

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



Docket No. 21-ENV-000104

In re Heyman JO Appeal

**DECISION ON MOTIONS**

Title: Motion for Leave to File Brief of Amicus Curiae (Motion: 6)  
Filer: Jeffery M. Bernstein, Esq.  
Filed Date: January 26, 2023

The motion is **DENIED**.

Title: Motion to Extend Time (Motion: 6)  
Filer: Alison Milbury Stone, Esq.  
Filed Date: February 13, 2023

Appellant's Memorandum in Opposition to Motion to Extend Time, filed on February 15, 2023 by Todd Heymann.

The motion is **GRANTED**.

This action is an appeal of Jurisdictional Opinion 3-263 concluding that applicant Todd Heyman (Appellant) required an Act 250 permit for certain activities at his property in Hartland, Vermont. Appellant appealed that decision to this Court. Appellant is self-represented. The Natural Resources Board (NRB) has also appeared in this matter and is represented by Attorney Alison Milbury Stone. Presently before the Court is a motion for leave to file a brief of amicus curiae, filed by Rural Vermont, Inc., and a motion to extend time to respond to Appellant's motion for summary judgment, filed by the NRB.

We first address the motion to file an amicus brief. Unlike appeals to the Vermont Supreme Court, a far majority of appeals to the Environmental Division are held by trial de novo.<sup>1</sup> 10 V.S.A. §8504(a); V.R.E.C.P. 5(g). As such, we hear this appeal as if no action occurred below.

---

<sup>1</sup> The Environmental Division hears a limited number of on-the-record appeals.

Chioffi v. Winooski Zoning Bd., 151 Vt. 9, 11 (1989). While the Vermont Rules of Appellate Procedure (V.R.A.P.) are limitedly applicable in de novo matters before this Court, all of the appellate rules are not always relevant to our actions. V.R.E.C.P. 3 (noting that V.R.A.P. applies “so far as those rules are applicable . . .”). V.R.A.P. 29 is not applicable in the context of this review by trial de novo.

Further, to appear in a matter before this Court, one must have both constitutional and statutory standing to do so. See In re Capitol Plaza 2-Lot Subdivision, Nos. 3-1-19 and 4-1-19 Vtec, slip op. at 2–5 (Vt. Super. Ct. Envtl. Div. Nov. 12, 2019) (Walsh, J.) (setting forth the constitutional and statutory standing requirements, as it relates to land use appeals) (citing In re Diverging Diamond, Nos. 50-6-16 and 169-12-16 Vtec, slip op. at 51–52 (Vt. Super. Ct. Envtl. Div. Jun. 1, 2018) (Walsh, J.) (stating that the statutes governing Act 250 appeals “add a layer of ‘statutory standing restrictions’ that supplement the underlying constitutional standing requirements”) (additional citations omitted); V.R.E.C.P. 5(d)(2); 10 V.S.A. § 8504(b)(1); 24 V.S.A. § 4465. As such, the Vermont legislature has clearly and expressly further limited access to the Environmental Division in land use appeals such as this one. It would be contrary to the Legislature’s purpose in creating these express limitations for the Court to conclude that amici are authorized in this Court. Thus, the Court concludes that V.R.A.P. 29 is not relevant to this de novo action, and Rural Vermont, Inc.’s motion to file brief of amicus curiae is **DENIED**.

Next, the NRB has filed a motion to extend the deadline to respond to Appellant’s motion for summary judgment to March 10, 2023, to allow continued negotiations for a settlement of this matter and, if unsuccessful, time to respond to the motion. The extension is reasonable. The motion is **GRANTED** and the NRB has until Friday, March 10, 2023 to respond to Appellant’s motion.

Electronically signed March 1, 2023 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" and the last name "Walsh" written in a cursive-like script.

Thomas G. Walsh, Judge  
Superior Court, Environmental Division