

VERMONT SUPERIOR COURT  
Environmental Division  
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Burlington, VT 05401  
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Docket No. 23-ENV-00025

Town of Stowe v. Von Doering

## ENTRY REGARDING MOTION

Title: Motion to Stay (Motion: 3)  
Filer: Harold B. Stevens, III  
Filed Date: April 06, 2023

Memorandum in Opposition to Motion to Stay, filed by Beriah Smith, Esq., Attorney for the Town of Stowe, on April 19, 2023.

Reply to Memorandum in Opposition to Motion to Stay, filed by Harold Stevens, Esq. Attorney for Respondent, on April 24, 2023.

**The motion is GRANTED.**

This is a Town of Stowe enforcement action concerning the construction of a pavilion without a necessary permit at property owned by Stephanie von Doering, Trustee of the Wallace and von Doering 2014 Revocable Trust (Respondent) located at 237 Points North Road, Stowe, Vermont (the Property). Presently before the Court is Respondent's motion to stay the present action while related appeals are pending before the Vermont Supreme Court which may have bearing on the present action. While posed as a motion to stay, a review of the filings shows that the motion is, effectively, one to suspend the pending action during the related appeals. For the reasons set forth herein, the motion is **GRANTED**.

### Discussion

This is the third docket relative to the pavilion at the Property. First, in In re 237 Points North Rd., No. 22-ENV-00125, Respondent appealed a decision of the Town of Stowe Development Review Board (DRB) denying an after-the-fact development application for approval of the pavilion on the grounds that the pavilion was within the Property's front yard setback (hereinafter, the Permit Appeal). Second, in In re von Doering NOV Appeal, 23-ENV-00028,

Respondent appealed a decision of the DRB upholding a Notice of Violation issued December 8, 2022 by the Town of Stowe Zoning Administrator (ZA) concluding that the construction of a pavilion at Appellant's property on Points North Road in Stowe was in violation of the Stowe Zoning Regulations (Regulations) (the NOV) (hereinafter, the NOV Appeal).

In two separate decisions, both issued on August 3, 2023, this Court concluded both the Permit Appeal and the NOV Appeal. See 237 Points North Rd., No. 22-ENV-00125 (Vt. Super. Ct. Envtl. Div. Aug. 3, 2023) (Walsh, J.); von Doering NOV Appeal, No. 23-ENV-00028 (Vt. Super. Ct. Envtl. Div. Aug. 3, 2023 (Walsh, J.)). In the NOV Appeal decision, we concluded Respondent did not timely file an appeal of the NOV as required by 24 V.S.A. § 4472(d) and that there was not grounds to extend the time to file an appeal. The appeal therefore was dismissed. We also concluded that Respondent's motion for a stay of this matter was mooted by this dismissal. In the Permit Appeal decision, we concluded that, while bound by the NOV as it was not timely appealed, we would reach the same conclusion that the DRB did in the underlying permit action, which is that front yard setback is located along the Property's southern line, where it adjoins Points North Road. As such, the Pavilion encroaches within the property's front yard setback. Thus, we affirmed the DRB's December 7, 2023 decision.

Both the Permit Appeal decision and the NOV Appeal decision were subsequently appealed to the Vermont Supreme Court on August 15, 2023 and have docket numbers 23-AP-255 and 23-AP-256, respectively.

Respondent built the pavilion during the summer of 2022 without a permit. Through filings in the other dockets, the Court understands that, once learning that a permit was required for the project, Respondent contacted the Town Zoning Administrator and subsequently applied for a zoning permit<sup>1</sup> on September 1, 2022. Following a denial by the Zoning Administrator and appeal to the DRB, the DRB denied the application in a December 7, 2022 decision. Respondent timely appealed to this Court, which affirmed the DRB's conclusion in an August 3, 2023 decision.

Further, the Town issued the NOV one day after the DRB decision on December 8, 2022. Appellant timely appealed to the Vermont Supreme Court. While this Court has concluded in its August 3, 2023 decision that the subsequent appeal was untimely without grounds to extend the

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<sup>1</sup> The Town's complaint alleges that Respondent applied for a zoning permit before this date, which was denied on July 8, 2022.

deadline to appeal, Respondent has also timely appealed that decision to the Vermont Supreme Court.

Thus, Respondent is diligently pursuing correcting the situation with the as-build unpermitted pavilion and the underlying permit decision and NOV that the Town relies upon in this action are both presently before the Vermont Supreme Court. While the parties pursue the appeal of the application for the pavilion before the Supreme Court, this matter is **STAYED**. In this context, the stay means that the present proceedings are suspended pending the Vermont Supreme Court's review of the related appeals.

This is the most efficient way to proceed in this enforcement case because, until we have the Vermont Supreme Court's final decision, the Court is unable to determine what the appropriate remedy is in this case, if any.

### **Conclusion**

We therefore **GRANT** Respondent's motion to stay the present action. We will await the Supreme Court's decision in 23-AP-255 and 23-AP-256. When those decisions are issued, we will set this matter for a status conference.

Electronically signed this 5<sup>th</sup> day of September 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 letters of the first and last names being capitalized and prominent.

Thomas G. Walsh, Judge  
Vermont Superior Court, Environmental Division