STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(Filed: January 27, 2014)

AMBER PRESTON	:	
	:	
V.	:	**C.A. No. WC 12-0151**
	:	
THE ZONING BOARD OF REVIEW OF THE TOWN OF HOPKINTON AND TODD SPOSATO AND TINA SPOSATO	:	

DECISION

LANPHEAR, J. In this administrative appeal, Amber Preston challenges a decision of the Zoning Board of Review for the Town of Hopkinton, which granted an appeal in favor of Ms. Preston's neighbors, Todd and Tina Sposato and overturned a Notice of Violation issued by the Zoning and Planning Official of the Town of Hopkinton.[1] The Board's Decision found that the Sposatos' keeping of four alpacas at their home was not a violation of the Zoning Ordinance. Ms. Preston alleges the Board's Decision is clearly erroneous, and that it was an abuse of discretion and in excess of authority. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth in this Decision, this Court affirms the Board's Decision.

I

Facts and Travel

Mr. Sposato is the owner of the subject property, identified as Lot 30-H on Assessor's Plat 10, which is located at 129 North Road in Hopkinton, Rhode Island. It is designated as a Residential-1 property (R-1) for the purposes of the Zoning Ordinance.

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[1] Section 45-24-64 of the Rhode Island General Laws codifies the applicable authority for a Zoning Board of Review to hear an appeal of a zoning violation issued pursuant to § 45-24-60. G.L. 1956 § 45-24-64.

During the past three years, the Sposatos purchased four alpacas which they keep on the property. (Board's Mem. of Law at 3.) Prior to acquiring the animals, Mr. Sposato contacted the Zoning Official to inquire into whether owning alpacas in the town were allowed.[2] The Zoning Official's assistant informed Mr. Sposato that pets, such as animals from pet stores or shelters, were allowed to be kept in the R-1 District. (Tr. at 85-86, Oct. 20, 2011.)

After the Sposatos received the alpacas, Ms. Preston felt aggrieved by the presence of the animals thus she filed police reports and DEM complaints against the Sposatos. (Tr. at 68, Oct. 20, 2011.) On May 23, 2011, the Sposatos received a Notice of Violation from the Zoning Official of the Town of Hopkinton, Brad Ward.[3] (Tr. at 78, Oct. 20, 2011.) The Notice claimed that the Sposatos were in violation of District Use Code 103 of the Zoning Ordinance because they were housing four alpacas on their property. The Sposatos appealed the Notice of Violation to the Hopkinton Zoning Board of Review pursuant to G.L. 1956 § 45-24-64, arguing that they were allowed to keep the alpacas as pets. (Board's Mem. of Law, Ex. 1.)

Four properly advertised public hearings were held by the Zoning Board on the following dates: October 20, 2011; December 15, 2011; January 19, 2012; and February 9, 2012. At the hearings, the Sposatos appeared with counsel to contest the Zoning Official's Notice of Violation.

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[2] The Zoning Official was out of work at the time for surgery.

[3] The Zoning Official was fulfilling his duty under G.L. 1956 § 45-24-54, which allows a city or town to designate a zoning official to inspect potential violations of a zoning ordinance, issue violation notices, and collect fines for violations. Section 17 of the Hopkinton Zoning Ordinance provides the authority for the Hopkinton Zoning Official to carry out these functions which gives a zoning board the ability "(i) To hear and decide appeals in a timely fashion where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer or agency in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto." Hopkinton Code of Ordinances § 17.

The first witness to testify before the Board was the Zoning Official Brad Ward, who issued the subject Notice of Violation. (Tr. at 37, Oct. 20, 2011.) It was his opinion, from his experience as a zoning official, that the Sposatos were violating the Zoning Ordinance for reasons listed in the Notice of Violation. Id. Specifically, Mr. Ward testified that District Use Code 103 of the Hopkinton Zoning Ordinance prohibits "livestock farms" in a residential district, yet the Ordinance offers no definition of livestock, farm or livestock farm. (Tr. at 38, Oct. 20, 2011.) He further testified that because alpacas are both livestock and farm animals, alpacas cannot be owned, under that prohibition of District Use Code 103, in R-1 Districts. Id. In coming to this conclusion, he relied on the definition of livestock in a statute regulating livestock dealers, located in G.L. 1956 § 4-7-6(1). He also referenced the definition of "farm animal" in § 4-1 of the Hopkinton Code of Ordinances, part of the "Animals" chapter, which has a similar definition of livestock. (Tr. at 38, 46, Oct. 20, 2011.)

Counsel for the Sposatos contends that Mr. Ward's definition was misapplied because § 4-7-1 relates to licensing of livestock dealers who are in the business of buying, selling and exchanging livestock as determined by the DEM. (Tr. at 41, 43, Oct. 20, 2011.) The Zoning Board had before it a different statute, G.L. 1956 § 4-13-1.2, which provides separate definitions for livestock and pets. (Tr. at 44-45, Oct. 20, 2011.) Counsel for the Sposatos highlighted to the Board separate definitions which list llamas, sheep and goats under both the livestock and pet category within this statute. Id.

In opposition, Ms. Preston testified against the Sposatos. She indicated that she is an abutting neighbor to the Sposatos' property and that she can smell the animals from her yard in the summer.

The Sposatos testified about their relationship with the alpacas. Mr. Sposato stated the alpacas are kept as companions to the family and that he only shears them for health purposes. (Tr. at 89, Oct. 20, 2011.) Various neighbors appeared in support of the Sposatos, to testify that the Sposatos did not use the alpacas for utility. The neighbors testified that the Sposatos held a close relationship with the animals. (Tr. at 114, Oct. 20, 2011.) One neighbor, Bob Doughty, testified that he could not smell the animals from his house across the street. (Tr. at 115, Oct. 20, 2011.) Another neighbor, Ms. Kipp, who also lives across the street, testified that the area is "pretty much known as horse country" and that she has never experienced an odor from the alpacas, though she walks past them every day. (Tr. at 115-116, Oct. 20, 2011.)

The Sposatos also presented expert witnesses. Each expert witness testified concerning how alpacas should be categorized, and how these alpacas were treated and used by the Sposatos. Dr. Scott Marshall, Rhode Island State Veterinarian, the chief animal health official of Rhode Island, testified that the alpacas were being used as pets because they were not being used for food, fiber, or financial gain. (Tr. at 25, Oct. 20, 2011.) Mr. Launer, a former USDA inspector, testified that an animal is considered livestock if one can eat it in the end. (Tr. at 56, Oct. 20, 2011.)

At the conclusion of the hearings, a majority of the Zoning Board voted to reverse the Zoning Official's Notice of Violation while placing conditions on the keeping of the alpacas. Within the Board's Decision, fourteen total motions were voted on; twelve of them passed with the necessary majority of the Board's approval. The Board's rulings were made in Motions 13 and 14. In Motion 13, the Board voted:

> "To overturn the Zoning Official's decision based on the testimony that was put before [them] that demonstrates that in this particular case that the Sposatos' alpaca are being housed and kept as domestic animals and treated as such. This Motion does not

> consider all alpaca as domestic animal but only the ones in this particular case based on the evidence presented." (Tr. at 90, Feb. 9, 2012.)

In Motion 14, the Board voted to place the following conditions on the Sposatos' property in relation to the keeping of their alpacas.

> "1. The dimensional setbacks for an R-1 zone shall apply to the fencing and enclosures; 2. The alpacas are to be kept one hundred (100) feet from wells; 3. The number of alpaca on this property shall not exceed four (4); 4. The right to keep alpaca on this property does not run with the land; that is, if the Sposato's (sic) sell this property the next owners are not permitted to keep alpaca." Id.

The Board issued a written decision incorporating the motions and the vote count for each motion. Ms. Preston timely filed the instant appeal.

II

Standard of Review

The Superior Court's review of a zoning board decision is governed by § 45-24-69(d), which provides:

> "The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:
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> (1) In violation of constitutional, statutory, or ordinance provisions;
> (2) In excess of the authority granted to the zoning board of review by statute or ordinance;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

When reviewing a decision of a zoning board, the trial justice "must examine the entire record to determine whether 'substantial' evidence exists to support the board's findings."' Salve Regina College v. Zoning Bd. of Review of the City of Newport, 594 A.2d 878, 880 (R.I. 1991) (quoting DeStefano v. Zoning Bd. of Review of the City of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). Rhode Island law defines "substantial evidence" as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance.'" Lischio v. Zoning Bd. of Review of North Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)).

III

Analysis

Ms. Preston bases her appeal on two grounds: (1) the Board's Decision was clearly erroneous, and (2) the Board's Decision was in excess of its authority and an abuse of discretion because the Decision was personal to the Sposatos. Additionally, in footnote 14 of its memorandum, Ms. Preston claims the Decision is invalid because members of the Board abstained from voting on part of the Decision.

A

Alleged Clearly Erroneous Decision

Ms. Preston contends that the Board's Decision is clearly erroneous in view of the reliable, probative and substantial evidence of the whole record. Specifically, Ms. Preston contends the keeping of the alpacas violates the Ordinance. The Sposatos maintain that the property is not in violation of the Ordinance and is properly being used for its permitted use as a

single-family home, with an accessory use, incidental to owning a single-family home[4]—not within the parameters of a separate prohibited use of property as a livestock farm. Thus, the Court must consider whether the Board's finding—that the Sposatos' retention of four alpacas is a permitted, accessory use of the land,—as supported by substantial evidence on the record. An accessory use is one that is allowed because it is a subordinate use that is commonly associated with the main permitted use of the property and only serves that purpose. An accessory use does not require special permission, and a landowner is "entitled to such use as a matter of right." LaMontagne v. Zoning Bd. of Review of City of Warwick, 95 R.I. 248, 249, 186 A.2d 239, 240 (1962).

The accessory use clause in the Zoning Ordinance, in pertinent part, provides: "any accessory use customarily incident to a use permitted in a district and located on the same lot shall be permitted." Hopkinton Zoning Ordinance § 134-5. Without a clear list of uses that are accessory within the clause, the Zoning Board is given "wide discretion in the determination as to [the section]," and what type of uses it allows, particularly where terms in the Zoning Ordinances are not adequately defined. Davis v. Zoning Board of Review of the City of Warwick, 93 R.I. 484, 488, 176 A.2d 735 (1962). Further, the discretion in making the determination entitles the Zoning Board to deference in this Court's review of whether the Sposatos' alpacas are animals owned as an accessory use to a single-family home in Hopkinton. See Hein v. Town of Foster Zoning Bd. of Review 632 A.2d 643, 646 (R.I. 1993) (holding that

[4] Although the Board did not specifically find that owning a pet is an accessory use, its position that pets are allowed to be kept stems from the accessory use clause. Further, both parties agree that an R-1 property used for the purpose of a single-family home may have a pet. See Foster Village Community Ass'n v. Hess, 667 P.2d 850 (HI 1983) (holding that even if pets are not specifically listed as accessory uses, the court can find the right to be "conceded" by the parties in a zoning appeal).

the discretion in Davis, 93 R.I. 484, 488, 176 A.2d 735, 738 (1962) specifically applies to determination of accessory use); see also 3 Rathkopf, The Law of Zoning and Planning (4th ed.) § 42.07[4][a], at 42-65 to 42-66 (2013) ("when there are no specific guideposts in an ordinance the Board's interpretation . . . should be accepted whenever there is a reasonable basis").

The courts have generally accepted the keeping of domestic animals or pets as a permitted accessory use even when these pets are non-traditional. See 7 P. Rohan, Zoning and Land Use Controls, § 40A.04[5] at 40A-68 (2013) ("[k]eeping pets may qualify as a valid accessory use even where the pet is unusual"); see also supra, at n.3. Further, this accessory use is only allowed if the incidental keeping of the animals does not "[move] beyond the hobby stage to constitute, for example commercial dog kennels or horse boarding and training facilities[,]" but if it does, then keeping of the animals, even if treated as pets, is not an allowed accessory use. Id. Thus, it is significant that the alpacas are treated as pets and serve no separate purpose.

In the case at bar, the record supports, and the Board's Decision found it reasonable, that an alpaca could be a pet incidental to a residential property in Hopkinton. Additionally, the Board noted the rural nature of Hopkinton and that promoting this nature was a goal of the Zoning Ordinance. (Motion 10 of Dec. at 7.) The Board also acknowledged that other residents in the town own non-traditional animals. Id.

The record supports the conclusion that the Sposatos' alpacas are treated as pets and used solely for that purpose. The alpacas are not kept as livestock farm. The evidence establishes: 1) Dr. Marshall observed the alpacas treated as pets; 2) the Sposatos play with the animals frequently; 3) the alpacas eat their dinner on the deck and have been inside the Sposatos' house; 4) the Sposatos only shear for health reasons; 5) the Sposatos do not use the fiber or meat; 6) the

Sposatos do not breed the alpacas. This substantial evidence supports the Board's finding that the alpacas are used for pets. (Mem. of Board at 13); (Motion 11 of Dec. at 7-8.)

If a zoning ordinance specifically and clearly prohibits the keeping of certain animals, a zoning board could not find that the keeping of those animals was accessory to another use.[5] Moreover, had it been the purpose of the Ordinance to prohibit the keeping of certain animals in a residential district, this objective could have easily been accomplished by a simple and direct provision in either the Zoning Ordinance or Town Code to that effect. See Wiley v. Hanover County, 209 Va. 153, 163 S.E.2d 160, 163 (1968). For example, many towns in Rhode Island Zoning Ordinances have adopted such provisions restricting the keeping of animals. See Burrillville Town Code § 4-8 "Keeping of horses, cattle, swine, fowl, etc. (a) No person shall own or have under his/her care any horse, goat, swine, sheep cattle or other livestock, except as may be expressly permitted by the zoning ordinance."; see also Charron-Perry v. Zoning Bd. of the City of Warwick, 2012 WL 6215603, (R.I. Super.) C.A. No. KC-2011-0542. The Warwick Zoning Ordinance defines residential occupancy as "those activities customarily conducted in living quarters in an urban setting, and excludes such activities as the keeping of livestock or fowl . . . and excludes the keeping on any lot of more than three household pets per family"). The Hopkinton Ordinance is not clear. It provides no definition of the clause nor is there a commonly accepted definition. There is no clear prohibition of the keeping of certain animals. Accordingly, the Board is justified in finding that a different, less restrictive part of the Zoning Ordinance applied. See supra, at n.5.

Courts, recognizing the common law favors unrestricted uses of land by property owners, have adopted a well-settled principle that any derogation of this right by a zoning ordinance must

[5] The Town Code Ordinance does prevent citizens of the town from owning wild animals, but there was no claim that alpacas are considered wild animals.

be clear on its face. City of Providence v. O'Neill, 445 A.2d 290, 293 (R.I. 1982). It is axiomatic that the Hopkinton Zoning Ordinance clause, by prohibiting livestock farms in R-1 Districts, restricts the use of land. The term "livestock farm" is neither defined in the Zoning Ordinance nor referenced in any other section other than the District Use Table. The District Use Table within the Zoning Ordinance delineates the permitted and prohibited uses in the various districts of the Town of Hopkinton. Hopkinton Zoning Ordinance § 134-5. The restrictive clause of the Zoning Ordinance in question, containing the term "livestock farm," is located merely in a single row of the District Use Table that reads "Livestock Farms" and has a corresponding "N" under the R-1 column indicating that the use is prohibited on R-1 properties. Hopkinton Zoning Ordinance § 134-5. Instead of interpreting the Zoning Ordinance to be a clear prohibition of keeping alpacas, the Zoning Board viewed the ownership of the alpacas as a mere accessory use—a right within the Zoning Ordinance more favorable to the Sposatos as landowners. O'Neill, supra, at 293.

The decision by the Zoning Board finding that this use is allowed as an accessory use (instead of one that is a prohibited primary use under an ambiguous zoning ordinance) is consistent with our Supreme Court's holding in Emma v. Silvestri, 101 R.I. 749, 751, 227 A.2d 480, 481 (1967) (holding that land use restrictions should "be construed strictly so as to favor an unrestricted use of property, and are not to be extended by implication, and if there is ambiguity, it is to be resolved in favor of an unrestricted use.") The Zoning Board did not exceed authority to interpret the Ordinance in favor of the landowner. In light of the doubt as to the intent of the restrictive clause,[6] the record supports a finding that the alpacas are pets. The Board's Decision

[6] While this Court may question whether the alpacas should be pets and whether they constitute livestock, it has a limited role on appeal. The evidence of record supports the conclusion that no common meaning of the term could be determined.

is not in violation of statutory ordinance provisions. O'Neill 445 A.2d at 293.

For these reasons, this Court will not substitute its judgment, regardless of whether it would have come to the same conclusion independently, for the reasonable interpretations and actions by the Board in its Decision. Accordingly, this Court is satisfied that there was substantial evidence of record to support the Zoning Board's finding that the keeping of the alpacas as domestic animals was a permitted accessory use, not a prohibited use as a livestock farm, and that the Sposatos' alpacas were allowed as such.

B

Abuse of Discretion and Excess of Authority

Ms. Preston avers that the reliance of the Board on the personal facts relating to the Sposatos in Motion 13, was in excess of the Board's authority. She claims the Board violated a basic zoning principle: that land is regulated by zoning ordinances, not the people who own the land. Ms. Preston contends that the Board's Decision, specific to the Sposatos and not all R-1 properties, was an abuse of discretion and was in excess of its authority.

The Zoning Board's Decision focuses on the facts surrounding the treatment of the alpacas by the Sposatos. (Motion 11 of Dec. at 7-8.) It held that four alpacas treated only as pets is an allowed accessory use in an R-1 District.[7] The Board's conclusion that keeping the alpacas is an accessory use is premised on the finding that the animals are not used for any other purpose. The Zoning Board thus found it was not a prohibited livestock farm.

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[7] While it is possible that the Decision of the Board could be construed to extend to animals of a comparable nature to alpacas, the determination to reverse the violation should be viewed narrowly. The issue the Board was faced with involved alpacas on an R-1 property and thus only applies to alpacas treated similarly to the ones owned by the Sposatos. If another animal by its nature is not viewed as an accessory or the number of the animals kept removes its use from accessory, this determination would be decided based on the circumstances in each case. Further, the Board set explicit limitations for its findings.

The analysis used to determine whether a use is accessory depends upon the individual facts of the property use and is particular to the property as used by the current landowner. See 1 Rathkopf, The Law of Zoning and Planning, op. cit. at 23-25 to 23-26; see also 7 P. Rohan, Zoning and Land Use Controls, § 40A.03[2] at 40A-17 (citing Kesling v. City of Baltimore, 220 Md. 263, 151 A.2d 726, 729 (1959) ("There is no precise formula for determining whether a use is incidental[.] . . . Resolution of the question proceeds on a case by case basis."). Because the basis for Motion 13 was a finding of an accessory use, personal facts were necessary to determine how the land was being used. Additionally, it has not been established that the Sposatos were afforded special treatment. Rather, when the Board considered the nature of the Sposatos' use, it considered whether the Sposatos' animals were being kept as pets or whether the land was being used as a livestock farm. For these reasons, Ms. Preston's reliance on the principle that zoning laws regulate only the land use is misapplied with respect to Motion 13 of the Board's Decision, which found that no violation had occurred.

Ms. Preston also contends that the special conditions placed on the land as part of Motion 14 were in excess of its authority and an abuse of its discretion, in deciding a zoning violation appeal.

The Hopkinton Zoning Ordinance, § 134-12, provides:

> "In granting a variance or in making any determination upon which it is required to pass after a public hearing under the provisions of this ordinance, the zoning board may apply such special conditions that may, in its opinion, be required to meet the intent and purposes of the Comprehensive Plan of the Town of Hopkinton and this ordinance." (Emphasis added).

Further, § 45-24-43 provides that:

> "In granting a variance or in making any determination upon which it is required to pass after a public hearing under a zoning ordinance, the zoning board of review or other zoning enforcement agency may apply the special conditions that may, in the opinion

> of the board or agency, be required to promote the intent and purposes of the comprehensive plan and the zoning ordinance of the city or town." (Emphasis added).

The language provided in the Hopkinton Zoning Ordinance and the Rhode Island Zoning Ordinances Act, each give authority to the Zoning Board to impose special conditions. Further, "[g]enerally if the specific condition imposed is authorized, the standard is often said to be one of reasonableness . . . [;] the reasonableness of site-specific conditions can only be determined in the context of the specific fact situation involved in the particular case in question." 3 Rathkopf, The Law of Zoning and Planning § 60.09, § 60:10, at 60-09 to 60-11 (2013).

The Zoning Board carefully crafted special conditions to ensure that the use does not evolve into a prohibited use. It clarified that changes are not shielded by the Zoning Board's approval. Limiting the number of alpacas, prohibiting commercial activity, and referencing the setback lines are reasonable limitations to protect against any expanded use.

Section 134-12 of the Hopkinton Zoning Ordinance and § 45-24-43 of the Zoning Enabling Act provides the authority to place special conditions. The Zoning Board had before it an appeal of a Notice of Violation requiring a determination about after a public hearing. See supra, at n.2. In deciding the Appeal the Board determined and voted to impose special conditions on the Sposatos' property in its Decision. Accordingly, statutory authority was exercised by the Zoning Board, and thus the imposition of conditions was not in excess of the Zoning Board's authority or an abuse of its discretion.[8]

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[8] The Court notes that while the Sposatos' current use of the alpacas is allowed by zoning, nothing more should be inferred. The Zoning Board's limitations permit nothing more. Other remedies of the neighbors, such as claims of nuisance, are preserved and outside the scope of this appellate review.

C

Voting Procedure

Ms. Preston's last argument is contained in a footnote in her memorandum of law. Specifically, Ms. Preston points to a defect in the vote cast by the Board on Motion 14 of the Decision. The Decision reflects the vote cast on the Motion. Members Harrington, Bjorkland, and Bynum voted in the affirmative; and members Scalise and Ure abstained. (Motion 14 of Dec. at 9.)

The Zoning Enabling Act, G.L. §§ 45-24-27 et seq., requires five members to vote on each appeal heard by a Zoning Board. It requires alternate members to sit and vote in the absence of members, § 45-24-56 ("[t]he first alternate shall vote if a member of the board is unable to serve at a hearing"). Moreover, G.L. § 45-24-57(2) states that the "zoning board of review shall . . . [b]e required to vote as follows: The concurring vote of three (3) of the five (5) members of the zoning board of review sitting at a hearing are necessary to reverse any order, requirement, decision, or [Notice of Violation] of any zoning administrative officer from whom an appeal was taken." Our courts have interpreted this five-vote mandate on decisions of a zoning board from construing various other requirements placed on zoning boards through the Zoning Enabling Act. Accordingly, the Zoning Board vote on Motion 14 technically violated the Rhode Island Zoning and Ordinances statute. Five members of a zoning board must cast their vote on a matter in order for it to be a valid action. See Kent v. Zoning Bd. of Review of City of Cranston, 102 R.I. 258, 264, 229 A.2d 769 (1967).

The Zoning Board's decision was oddly formatted. It is composed of fourteen separate motions, voted separately on February 9, 2012. Some of the motions did not pass. The separation of the motions allowed the Board to vote on each one independently. Apart from

Motions 13 and 14, each of the other motions passed by the Board contained either findings of fact or conclusions of law. Motion 14 passed by a vote of three in favor, none opposed and two abstentions. It placed reasonable limits on the Sposatos' retention of alpacas on the property. As Zoning Board members may not abstain on zoning board matters, the procedure was defective. However, the tally clearly reflects that this motion was favored by a clear majority seeking to define and limit the scope of the Board's approval.

To remand this one motion for another vote may, in effect, change the outcome, or the intended result. This would not be substantial justice. Therefore, the Zoning Board is forewarned that all members present must vote on all zoning matters in the future. This Court will consider Motion 14 to be passed by the Board and effective.

IV

Conclusion

After reviewing the entire record, this Court finds that the Zoning Board's reversal of the Zoning Official's Notice of Violation was not clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; in excess of authority; an abuse of discretion; or in violation of statutory ordinance provisions. Substantial rights of Ms. Preston have not been prejudiced. Accordingly, this Court affirms the March 7, 2012 Decision by the Zoning Board of Review of the Town of Hopkinton. Counsel shall submit any appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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DATE DECISION FILED:	January 27, 2014
JUSTICE/MAGISTRATE:	Lanphear, J.

ATTORNEYS:

For Appellant:	George A. Comolli, Esq.
For Defendant:	Todd J. Romano, Esq.