

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[FILED: August 7, 2019]

WED COVENTRY SEVEN, LLC,
Appellant,

v.

TOWN OF COVENTRY ZONING BOARD
OF APPEALS, ROBERT CROWE, in his
capacity as the Chairman of the Town of Coventry
Zoning Board of Appeals, VIRGINIA SOUCY,
in her capacity as a member of the Town of
Coventry Zoning Board of Appeals, RUSSELL
LACAILLADE, in his capacity as a member of
the Town of Coventry Zoning Board of Appeals,
JOHN D'ONOFIRO, in his capacity as a member
of the Town of Coventry Zoning Board of Appeals,
JEANNE KOSTYLA, in her capacity as a
member of the Town of Coventry Zoning Board
of Appeals, ROBERT THIBEAULT, in his
capacity as Finance Director of the Town of
Coventry Zoning Board of Appeals, and
THE TOWN OF COVENTRY, as a municipal
entity,
Appellees.

C.A. No. KC-2018-0567

DECISION

LANPHEAR, J. Before this Court is the Appellant's, WED Coventry Seven, LLC (WED or Appellant), appeal of the Town of Coventry Zoning Board of Appeals (Zoning Board) Decision. The Zoning Board approved and sustained the Coventry Planning Commission's (Planning Commission) Decision, which denied the Appellant's Conceptual Master Plan application for a proposed solar installation. The Zoning Board based its approval on grounds that there was evidentiary support on the record for the Planning Commission's Decision. WED seeks the reversal of the Zoning Board's Decision for the reasons that substantial rights of the Appellant

have been prejudiced; the Zoning Board Decision is not premised on competent, credible evidence; and the Zoning Decision is not supported by the record. The Respondents timely objected. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts and Travel

WED owns the property located at 394 Carrs Trail and 5641 Flat River Road, Coventry, Rhode Island, otherwise known as, Assessor's Plat 315, Lots 37.1, 37.5, and 58 (the Property). (Appellant's Ex. A.) The Property consists of 107.6 acres of rural land and is designated as a Rural Residential District (RR-5) Zoning District—a Very Low Density Residential District (VDR). (Appellant's Ex. D; Appellee's Ex. B.) On October 13, 2017, WED submitted an application for a Special Use Permit in order to seek the approval of a proposed 5.22 megawatt ground mounted solar energy project. (Appellant's Ex. A; Appellant's Ex. D.) This proposed project constituted a Major Solar Installation pursuant to Article 21 of Coventry's Town Zoning Ordinance. A Major Solar Installation is defined as, "[a] solar installation designed primarily to sell electricity to a utility supplier, or a solar installation with an output exceeding 25 kW or exceeding 20% of the net buildable area (the total area of the applicable lot, minus setbacks, vegetated buffers and wetlands)." (Appellant's Ex. D.) In order to comply with the Town's Zoning Ordinances, a Major Solar Installation requires "Major Land Development" approval from the Planning Commission and a Special Use Permit from the Zoning Board. (Appellant's Ex. D.)

The Planning Commission held hearings on the Appellant's Master Plan petition on October 25, 2017, November 15, 2017, and November 29, 2017. (Appellant's Ex. D.) During the Planning Commission meetings, Kevin Morin, a Registered Professional Civil Engineer from DiPrete Engineering, Hannah Morini from Green Development, LLC, and Developer Mark

DePasquale testified in favor of the Master Plan. (Appellant's Exs. B, C.) Specifically, Morin explained the overview of the site, and the detailed description of the proposed construction. (Appellant's Exs. B, C.) Morini testified regarding the aging and future decommissioning of the solar array. (Appellant's Ex. B.) DePasquale testified as to the overview of the Master Plan, deforesting, farming as the site's primary purpose, dual use, and WED's lease option with Carrs Trail, LLC. (Appellant's Exs. B, C.) Attorney Steve MacGillivray, the Town of Coventry Solicitor, testified as to the relevant law for Coventry's Zoning Ordinances and legal requirements in order to obtain a Special Use Permit. (Appellant's Ex. C.) In opposition to the Master Plan, local residents presented testimony regarding the inadequacy of the Master Plan's Application, and the proposed solar farm's inconsistency with the District's Comprehensive Plan. (Appellant's Ex. C.) During the Planning Commission Meetings, no citizens spoke in favor of the Petition. (Appellant's Ex. D.)

The Planning Commission rendered a Decision on November 29, 2017. (Appellant Ex. D.) After reviewing the material submitted by WED in support of its Master Plan Application and hearing of evidence at the public hearing, the Planning Commission made the following findings. First, the Planning Commission found that the subject Property was in a very low-density rural residential zone and in rural Western Coventry, where fragmentation and development are negative factors. The Planning Commission analyzed the Coventry Comprehensive Community Plan and the Coventry Zoning Ordinance in order to decide the appropriate decision regarding development. The Planning Commission reasoned that the Coventry's Comprehensive Community Plan and its Zoning Ordinance are intended to work in concert with one another, and how the Coventry Comprehensive Community Plan can supplement provisions of the Coventry's Zoning Ordinance. The Commission found that the language of the Coventry Comprehensive Community Plan and

the Coventry Zoning Ordinance “limit the scale and intensity of large commercial projects in the very low density residential zone in western Coventry in order to preserve the rural and agricultural character of the zone.” (Appellant’s Ex. D at 18.) Based on the exhibits and testimony, the Planning Commission found that the “proposed development is not consistent with the Town’s comprehensive community plan because the scale and intensity of the proposed development is incompatible with the Land Use Element of the comprehensive community plan’s goal to preserve the rural character of western Coventry.” (Appellant’s Ex. D at 18.) The Planning Commission further elaborated that while the Town’s Zoning Ordinances allow for major solar installations with a special use permit, the ordinance is silent as to considerations of scale and intensity, which naturally vary on a property-by-property, project-by-project basis. (Appellant’s Ex. D at 18.) The Planning Commission noted that a development project may be appropriate in scale and intensity for one property, but not the other. (Appellant’s Ex. D at 18.) Specifically, the factors include: the zoning district, lot size, topography, buildable area, etc. (Appellant’s Ex. D at 18.) Thus, the Planning Commission consulted the Land Use Element of the Town’s Comprehensive Community Plan, as mandated by both statute and ordinance. (Appellant’s Ex. D at 18.)

The Planning Commission found that the proposed solar array project was not consistent with the Town’s Comprehensive Plan. (Appellant’s Ex. D at 18.) However, with respect to the remaining Master Plan requirements, the Planning Commission found the following: the proposed project met the minimum dimensional standards of the zoning ordinance; the Solar Installation will not have significant, negative impacts to the environment; the proposal does not result in the creation of individual lots with physical constraints to development that would make it impracticable to build on those lots according to pertinent regulations and building standards; and the proposed project appears to have adequate and permanent access to a public street. (Appellant’s

Ex. D at 18-19.) Accordingly, the Planning Commission denied the Conceptual Master Plan Application for the proposed Solar Installation. (Appellant's Ex. D at 19.) On January 8, 2018, WED timely appealed the Planning Commission Decision.

The Zoning Board conducted hearings regarding WED's appeal on April 30, 2018 and May 9, 2018. (Appellant's Ex. E.) The Zoning Board considered the record before the Board, including the Planning Commission Decision, the transcripts from the Planning Commission hearings, and the documentary evidence submitted to the Commission and Planning Department. (Appellant's Ex. E.) After extended deliberations concerning evidentiary support on the record before the Planning Commission, a motion was made and seconded to sustain the Planning Commission Decision. (Appellant's Ex. E.) On a roll call vote, the motion was approved 3-2, and the decision of the Planning Commission was sustained. (Appellant's Ex. E at 3.)

On May 30, 2018, WED filed an appeal of the Zoning Board's Decision that affirmed the Planning Commission, ultimately denying WED's petition for Master Plan approval of the proposed Solar Farm installation. WED seeks the reversal of the Zoning Board Decision asserting that substantial rights of the Appellant have been prejudiced; the Zoning Decision is fatally flawed due to the unsoundness of the underlying Planning Commission determination that is not premised on competent, credible evidence; and the Zoning Decision is not supported by the record.

II

Standard of Review

Section 45-23-71 grants the Superior Court jurisdiction to review a decision of the Board of Appeals; here, the Coventry Zoning Board. Such review is governed by § 45-23-71(c), which provides:

“The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court

may affirm the decision of the board of appeal 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:

“(1) In violation of constitutional, statutory, ordinance or planning board regulations provisions;

“(2) In excess of the authority granted to the planning board 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.” Sec. 45-23-71(c).

Review by this Court is not de novo. Rather, this Court reviews planning board decisions “utilizing the ‘traditional judicial review’ standard that is applied in administrative-agency actions.” *Kirby v. Planning Board of Review of Town of Middletown*, 634 A.2d 285, 290 (R.I. 1993). Accordingly, the Court “‘lacks [the] authority to weigh the evidence, to pass upon the credibility of witnesses, or to substitute [its] findings of fact for those made at the administrative level.’” *Id.* at 290 (quoting *Lett v. Caromile*, 510 A.2d 958, 960 (R.I. 1986)). In performing this review, the Court “‘may ‘not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact.’” *Curran v. Church Cmty. Housing Corp.*, 672 A.2d 453, 454 (R.I. 1996) (quoting § 45-24-69(d)). However, the applicant always bears the burden to demonstrate why the requested relief should be granted. *See DiIorio v. Zoning Bd. of Review of City of E. Providence*, 105 R.I. 357, 362, 252 A.2d 350, 353 (1969) (requiring “an applicant seeking relief before a zoning board of review to prove the existence of the conditions precedent to a grant of relief”).

In reviewing a zoning decision, the Court’s review “is confined to a search of the record to ascertain whether the board’s decision rests upon ‘competent evidence’ or is affected by an error of law.” *Kirby, supra* at 290 (quoting *West v. McDonald*, 18 A.3d 526, 531 (R.I. 2011)).

If the Court “can conscientiously find that the board’s decision was supported by substantial evidence in the whole record,” it must uphold that decision. *Mill Realty Assocs. v. Crowe*, 841 A.2d 668, 672 (R.I. 2004) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978)).

III

Analysis

This Court is sitting as an intermediate appellate court. The Coventry Zoning Board was also sitting in its appellate capacity, reviewing the decision of the Planning Commission. Secs. 45-23-66 *et seq.*) It is the Planning Commission that was responsible for holding the evidentiary hearing, making findings of fact and applying conclusions of law.¹ Hence, while the Zoning Board of Review had difficulty discerning factual findings (though it ultimately affirmed the decision), it is this Court’s responsibility to perform a similar task. This Court scours the record, evidence and conclusions of the Coventry Planning Board.

The Planning Commission made findings of fact. As stated on page eighteen of its Decision, it concluded that the “proposed development is not consistent with the Town’s comprehensive community plan because the scale and intensity of the proposed development is incompatible with the Land Use Element of the comprehensive community plan’s goal to preserve

¹ This Major Solar Installation application required “Major Land Development’ Approval from the Planning Commission and a Special Use Permit from the Zoning Board.” This case is an appeal from the Planning Commissions’ denial of the Major Land Development. Planning Commission Decision at 2.

the rural character of western Coventry.” The Board continued by declaring more specific findings:

“[i]n the present matter, the proposed construction of a major, 5.22 MW, solar generating facility will result in the clearing, grading and development of roughly 25 acres (22.6% of the 110.4-acre site) of woodland. The vast majority of this development work is proposed to occur on two of the three lots (Lots 37.1 and 37.5), which lots occupy just 75.73 acres, only 37.39 acres of which are buildable land. The scale and intensity of the proposed commercial development project is found to be contrary to the stated goals of Coventry’s comprehensive community plan regarding the intensity of development in the very low residential district where the preservation of rural character and open space is desired.” (Appellant’s Ex. D at 18.)

The Planning Commission concluded that the proposal “is located in a very low-density rural residential zone. Fragmentation and development are the primary negative factors impacting rural areas including western Coventry.” Appellant’s Ex. D at 16. Hence, the proposal was inconsistent with the Comprehensive Plan.

The Planning Commission was thorough in its analysis. While it concluded that the proposed solar array was inconsistent with the Comprehensive Plan, it also concluded that the project was satisfactory in some respects. The proposal:

- Met minimum dimensional standards (*Id.* at 18);
- Did not have significant, negative impacts to the environment (*Id.*);
- Did not create individual lots which would constrain development (*Id.* at 19); and
- Had adequate and permanent street access (*Id.* at 19).

Of the five points addressed, the Planning Commission Decision found for the applicant on four of the criteria.

Clearly, the findings of fact concerning the compliance with the Comprehensive Plan were pivotal to the Planning Commission’s denial and are discussed in more detail in the Planning

Commission Decision. These inconsistencies are set out clearly. This was a proposed intense use of commercial development in a residential district designed for low intensity. This, the Planning Commission concluded, was inconsistent with the Comprehensive Plan.

The Planning Commission's findings of fact are given deference. *West*, 18 A.3d at 531. The role of the Planning Commission in the local government's regulatory control over land development is significant. Local Planning Commissions are charged with drafting Comprehensive Plans, in concert with citizen input and state review, and the city or town council adopts the plan in the same manner as an ordinance. Secs. 45-22.2-8, 9. The plans are to promote orderly growth cognizant of the characteristics of the land, promote a positive economic climate, produce and rehabilitate housing, protect resources, preserve open space and the like. Secs. 45-22.2-3(c), 45-22.2-6. The plans are to be updated every 5 years. 45-22.2-12. The planning commissions are then charged with the responsibility of ensuring compliance with the Comprehensive Plans by reviewing zoning changes before town council enactment and specifically reviewing land development projects at various stages. Secs. 45-22-7(d), 45-23-43(c), 45-24-51, *et seq.* Noncompliance with the Comprehensive Plan has been established in the record. On that basis, the Planning Commission rejected the applicant's proposal. The Commission's findings of fact were based upon evidence in the record and well within its authority. Its conclusions of law were appropriate.

IV

Conclusion

For the reasons stated, the Decisions of the Planning Commission and the Town of Coventry Zoning Board of Appeals are affirmed. Appellant's request for attorney's fees is denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: Kent County Superior Court

DATE DECISION FILED: August 7, 2019

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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