

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 152-11-17 Vtec

Williams NOV

ENTRY REGARDING MOTION

Count 1, Appeal from DRB determination on Notice of Violation appeal (152-11-17 Vtec)

Title: Motion to Stay (Motion 1)

Filer: Robert B. Williams

Attorney: Pro Se

Filed Date: November 7, 2017

Response in Opposition filed on 02/06/2018 by Attorney David G. Carpenter
for Interested Persons Keith and Linda Michaels
Reply filed on 02/13/2018 by Robert B. Williams, Appellant

The motion is DENIED.

By the pending motion, Appellant Robert B. Williams ("Appellant") appears to ask that this Court stay the decision of the Town of Poultney Development Review Board ("DRB"), denying his appeal of the June 26, 2017 notice of alleged zoning violation ("NOV") served upon him by the Town of Poultney Zoning Administrator. The NOV alleges that Appellant dumped in excess of fourteen cubic yards of fill upon his property on Ivy Lane in the Town of Poultney ("the property"). Appellant has preserved his rights to dispute this NOV by filing his appeal with this Court.

The Court is left to wonder what Appellant wishes to have stayed. In support of his stay request, Appellant summarizes the remedial measures that he has recently undertaken, including securing a permit for the removal of the complained-of fill and the hiring of a contractor to remove the offending fill. We encourage these and continued remedial measures, when done in accordance with the applicable zoning regulations.

The Town has not yet sought to enforce the NOV or seek monetary or injunctive relief against Appellant. To the extent that Appellant seeks a stay of any future enforcement action that the Town may take to enforce the NOV, we decline to stay such actions because Appellant had not made a sufficient showing that such a stay is justified.

The current appeal of the DRB's upholding of the NOV does not give rise to an automatic stay. See 10 V.S.A. § 8504(f)(1). When a stay does not automatically arise as a consequence of

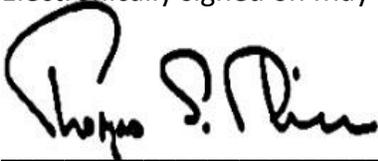
the filing of an appeal, this Court has the discretionary power, either in response to a party's petition or on the Court's own motion, to grant a stay. 10 V.S.A. § 8504(f)(2). However, for a stay to be granted, the Court must be convinced that the party who would benefit from the stay has provided a sufficient showing in support of the stay request. See In re Route 103 Quarry, No. 205-10-05 Vtec, slip op. at 3–6 (Vt. Envtl. Ct. Sept. 14, 2007), *aff'd* 2008 VT 88, 184 Vt. 283.

In our analysis of the stay request in the Route 103 appeal, we relied upon the precedent of Gilbert v. Gilbert, 163 Vt. 549 (1995). The Gilbert Court, relying on a number of earlier precedents, summarized the elements of a successful stay request as follows: “(1) a strong likelihood of success [on appeal]; (2) irreparable injury [to the moving party] if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay will serve the best interests of the public.” Gilbert at 560. We understand that the Gilbert precedent remains strong to this day.

Appellant Williams has offered no representations that we can rely upon to make the determinations necessary to grant the requested stay. In the absence of the necessary showing, we must **DENY** his request.

So Ordered.

Electronically signed on May 1, 2018 Newfane, Vermont, pursuant to V.R.E.F. 7(d).



Thomas S. Durkin, Superior Judge
Environmental Division

Notifications:

Appellant Robert B. Williams
David G. Carpenter (ERN 6139) and John A. Facey, III, (ERN 4972), Attorneys
for Interested Persons Keith and Linda Michaels
Neal C. Vreeland (ERN 2734), Attorney for the Town of Poultney