic district does not change this conclusion. Reading the Ordinance as a whole, the Court does not construe the exemption as somehow bringing all other types of demolition (i.e., demolition not involving a noncontributing structure in a historic district) into the definition of land development, thereby requiring design review. On the contrary, the Court views the exemption as reinforcing that "land development" and "demolition" are different, with demolition being independently regulated under Ordinance § 6.8.[6] To the extent that there is any ambiguity in the Ordinance's language, we resolve any ambiguity in favor of Applicant. See In re Lathrop Ltd. P'ship I, 2015 VT 49, ¶ 29 (quotation omitted). Because neither §§ 3.4 nor 5.1 apply to a demolition only project, the material facts are not in dispute and Applicant is entitled to judgment as a matter of law. The Court **GRANTS** Applicant's motion on Question 6.

VI. Question 7

Question 7 asks whether the proposed demolition complies with "the Demolition and Historic Preservation requirements in . . . [Ordinance] § 6.8?" For the reasons discussed below, we conclude that it does.

Section 6.8 addresses and regulates demolition activity in the Town. That provision generally requires a zoning permit to demolish a structure or part of a structure (§ 6.8.1). It contains both general regulatory standards (§ 6.8.2) and standards specific to historic structures (§ 6.8.3). Under § 6.8.3, an applicant seeking to demolish a historic structure, or part of such a structure, must obtain both conditional use approval from the DRB and demonstrate to the DRB that the demolition complies with the specific criteria listed in § 6.8.3(1). However, because the Firefly is not "a structure

[6] Demolition of an individually listed or contributing structure within a historic district is regulated by Ordinance § 6.8.3, as discussed below.

listed individually, or as a contributing structure within a designated historic district, in the National Register of Historic Places or Vermont Register of Historic Places," that provision does not apply here. Ordinance § 6.8.3. Therefore, the proposed Firefly demolition is subject only to the general standards contained in § 6.8.2.

Section 6.8.2 states that "[w]ithin 60 days after demolition is complete: (1) All structural materials and debris must be removed from the site; (2) The site must be restored to a natural grade; and (3) Groundcover must be re-established to prevent erosion unless otherwise specified as a condition of approval." Ordinance § 6.8.2.

In this case, Applicant, through its member and agent, Mr. Greenberg, has stated under oath that it intends, within 60 days of demolishing the Firefly, to remove all structural materials and debris from the Property and to restore the site to its natural grade. In addition, Applicant will add groundcover and landscaping to the Property in accordance with the Bohler site plan(s). This is sufficient to demonstrate compliance with § 6.8.2's general standards.[7] Accordingly, the material facts are not in dispute and Applicant is entitled to judgement as a matter of law on Question 7. Thus, we **GRANT** Applicant's motion on Question 7.

Conclusion

Based on the foregoing, and since there are no genuine issues of material fact, Applicant is entitled to judgment as a matter of law on Questions 1 through 7, as set forth in Appellants' Statement of Questions. Accordingly, Applicant's Motion for Summary Judgment on Remaining Questions is GRANTED. This concludes the matter before the Court. A Judgment Order accompanies this decision.

Electronically signed on October 21, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division

[7] To the extent Applicant fails to follow through on its representations, it may be subject to enforcement action by the Town.