

VERMONT SUPERIOR COURT, ENVIRONMENTAL DIVISION

MSFE, LLC Administrative Officer Appeal

MSFE, LLC Administrative Officer Appeal · No. 25-ENV-00129 · Decided April 2, 2026

SUMMARY

The Vermont Superior Court, Environmental Division, grants the Town of Panton’s motion to dismiss MSFE, LLC’s appeal of a Development Review Board decision concerning a notice of violation for basketball-court setback violations. The court holds that 24 V.S.A. § 4472 barred the appeal because MSFE failed to appeal the Administrative Officer’s 2021 denial of a substantially similar zoning permit application. The court also grants MSFE’s motion for leave to file a surreply and schedules a status conference regarding a related zoning enforcement action.

CASE DETAILS

COURT	Vermont Superior Court, Environmental Division
WRITING FOR THE COURT	Joseph S. McLean
JURISDICTION	Vermont Superior Court, Environmental Division
DECIDED	April 2, 2026
DOCKET	25-ENV-00129
DISPOSITION	dismissed
PROCEDURAL POSTURE	MSFE, LLC appealed the Town of Panton Development Review Board's decision upholding a notice of violation concerning a basketball court and hoop. The Town moved to dismiss the appeal for lack of subject matter jurisdiction under V.R.C.P. 12(b)(1) and 24 V.S.A. § 4472(d).
STANDARD OF REVIEW	On a V.R.C.P. 12(b)(1) motion, the court accepts uncontroverted factual allegations as true and construes them in the light most favorable to the nonmoving party; the court may consider evidence outside the pleadings.
PRECEDENTIAL VALUE	Unpublished trial-level Environmental Division entry; precedential status is unknown from the source metadata.
PARTIES	MSFE, LLC v. Town of Panton

TOPICS

subject matter jurisdiction

motions to dismiss

zoning

appellate procedure

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PRACTICE AREAS

Vermont land use and zoning

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QUESTIONS PRESENTED

1. Whether 24 V.S.A. § 4472(a) and (d) deprived the Environmental Division of subject matter jurisdiction over MSFE's appeal because MSFE failed to appeal the 2021 permit denial.
2. Whether MSFE could challenge in the notice-of-violation appeal the Town's authority to regulate the basketball court, the applicability of setback requirements, or the validity of the zoning regulations after failing to appeal the initial permit denial.
3. Whether the Town's motion to dismiss under V.R.C.P. 12(b)(1) should be granted.

HOLDINGS

1. Under 24 V.S.A. § 4472(a) and (d), MSFE's failure to timely appeal the Administrative Officer's 2021 permit denial made that decision final and binding and barred any direct or indirect collateral attack on it in the later notice-of-violation appeal.
2. Once an applicant submits to the permitting process and receives an adverse decision, it must timely appeal that decision to preserve challenges to the municipality's jurisdiction, the applicability or validity of zoning regulations, and the project's exemption from regulation.
3. The Town's motion to dismiss MSFE's appeal for lack of subject matter jurisdiction was properly granted.

KEY QUOTATIONS

“§ 4472(a) and (d) are ‘two sides of the same coin,’ embodying through ‘broad and unmistakable language’ a legislative intent ‘to prevent any kind of collateral attack on a zoning decision that has not been properly appealed through the mechanisms provided by the municipal planning and development statutes.’” (4)

“Having applied for a zoning permit, however, Appellant was statutorily obligated to appeal that permit to avoid the preclusive effect of the zoning administrator’s decision relative to compliance with setback requirements.” (5)

“It cannot be collaterally attacked—directly or indirectly—at this time.” (6)

FACTUAL BACKGROUND

MSFE owned a 1.92-acre property in Panton's Residential Agricultural zoning district and sought approval in 2021 to construct a paved half basketball court and permanent hoop near the property's southwest corner. The Town's Administrative Officer denied the application because the proposed improvements were within required setbacks, and MSFE did not appeal within the prescribed period. MSFE later constructed a larger asphalt court and hoop, after which the Administrative Officer issued a notice of violation alleging violations of front- and side-yard setback requirements. The Development Review Board upheld the notice and concluded that the

unappealed 2021 denial precluded MSFE from challenging the setback requirements or the Town's regulatory authority in the subsequent appeal.

PROCEDURAL HISTORY

In January 2021, MSFE submitted a zoning permit application for a proposed basketball court and permanent hoop. The Town's Administrative Officer denied the application because the proposal did not meet setback requirements, and MSFE did not appeal that decision. After MSFE constructed an asphalt court and hoop in 2025, the Administrative Officer issued a notice of violation. The Development Review Board upheld the notice and ruled that the unappealed 2021 permit denial barred the challenge. MSFE timely appealed to the Environmental Division, which granted the Town's motion to dismiss.

DISPOSITION

dismissed

CASES CITED

- Town of Charlotte v. Richmond, 158 Vt. 354, 357-58 (1992)
- Rheaume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245
- Conley v. Crisafulli, 2010 VT 38, ¶ 3, 188 Vt. 11
- In re Guillemette ZA Determination Appeal, 2025 VT 25, ¶ 12
- Levy v. Town of St. Albans Zoning Bd. of Adjustment, 152 Vt. 139, 142 (1989)
- In re Hopkins Cert. of Compliance, No. 108-10-18 Vtec, slip op. at 4 (Vt. Super. Ct. Envtl. Div. June 20, 2019) (Durkin, J.)
- In re Hopkins Cert. of Compliance, 2020 VT 47, ¶ 8
- City of S. Burlington v. Dep't of Corr., 171 Vt. 587, 588-91 (2000) (mem.)
- Town of Pawlet v. Banyai, 2022 VT 4, ¶ 20
- Brewster River Mountain Bike Club, Inc., 2025 VT 4, ¶¶ 6-8
- In re Scheiber, 168 Vt. 534 (1998)
- In re Laberge Moto-Cross Track, 2011 VT 1
- In re Denio, 158 Vt. 230 (1992)
- Graves v. Town of Waitsfield, 130 Vt. 292, 295 (1972)
- In re Confluence Behavioral Health, LLC, 2017 VT 112, ¶ 17
- In re Snowstone LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28

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