Vermont Superior Court
Filed 11/03/26
Environmental Division

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-00085

Essex County Courthouse Amended Zoning Permit

ENTRY ORDER

Title: Motion to Dismiss Valerie Foy's Cross Appeal

Filer: Nicholas AE Low, Esq.

Filed Date: October 2, 2026

The motion is GRANTED.

This matter involves a September 4, 2026 appeal by Trevor Colby 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 applicant Essex County (Applicant) to construct an addition and renovations to the Essex County Courthouse (the Project). Mr. Colby's appeal largely focused on proposed changes to the rear parking/access area.

On September 20, 2026, Valerie Foy filed a timely notice of cross-appeal. See V.R.E.C.P. 5(b)(2). In her notice of cross-appeal, Ms. Foy states that she "participated in the municipal proceeding, including the July 15, 2026, public hearing [before the AMP]" and that she "alleges participation within the meaning of 24 V.S.A. § 4471(a)." Notice of Cross-Appeal at 2. On October 2, 2026, Applicant moved to dismiss Ms. Foy's cross-appeal. On October 9, 2026, the Court dismissed Mr. Colby's appeal and indicated that it would "separately evaluate Applicant's Motion to Dismiss Ms. Foy's cross-appeal, as well as the effect of this decision thereon, when all relevant filings have been submitted and the matter comes under advisement." In re Essex Cty. Courthouse Amended Zoning Permit, No. 26-ENV-00085, slip op. at 10 (Vt. Super. Ct. Envtl. Div. Oct. 9, 2026) (McLean, J.). The time to respond to Applicant's Motion to Dismiss the cross-appeal has now expired and Ms. Foy did not respond to the motion.

Applicant argues that Ms. Foy's cross-appeal must be dismissed because she failed to participate in the proceedings below. Under 24 V.S.A. § 4471, an "interested person" who has

participated in the proceedings below may appeal a decision by an appropriate municipal panel to this Court.[1] Specifically, § 4471(a) states, in pertinent part:

> An interested person who has participated in a municipal regulatory proceeding authorized under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the Environmental Division. Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.

24 V.S.A. § 4471.

Applicant, through the declaration of Evan Hammond, indicates that "[w]hile Ms. Foy attended the sole hearing before the Appropriate Municipal Panels, she did not 'participate' for purposes of § 4471(a) because she did not offer any oral or written testimony or statement at the hearing." Mr. Hammond further states that he: 1) attended the July 15 hearing before the AMPs; 2) he is personally acquainted with Ms. Foy; 3) she attended the hearing but did not make any comment, statement or provide testimony at the hearing; and 4) to Mr. Hammond's knowledge, she did not submit any written statement or testimony to the AMPs. Declaration of Evan Hammond, dated October 1, 2026. Ms. Foy has offered nothing in response to these assertions.

As this Court has frequently stated, and the Applicant observes, only interested persons who have "participated" in the proceedings below have standing to appeal. 24 V.S.A. § 4471. "Mere attendance" is not participation. Burkett 2-Lot Subdivision, No. 75-4-06, slip op. at 1 (Vt. Super. Envtl. Div. Feb. 9, 2007) (Durkin, J.); In re Verizon Wireless Barton Permit, No. 133-6-08 Vtec., slip op. at 5 (Vt. Super. Ct. Envtl. Div. May 20, 2009) (Durkin, J.) ("Mere attendance at a municipal hearing is not enough to secure a right to appeal; the interested person must actively participate in the proceeding through offering evidence or a statement of concern") (citation omitted). Rather, participation is defined as "offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding." 24 V.S.A. § 4471(a). To satisfy the statutory participation requirement under § 4471, such activity must take place while the municipal decision-making process is ongoing. In re Verizon Wireless Barton Permit, 2010 VT 62, ¶¶ 10–11; In re Carroll, 2007 VT 19, ¶¶ 14–15. Interest party status alone, without participation, does not qualify for automatic standing to appeal and dismissal is appropriate when statutory requirements are not met. Carroll, 2007 VT at ¶ 15.

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[1] Ms. Foy claims interested person status pursuant to 24 V.S.A. § 4465(b)(3). Applicant has not challenged her standing under that provision of Title 24, Chapter 117.

In this case, Applicant has asserted, through the declaration of Mr. Hammond, that Ms. Foy did not participate in the local proceedings within the meaning of § 4471. Beyond the conclusory statement in her notice of cross-appeal alleging participation, Ms. Foy has not responded to this assertion by way of affidavit, declaration, or other evidence demonstrating that she participated before the AMPs as defined by § 4471. In the absence of such evidence, the Court must grant Applicant's Motion to Dismiss for lack of standing. See In re Lake Bomoseen Assoc., 2025 VT 59, ¶ 27 (recognizing that appellants bear the burden of establishing standing) (citing PeakCM, LLC v. Mountainview Metal Sys., LLC, 2025 VT 50, ¶ 41). Accordingly, Ms. Foy has failed to meet her burden of establishing she has standing to appeal and that she both attended and participated in the proceedings before the AMPs. The Court **GRANTS** Applicant's Motion to Dismiss cross-appeal.

The Court is aware that Mr. Colby has filed a motion for reconsideration and other post-decisional documents in response to the Court's dismissal of his appeal. We will separately consider the dismissal of the cross appeal, and the impact thereof, in the context of the Court's review of those motions.

Electronically signed on November 3, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division