

SUPREME COURT OF VERMONT

Mongeon Bay Properties, LLC v. Town of Colchester

2026 VT 1 · No. 25-AP-125 · Decided January 23, 2026

SUMMARY

The Vermont Supreme Court affirms the denial of the Town of Colchester’s petition to condemn Mongeon Bay Properties’ land for a stormwater treatment facility. The Court holds that the Town failed to prove necessity under 24 V.S.A. §§ 3601(4) and 3609 because it did not adequately consider statutory factors, including impacts on the property owner and alternative sites. The Court does not reach the trial court’s separate finding that the condemnation proceeding was initiated in bad faith.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Cohen, J.; Reiber, C.J.; Eaton, J.; Tomasi, Supr. J.; Johnson, J. (Ret.), Specially Assigned
JURISDICTION	Vermont Supreme Court
DECIDED	January 23, 2026
DOCKET	25-AP-125
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Town appealed from the Vermont Superior Court, Chittenden Unit, Civil Division's denial of the Town's petition seeking a necessity determination for condemnation of Mongeon Bay's property to construct a stormwater treatment facility.
STANDARD OF REVIEW	A finding of necessity is a question of fact determined exclusively by the trial court. The Supreme Court accepts the trial court's findings if supported by any competent evidence and will reverse only for an abuse of discretion. Factual findings are not disturbed unless clearly erroneous, viewed in the light most favorable to the prevailing party, and the Court defers to the trial court's credibility determinations and assessment of the persuasive effect of evidence.
PRECEDENTIAL VALUE	Published
PARTIES	Town of Colchester v. Mongeon Bay Properties, LLC

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion in finding that the Town failed to prove the necessity of condemning Mongeon Bay's property under 24 V.S.A. §§ 3601(4) and 3609.
2. Whether the trial court erred in finding that the Town acted in bad faith in seeking the taking.

HOLDINGS

1. The Town failed to meet its burden to prove that the taking was necessary because it did not present adequate evidence showing due consideration of the statutory factors, including the impact on the property owner's rights and convenience, the effect on town revenues, the inconvenience and expense to the property owner, and the adequacy of alternative properties and locations.
2. The trial court was not required to defer to the Town's determination merely because the condemnation involved a complex public-policy objective. Under Title 24, Chapter 101, the trial court independently assesses whether the Town's decision is supported by adequate reasoning and consideration of alternatives.

KEY QUOTATIONS

“The Town has the burden to prove the necessity of the taking by a preponderance of the evidence.” (¶ 8)

““Necessity” means a reasonable need that considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner.” (¶ 9)

“The burden to duly consider alternative properties and locations is not the property owner’s burden, but the condemning party’s burden.” (¶ 19)

“To the contrary: the statute requires the court to independently assess whether the Town’s decision is supported by adequate reasoning and consideration of alternatives.” (¶ 27)

FACTUAL BACKGROUND

The Town sought to condemn a portion of Mongeon Bay's larger unsubdivided parcel on Malletts Bay to construct a stormwater treatment facility. The property was already burdened by a 1979 easement allowing the Town to maintain a stormwater drainpipe, but the pipe ruptured in 2019, damaging the land and a camp structure; the Town repaired it in 2020 with a cured-in-place liner having an expected service life of thirty to fifty years. The Town argued that condemnation was needed to reduce phosphorus runoff, address safety and liability concerns, and improve access, but the trial court found that the Town had not adequately evaluated the property's impacts, alternative sites, or the likelihood of future pipe-related liability.

PROCEDURAL HISTORY

The Town initiated condemnation proceedings in August 2021 and issued a proposed decision to condemn the property in January 2022. Mongeon Bay filed an action for declaratory and injunctive relief, and the Town sought a hearing to determine necessity under 24 V.S.A. § 3606. After a two-day bench trial, the trial court found that the Town failed to prove necessity, including because it had not adequately considered the statutory factors or alternative sites, and rejected the petition. The Vermont Supreme Court affirmed on the necessity issue and did not address the trial court's alternative bad-faith ruling.

DISPOSITION

affirmed

CASES CITED

- *Cersosimo v. Town of Townshend*, 139 Vt. 594, 597, 431 A.2d 496, 498 (1981)
- *Rossetti v. Chittenden County Transportation Authority*, 165 Vt. 61, 67, 674 A.2d 1284, 1288 (1996)
- *Jackson v. Jackson as Trustee for William Jackson Trust of 1939 & the William Jackson Trust of 1941*, 2025 VT 29, ¶ 22, 342 A.3d 928
- *Agency of Transportation v. Wall Management*, 144 Vt. 640, 643, 645, 481 A.2d 1270, 1272-73 (1984)
- *Livanovitch v. Livanovitch*, 99 Vt. 327, 328, 131 A. 799, 800 (1926)
- *Agency of Transportation v. Timberlake Associates, LLC*, 2024 VT 83, ¶¶ 7-8, 331 A.3d 1070
- *Lofts Essex, LLC v. Strategis Floor & Décor Inc.*, 2019 VT 82, ¶ 23, 211 Vt. 204, 224 A.3d 116
- *New England Phoenix Co. v. Grand Isle Veterinary Hospital, Inc.*, 2022 VT 10, ¶¶ 21-22, 216 Vt. 227, 275 A.3d 134
- *In re Transportation Project Colchester HES NH 5600(14) (Exit 16 Diverging Diamond Interchange)*, No. 484-6-19 Cncv, slip op. at 3 (Vt. Super. Ct. Mar. 9, 2022), *aff'd* *Timberlake*, 2024 VT 83