

Regulations with respect to capital contributions, control, dependency, and affiliation. Jurisdiction is pursuant to G.L. 1956 §§ 42-35-15 *et seq.* For the reasons set forth in this Decision, this Court remands the Decision to the DOA for further findings of fact and conclusions of law.

I

Facts and Travel

MBECO was created within the DOA after the Rhode Island General Assembly tasked the director of the DOA with maximizing opportunities for the MBE to participate in state funded construction projects and state purchases of goods and services. The MBECO provides administrative services relating to minority business enterprises including certification, enforcement, business assistance and advocacy. Pursuant to its governing rules, the MBECO established the CRC, which is responsible for determining whether an applicant is eligible for MBE certification.

Meadowbrook is a Rhode Island based limited liability company owned by Mackenzie St. Godard (Ms. St. Godard). Prior to the creation of Meadowbrook, Ms. St. Godard owned and operated Meadowbrook Farm with her husband, Thomas St. Godard (Mr. St. Godard). Meadowbrook Farm boarded horses, raised cows and brokered the sale of hay.

In 2011, Ms. St. Godard formed Meadowbrook to supplement her income when boarding horses was no longer feasible due to a changing economic climate. The firm was formed in order to utilize the experience she had gained operating construction and other heavy equipment while working on her farm with the goal of leasing or subcontracting her services on a contractual basis for general contractors working on large scale projects. Since creation of the company, Ms. St. Godard has acquired a valid Commercial Driver's License (CDL) and Rhode Island hoisting license required to operate certain types of construction equipment in order to facilitate the company's main purpose of loading and hauling material for large general contractors. The

company operates out of the jointly owned home and property Ms. St. Godard shares with Mr. St. Godard at 232 Sneeck Pond Road, Cumberland, Rhode Island. Mr. St. Godard also operates T.S. Enterprise, a hay brokering business, out of the same location.

Meadowbrook previously applied for MBE certification in 2011 but was denied. At that time, the CRC indicated that Ms. St. Godard did not have the requisite construction experience necessary to operate a company within that field. Moreover, the CRC found that Ms. St. Godard did not possess certain licenses—including a CDL and hoisting license—necessary for her to operate the machinery associated with the business. Furthermore, the CRC expressed concern with inconsistencies in Ms. St. Godard’s tax returns, the presence of dual signatories by Ms. St. Godard and Mr. St. Godard on the company business account, and the fact Mr. St. Godard operated a separate company out of the same location on Sneeck Pond Road. Accordingly, the CRC denied the application and found that Meadowbrook “is closely affiliated with the non-minority owned firm, T.S. Enterprise, and subcontracts out all trucking to this non-minority firm.” (MBECO Decision at 7, July 14, 2011.)

On March 27, 2014, Ms. St. Godard submitted an application (the Application) on behalf of Meadowbrook to the MBECO seeking certification as a MBE. Ms. St. Godard is the sole member of Meadowbrook and submitted her application on the basis that the company was created, owned and controlled by a female.

On May 27, 2014, the MBECO informed Ms. St. Godard by correspondence that her application was incomplete. The MBECO included a list of additional information required, including proof of the initial cash contribution of \$5000, updated truck registrations, active insurance information and Federal Tax Returns for Meadowbrook Farm for 2011-2013. On June 16, 2014, Ms. St. Godard responded to this inquiry indicating that the capital contributions were

funded by the \$5000 she received via tax return payments from Meadowbrook Farm and provided Schedule F forms from 2009 and 2010 as proof. In addition, 2013 tax returns for Ms. St. Godard, Meadowbrook and Meadowbrook Farm were provided. Additionally, the correspondence indicates that the 2011 and 2013 tax returns for Meadowbrook Farm were previously submitted on the couple's joint tax filing because it operated as a sole proprietorship.

In connection with the Application, CRC caseworker Patsy Peterson (Ms. Peterson) conducted a site visit on July 22, 2014 at Ms. St. Godard's home, which also acts as the location of the subject business. Ms. Peterson completed a certification evaluation form in which she indicated Ms. St. Godard provided an initial cash contribution of \$5000; both Ms. St. Godard and Mr. St. Godard are authorized to sign checks from the business account; and logos of Meadowbrook Farm were visible on a number of vehicles purportedly owned by Meadowbrook. Moreover, the certification evaluation form indicates that Ms. St. Godard is also the co-owner of Meadowbrook Farm and works approximately five hours per week for that entity. However, the certification evaluation form also indicates Ms. St. Godard operates the equipment, manages the schedule and handles the finances for Meadowbrook as its sole employee.

On July 31, 2014, Ms. Peterson recommended to the CRC that Ms. St. Godard's Application be set down for a hearing to discuss issues of ownership, control, and dependency on a non-minority individual. Specifically, Ms. Peterson raised concerns that there were discrepancies in supporting documentation as to ownership of the firm. In addition, Ms. Peterson was concerned with an undue reliance and dependent relationship on a non-minority individual, Mr. St. Godard. The CRC agreed with Ms. Peterson's recommendation to hold a hearing regarding the Application. In its August 22, 2014 letter (Notice Letter), notifying Ms. St. Godard of the hearing on October 21, 2014, the CRC included a breakdown of the MBE regulations and its analysis based on the

record at that time. This provided Ms. St. Godard with time to prepare for the hearing and supplement the record as needed. Among the issues raised were the listing of both Ms. St. Godard and Mr. St. Godard as signatories on the company accounts, supporting documentation indicating the legal name of the firm as Meadowbrook, LLC, d/b/a Meadowbrook Farm, and the lack of evidence regarding the source of the \$5000 capital used to fund the startup of the firm.

The CRC conducted a hearing on October 21, 2014, with Ms. St. Godard and her attorney, Nicholas Goodier (Attorney Goodier), present. At the start of the hearing, Attorney Goodier presented the CRC with supplemental correspondence responding to the concerns raised in the Notice Letter. First, Attorney Goodier indicated that Ms. St. Godard is the full and only owner of Meadowbrook and Ms. St. Godard no longer owns, operates, or manages any part of Meadowbrook Farm. Moreover, he explained Meadowbrook and Meadowbrook Farm have always been separate entities with no overlapping business. Next, the provided supplemental information evidences that Mr. St. Godard owns his own business on the property but conducts no business with or is in any way associated with Meadowbrook. However, it was further revealed that he was previously listed as a signatory on Meadowbrook's business account and was authorized to sign checks in case of emergency, but said ability has since been updated and removed. Appellant also provided documentation from the U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA) that Meadowbrook is registered as "Meadowbrook LLC" and not any other variation or d/b/a. Appellant also provided Ms. St. Godard's "Schedule F" tax forms from 2009 and 2010, as well as the Operating Agreement of Meadowbrook, as proof that she provided the \$5000 capital contribution to launch Meadowbrook.

At the conclusion of the hearing, the CRC voted to table the vote and reconvene at a later date for additional discussion on the Application. Specifically, CRC members sought additional

information and copies of (1) checks issued by Meadowbrook to Mr. St. Godard when Meadowbrook allegedly purchased Mr. St. Godard's share of the 2007 Kenworth Tri-Axle dump truck previously owned by Meadowbrook Farm; (2) copies of a check issued to Minuteman Truck for the purchase of the 1989 Mack pumper truck; (3) proof of the initial \$5000 investment which was initially required for the hearing; and (4) photographs of the updated decals on equipment owned by Meadowbrook.

A second formal hearing was conducted on February 17, 2015, before the CRC with Ms. St. Godard and Attorney Goodier testifying. During this testimony, Ms. St. Godard and Attorney Goodier supplied the requested supplemental information in the form of purchase documents for a 2007 Kenworth Tri-Axle dump truck and pictures evidencing updated decals on Meadowbrook's trucks. The CRC then inquired as to the status of requested proof of the initial cash contribution, and testimony was heard regarding Ms. St. Godard's initial contribution by her tax return and subsequent application for a small business loan. Further inquiries were made regarding tax exemption forms, possible affiliation with another entity operating out of the Sneece Pond address, and issues involving ownership of equipment. At the conclusion of the hearing, a motion was made and properly seconded to deny the Application. The CRC unanimously approved the motion.

The CRC issued its Decision on May 5, 2015, indicating the Application did not comply with the MBE regulations which govern certification. Specifically, the Decision indicates that the Application failed to meet criteria set forth in Sections 3.00, 3.02, 3.04, and 3.05.² Meadowbrook filed a timely appeal, and the matter was assigned for decision.

² These sections respectively provide certification criteria, control requirements, substantial investment in business requirement and continuing operational requirement.

II

Standard of Review

Pursuant to the Administrative Procedures Act, the Superior Court has appellate jurisdiction to review final orders of state administrative agencies. Secs. 42-35-1 *et seq*; *McAninch v. State, Dep't of Labor & Training*, 64 A.3d 84, 87 (R.I. 2013). Section 42-35-15(g) of the Administrative Procedures Act governs this Court's review of the CRC Decision, and it provides:

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15 (g).

This Court's review of an agency's decision “is circumscribed and limited to ‘an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.’” *Nickerson v. Reitsma*, 853 A.2d 1202, 1205 (R.I. 2004) (quoting *Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd.*, 608 A.2d 1126, 1138 (R.I. 1992)). If this Court does find that legally competent evidence exists in the record, then “the court is required to uphold the agency's conclusions.” *See id.* (quoting *Barrington Sch. Comm.*, 608 A.2d at 1138). Our Supreme Court has defined legally competent evidence to mean “the

presence of some or any evidence supporting the agency’s findings.” *Auto Body Ass’n of Rhode Island v. State, Dep’t of Bus. Regulation*, 996 A.2d 91, 95 (R.I. 2010) (citations omitted). The Court further clarified that legally competent evidence must be an amount “more than a scintilla but less than a preponderance.” *Arnold v. Rhode Island Dep’t of Labor & Training Bd. of Review*, 822 A.2d 164, 167 (R.I. 2003) (internal quotations omitted). Legally competent evidence must be “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* (internal quotations omitted).

If this Court does find that there is legally competent evidence supporting the agency’s decision, then this Court shall defer to the agency’s decision on questions of fact. *See Town of Burrillville v. Rhode Island State Labor Relations Bd.*, 921 A.2d 113, 118 (R.I. 2007). In reviewing an agency’s interpretation of a “statute as applied to a particular factual situation[,] [this Court] must accord that interpretation weight and deference[,] as long as that construction is not clearly erroneous or unauthorized.” *Labor Ready Ne., Inc. v. McConaghy*, 849 A.2d 340, 344 (R.I. 2004) (internal quotations omitted). In reviewing agency appeals, this Court “shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” Sec. 42-35-15(g). Alternatively, an agency’s determinations on questions of law are not binding on this Court, which may review the agency’s determinations on questions of law in order to determine the law in view of the applicable facts. *Narragansett Wire Co. v. Norberg*, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977). Similarly, this Court retains “a broad grant of power . . . to remand, in a proper case, to correct deficiencies in the record and thus afford the litigants a meaningful review.” *Champlin’s Realty Assocs. v. Tikoian*, 989 A.2d 427, 449 (R.I. 2010) (quoting *Lemoine v. Dep’t of Mental Health, Retardation and Hospitals*, 113 R.I. 285, 290, 320 A.2d 611, 614 (1974)). Accordingly, remand may be appropriate “[i]f the record before the agency does not support the agency action,

if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it” *Id.* at 448. (quoting *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)).

III

Applicable Law

In the present action, G.L. 1956 §§ 37-14.1-6 and 37-14.1-7 grant the director of the department of administration the power to effectuate policies which maximize participation by minorities in construction projects. MBE certification is governed by regulations issued pursuant to the authority established in the Minority Business Enterprise Act (MBEA). *See* §§ 37-14.1-1 *et seq.* The Legislature enacted the MBEA for the purpose of “carry[ing] out the state’s policy of supporting the fullest possible participation of firms owned and controlled by minorities and women (MBEs) in state funded and state directed public construction programs and projects and in state purchases of goods and services.” Sec. 37-14.1-1.

A “[m]inority business enterprise” or “MBE,” as defined by the MBEA, is “a small business concern, as defined pursuant to § 3 of the federal Small Business Act, 15 U.S.C. § 632, and implementing regulations, which is owned and controlled by one or more minorities or women.” Sec. 37-14.1-3(f). Furthermore, the statute defines “owned and controlled” as a business that is “at least fifty-one percent (51%) owned by one or more minorities or women . . .” and “[w]hose management and daily business operations are controlled by one or more such individuals.” *Id.* at (f)(1) and (f)(2). The MBEA, along with the Administrative Procedures Act, grants the authority to establish rules and regulations governing MBE certifications to the department of administration. *See* § 37-14.1-7.

Accordingly, the DOA issued the Rules, Regulations, Procedures and Criteria Governing Certification and Decertification of MBE Enterprises by the State of Rhode Island (MBE Certification Regulations). Set forth in the MBE Certification Regulations are the requirements that a minority-owned business must meet to become certified: “To qualify as a Minority Business Enterprise (MBE), a firm must meet eligibility standards established in Sections 3.00 through 3.05 of th[e] [MBE Certification Regulations].” MBE Certification Regulations § 1.00.³ Relevant to the instant matter, the CRC indicated that the appellant failed to establish the required “Control Requirements” of 220-RICR-80-10 § 1.7.⁴ Moreover, the CRC concluded that the Appellant failed

³ The Court notes that the previous codification of these MBE Certification Regulations within the Rhode Island Administrative Code was repealed during the pendency of this appeal. However, the implementation of new regulations mentioned *supra* does not alter the language or substance of the applicable code in the present matter and the current codification will be used herein.

⁴ 220-RICR-80-10 § 1.7 (MBE Certification 3.03) provides:

“A. To prove that the minority, disadvantaged or women owners possess control over the business, an applicant must satisfy all the requirements of §§ 1.7(A)(1) through (3) of this Part below:

1. The Minority, Disadvantaged or Women owners must demonstrate that they have control over:

- a. The day-to-day management of the business, and
- b. The policy-making mechanism of the business.

(1) The ownership and control by the Minority, Disadvantaged or Women owners must be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership document.

(2) The Minority, Disadvantaged or Women owners must establish their control by providing substantial evidence that they possess the power to direct or cause the direction of the management of the firm and to make day-to-day as well as major decisions on matters of management, policy, and operations by establishing the following:

- c. Have the power to direct or cause the directions of the purchase of goods, equipment, business

to provide evidence of a substantial personal investment in the business as required by 220-RICR-80-10 § 1.8.⁵

inventory and services needed in the day-to-day operation of the business.

d. Have the authority to hire and fire employees, including those to whom management authority is delegated.

e. Be an authorized signature on all corporate accounts-checking, savings, and other financial accounts.

f. Have a thorough knowledge of the financial structure of the business and authority to determine all financial affairs.

g. Have the capability, knowledge and experience required to make decisions regarding the particular type of work engaged in by the MBE.

h. Have displayed independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business.

2. Any of the following conditions creates an irrefutable presumption that the owners do not have control of the business that is applying for certification.

a. If the Minority, Disadvantaged or Women owners are current employees of a non-minority business corporation, or individual, or partnership which has a significant ownership interest in the business firm applying for certification.

b. If the directors and/or management of the applicant firm is substantially the same as the affiliated non-minority firm.

c. If the applicant is a wholly-owned subsidiary of a non-minority firm.

d. If the applicant has an extremely dependent relationship on a non-minority firm or individual.

3. Any agreement, option, right of conversion, scheme or other restraint, which, if exercised, would result in less than dominant control by the minority owners is prohibited." 220-RICR-80-10 §1.7.

⁵ 220-RICR-80-10 § 1.8 (MBE Certification 3.04) provides:

"A. The Minority, Disadvantaged or Women owners must demonstrate that they have substantial personal investment in the

IV

Sufficiency of Agency Decision

Meadowbrook asserts that the CRC erred by failing to make findings of fact and conclusions of law in its written Decision denying the Application. Specifically, it contends that adequate judicial review is impossible at this time because the CRC ignored relevant evidence, made vague findings of fact and failed to provide any interpretative guidance or application of the pertinent rules or regulations to the evidence. Conversely, the CRC contends that the Decision serves as sufficient notice to Meadowbrook of the reasons for its denial and thus allows adequate facts for review by this Court.

The Administrative Procedures Act requires that “[a]ny final order adverse to a party in a contested case shall be in writing or stated in the record.” Sec. 42-35-12. Such a written decision must “include both findings of fact and conclusions of law, separately stated.” *Id.* The purpose of

Business. Proof of such substantial investment must be established by producing evidence of the following:

1. A substantial amount of money invested in the business, or
2. Investment in the form of capital, equipment, contribution of property, space, patents and copyrights.
 - a. Contributions of personal or professional services alone will not be considered substantial investment for the purpose of this section. However, a contribution of such services will receive consideration when given in conjunction with other tangible forms of investment.
 - b. There will be an irrefutable presumption that the Minority, Disadvantaged or Women owners have not made a substantial investment in the business if a significant portion of the applicant’s equity is financed by a loan or gift from a non-minority corporation, partnership or individual that has a significant interest in the applicant.” 220-RICR-80-10 § 1.8.

requiring agency decisions to contain both findings of fact and conclusions of law is to ““facilitat[e] judicial review, avoid[] judicial usurpation of administrative functions, assur[e] more careful administrative consideration, help[] parties plan their cases for rehearings and judicial review, and keep[] agencies within their jurisdiction.”” *Irish P’ship v. Rommel*, 518 A.2d 356, 358 (R.I. 1986) (quoting *Hooper v. Goldstein*, 104 R.I. 32, 44, 241 A.2d 809, 815 (1968)).

After a thorough review of the Decision and the administrative record, this Court notes that the findings of fact that were made and incorporated into the Decision were not applied to the conclusions of law reached by the CRC. At the outset, the Court notes that swathes of relevant evidence which were submitted by Meadowbrook—at the request of the CRC and MBECO—are not mentioned in the Decision. For example, supplemental information in the form of updated tax returns indicating Ms. St. Godard is “self-employed,” testimony that Mr. St. Godard is no longer a signatory on Meadowbrook’s accounts, as well as documentary and testimonial evidence indicating the legal name is Meadowbrook and not Meadowbrook Farm or Meadowbrook, LLC, d/b/a Meadowbrook Farm. Moreover, certain findings of fact within the Decision itself directly relate to requested supplemental material but the subsequent findings fail to mention any rebuttal evidence provided. Furthermore, the Decision fails to provide an adequate interpretation of the MBECO requirements and subsequent application of the supplied facts to said requirements.

Here, the Decision generally fails to designate which facts were applied to which certification criteria and instead refers to four possible regulations that the Appellant allegedly failed to satisfy. *See Cullen v. Town Council of Lincoln*, 850 A.2d 900, 904 (R.I. 2004) (quoting *Thorpe v. Zoning Bd. of Review of N. Kingstown*, 492 A.2d 1236, 1237) (R.I. 1985)) (holding that a quasi-judicial decision must contain ““findings of fact and the application of legal principles in such a manner that a judicial body might review a decision with a reasonable understanding of the

manner in which evidentiary conflicts have been resolved and the provisions of the . . . ordinance applied.”). Elsewhere, limited sections of the Decision mention other possible regulations but fail to apply the necessary facts or inform the Appellant of the underlying analysis performed. It is well-settled that “[T]he rationality of an agency’s decision must encompass its fact findings, its interpretation of the pertinent law, and its application of the law to the facts as found.” *Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council*, 536 A.2d 893, 896 (R.I. 1988) (quoting *Arrow Transp. Co., Inc. v. United States*, 300 F. Supp. 813, 817 (D.R.I. 1969)).

Moreover, the Decision must address evidentiary conflicts created by the submittal of supplemental evidence provided by the Appellant during the entirety of the Application process. It is well-settled that “[t]he requirement that a municipal council’s decision be accompanied by sufficient factual findings is especially important when evidentiary conflicts abound.” *See Cullen*, 850 A.2d at 904. Our Supreme Court has held that relevant evidence and testimony submitted on behalf of an application that is “not mentioned in any way by [a quasi-judicial body] in its decision, [the Supreme Court] can only conclude that it was overlooked or ignored.” *Sakonnet Rogers, Inc.*, 536 A.2d at 897.

For example, the CRC notified Ms. St. Godard via the Notice Letter that a hearing would be conducted on October 21, 2014 regarding her Application. This correspondence indicated thirteen areas of concern held by the CRC in relation to said Application and concluded that these concerns led to a belief “that the applicant firm may be owned and operated more as a family owned business, rather than as a WBE.” (Notice Letter at 6). Subsequently, the CRC rendered a written Decision after a site visit and two hearings where supplemental evidence and information were provided. Strikingly, the language and substance of the majority of the written Decision—including the finding of facts and interpretation—mirror the language and concerns first

promulgated in the Notice Letter. *See Irish P'ship*, 518 A.2d at 358-59 (quoting *May-Day Realty Corp. v. Bd. of Appeals of Pawtucket*, 107 R.I. 235, 239, 267 A.2d 400, 403 (1970) “[t]hose findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany.”). Noticeably absent from much of the Decision are references to supplemental evidence or testimony provided by Ms. St. Godard at the invitation of the CRC. *See Sakonnet Rogers, Inc.*, 536 A.2d at 897.

V

Conclusion

After review, this Court finds the CRC Decision does not contain the requisite findings of fact and conclusions of law, so it is in violation of statutory provisions. Here, the Court finds the findings of fact and application of legal principles are not sufficient to allow for review at this time. Accordingly, this Decision is remanded to the CRC for adequate findings of fact and conclusions of law.

Counsel shall submit the appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Meadowbrook, LLC v. Rhode Island Department of Administration, et al.

CASE NO: PC-2015-2148

COURT: Providence County Superior Court

DATE DECISION FILED: July 9, 2019

JUSTICE/MAGISTRATE: McGuirl, J.

ATTORNEYS:

For Plaintiff: Nicholas J. Goodier, Esq.

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