Vermont Superior Court
Filed 10/28/26
Windham Unit

VERMONT SUPERIOR COURT
Windham Unit
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CIVIL DIVISION
Case No. 26-CV-02108

The Nature Conservancy v. The Town of Stratton

ENTRY REGARDING MOTION

Title: Motion for Partial Summary Judgment (Motion: 1)
Filer: Merrill E. Bent
Filed Date: June 29, 2026

The motion is GRANTED.

Plaintiff seeks Partial Summary Judgment on its claim for Declaratory Relief that the Town of Stratton has violated a condition in a deed conveying land to it and thus Plaintiff is entitled to exercise a right of entry. Plaintiff claims that the relevant facts are undisputed, whereas the Town argues that the terms of the deed are ambiguous, foreclosing summary judgment.

Undisputed Facts

The following facts pertinent to this motion are undisputed.

The Nature Conservancy is a charitable, tax-exempt, 501(c)(3) non-profit corporation organized and operated exclusively for educational, scientific and charitable purposes. In 1978 the Conservancy conveyed to the Town a parcel of approximately 320 acres. The deed contains the following terms:

> This conveyance is made subject to the express condition and limitation that the premises conveyed shall forever be held as a natural area for scientific, educational, wood fibre production, and recreation purposes, including hunting. The premises shall be kept entirely in its natural state, excepting only limited selected timber harvesting and the maintenance of such fences and foot trails as may be appropriate to effectuate the foregoing purpose without impairing the essential natural character of the premises.
>
> Should the premises cease to be used solely as provided herein, then the estate hereby granted to the Town of Stratton shall cease and desist and shall revert to and vest in The Nature Conservancy. . . Said reversion shall not be automatic, but in the nature of a right of entry for condition broken or executory interest which

> right, if exercised by The Nature Conservancy upon violation of the above condition, is exercised by mailing a notice of violation by certified mail to Board of Selectmen, Stratton, Vermont. Said notice shall declare that the power of termination has been exercised and shall state the breach which caused the action. A copy of the notice shall simultaneously be recorded on the appropriate land records.

Exhibit 1, 1978 Deed, page 5.

Between October 2022 and December 2023, the Town constructed, or permitted the construction of, a parking lot by clearing and leveling an area of approximately sixty-nine (69) feet by forty-three (43) feet that is partially on the subject property. The property did not have a parking lot at the time of the 1978 deed. There was a portion of a public roadway on it that was later discontinued. The parking lot is being used for the parking of passenger vehicles. In July of 2022 the Selectboard voted not to perform logging within the Town Forest, which includes the subject property. In May of 2024, the Conservancy mailed to the Selectboard a notice asserting specific violations of the 1978 Deed. The Town responded denying that the conditions in the deed are "restrictive covenants."

Conclusions of Law

The Conservancy seeks a partial summary judgment ruling that the condition in the deed has been violated, and that it is entitled to exercise the remedy provided in the 1978 deed.[1] The Town claims that the deed is ambiguous precluding summary judgment and that additional facts are necessary to decide the claim.

The initial question is whether the deed is ambiguous as to the claim made by the Conservancy related to the parking lot. If not, its terms are to be enforced. *Sanville v. Town of Albany,* 2022 VT 22, ¶ 14; *Fassler v. Okemo Mountain, Inc.,* 148 Vt. 538, 540 (1987).

The pertinent deed conditions from 1978 are:

- That the property "shall be kept entirely in its natural state"
- This standard is subject to two specific exceptions:
    1. Limited selected timber harvesting
    2. Maintenance of fences and foot trails as may be appropriate to effectuate the foregoing purpose (i.e., kept in natural state)
- Exceptions are not to "impair[] the essential natural character of the premises"

Clearing an area of 69' x 43' and leveling it for a parking lot for passenger vehicles is not reasonably related to either of the two exceptions. The facts show that it was not done ancillary

[1] The Complaint alleges other grounds for violation, specifically: authorizing the construction of a network of trails for mountain biking. and permitting the clearing of trees for backcountry ski glades. The present motion for partial summary judgment relates only to the construction of the parking lot.

to timber harvesting. It is used as a parking lot for passenger vehicles, which is not within the exceptions to maintaining the property in its natural state. The clearing of such an area, to the extent it is on the subject lot, does not keep the property in a "natural state."

The second exception allows maintenance of fences and foot trails. There is no evidence that the parking lot relates to this exception, which defines maintenance of then-existing foot trails and fences as the sole allowable activity on the parcel outside of timber harvesting. The deed language lays emphasis on not impairing the "essential natural character of the premises," which reasonably means the natural character as of 1978.

Defendant's Claim of Ambiguity

The Vermont Supreme Court recently articulated standards with respect to analyzing whether a condition in a deed is ambiguous.

> The determination of whether a deed provision is ambiguous is a question of law. . . "We allow limited extrinsic evidence of 'circumstances surrounding the making of the agreement' in determining whether the writing is ambiguous." Kipp, 169 Vt. at 107, 732 A.2d at 131 (quoting Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 579, 556 A.2d 81, 84 (1988)). "This evidence is relevant, however, only when, in combination with the writing, it supports an interpretation that is different from that reached on the basis of the writing alone, and both are reasonable." Id.

Sanville v. Town of Albany, 2022 VT 22, ¶ 15.

In this case, Stratton alleges ambiguity. This raises the issue of whether it has introduced sufficient evidence of circumstances surrounding the making of the deed which, in combination with the deed language, supports an interpretation that is different from that based on the deed language alone, and both are reasonable. Only then does the evidence of circumstances at the time of the deed become relevant to resolving the ambiguity. The Town has not actually offered any evidence of circumstances at the time of the deed, making an analysis on such a claim moot.

The Town argues general ambiguity without reference to circumstances at the time of the deed, based presumably on deed provisions. In "Defendant's Response to Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment," (Defendant's Sur-Reply filed September 29, 2026) the Town simply asserts that the deed is ambiguous if it is read and interpreted as a whole, without articulating an argument in support of ambiguity. The Town has not provided any analysis in support of concluding that the language of the deed itself is ambiguous.

The Town notes that the Selectboard had discussions between January and June 2022 about logging operations, suggesting a connection between logging and construction of the parking lot, but it is undisputed that the Selectboard voted against doing any logging. Moreover, the discussion at the February 14, 2022 meeting (Minutes, Exhibit C, page 4) shows that discussion of a parking lot was in connection with a proposed new trial system promoted by the

Southern Vermont Trail Association rather than for purposes of "limited selective timber harvesting." The May 23, 2022 Minutes describe grant money received by the Southern Vermont Trail Association for trails "and parking lot." (*Id,* page 5). The June 27, 2022 Minutes show considerable discussion about citing the parking lot, without any reference to timber harvesting. (*Id,* page 8). The July 22, 2022 Minutes show that ultimately the Selectboard voted (1) to allow the Southern Vermont Trail Association to construct a parking lot in connection with its trail project, and (2) voted not to do any logging.

Overall, the Town has not shown any grounds for an interpretation of the original deed provisions as ambiguous, either based on circumstances at the time of the deed or based on language in the deed itself. It has also not shown any basis for an interpretation of the construction of the parking lot as being related to any timber harvesting.

The court concludes that there is no ambiguity in the meaning of the Deed provisions and the undisputed facts show a violation of the terms of the 1978 Deed.

Electronically signed October 28, 2026 pursuant to V.R.E.F. 9 (d).



Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned