STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 10, 2013)

JOANNE CAMARA, THOMAS CAMARA, PETER CALISE, CAROL CALISE, JOHN M. CONSTANTINO, ANTHONY MELLO, PETER ACHILLE and SANDRA ACHILLE,	:	
Appellants	:	
v.	:	**C.A. No. PC 2007-5479**
ROBERT S. JENSEN,	:	
Applicant/Appellee	:	
and	:	
CHARLES ALEXANDRE, A. WILLIAM JOSEPHS, WILLIAM McMULLEN, EDWARD CORREIA, DAVID R. SIMOES, JOSEPH A. ASCIOLA and BRUCE KOGAN, in their capacity as Members of the Zoning Board of Review of the Town of Bristol,	:	
Appellees	:	

DECISION

McGUIRL, J. This matter arises before the Court on appeal from a decision of the Zoning Board of Review of the Town of Bristol (the Board). In that decision, the Board granted the application of Robert S. Jensen (Jensen) for dimensional variances from the side, front, and rear setbacks required by the Zoning Ordinance of the Town of Bristol (the Zoning Ordinance). The Board approved construction of a single-family dwelling on the non-conforming lot. Joanne Camara, Thomas Camara, Peter Calise, Carol Calise, John M. Constantino, Anthony Mello, Peter Achille, and Sandra Achille (collectively, Appellants) filed a Complaint against Charles Alexandre, A. William Josephs, William

McMullen, Edward Correia, David R. Simoes, Joseph A. Asciola, and Bruce Kogan (collectively, the Board Members) in their capacities as members of the Board, and Jensen, individually. Appellants requested that this Court vacate the decision of the Board for lack of jurisdiction or authority and deny Jensen's application for dimensional variances. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts & Travel

Jensen owns Tax Assessor's Plat 133, Lot 75 (the Property, or the Lot), a 2925 square foot parcel of land located on Wilcox Street in Bristol, Rhode Island. (Zoning Board Decision, October 14, 2005 (First Zoning Decision), at 1; Zoning Board of Review Application, at 1.) The Property is zoned R-15, a zoning classification intended for medium-density residential areas comprised of single household detached structures. (First Zoning Decision, at 1; Bristol Town Code ch. 28 § 28-111.) The Zoning Ordinance requires that new homes built in R-15 zones have minimum front and rear setbacks of thirty-five feet, and side setbacks of twenty feet. Bristol Town Code ch. 28 § 28-111. Jensen's Property, however, is only sixty-five feet deep and forty-five feet wide. (Site Plan.) Accordingly, it would be impossible for Jensen to construct a building on the Property in compliance with these requirements. See id. That is, because the Lot is only forty-five feet wide, compliance with the side yard setbacks would only allow a structure of five or fewer feet in width. See id.; Bristol Town Code ch. 28 § 28-111. Further, because the Lot is only sixty-five feet deep, compliance with the front and rear yard setbacks would prevent Jensen from building any structure, as the required setbacks overlap by five feet. See Site Plan; Bristol Town Code ch. 28 § 28-111.

On July 14, 2005, Jensen filed an application with the Town of Bristol seeking dimensional variances from the side, front, and rear yard setback requirements so that he could construct a two-bedroom, single-family dwelling. (Zoning Board of Review Application, at 1.) On September 12, 2005, Jensen appeared before the Board and, through counsel, presented expert testimony in support of the requested dimensional variance. Id. at 3. George Valentine, a certified real estate appraiser, presented expert testimony and an expert report, which concluded that Jensen met the statutory requirements for a dimensional variance. See Jensen v. Zoning Board of Review of Bristol, No. 2005-5555, slip op. at 2 (filed May 10, 2007) (Jensen I); Consulting Report for Property Located at Wilcox Street, Bristol, RI, at 1-2. Valentine further opined that the hardship suffered by Jensen was more than a mere inconvenience and would deprive Jensen of all beneficial use of the Property. (Jensen I, at 2.)

Several property owners of abutting lots objected to the variance application. Id. at 3. Although the objectors spoke in opposition to the application, they did not present any expert testimony. Id. Rather, the objectors expressed concerns that the Lot, which is less than 3000 square feet, would be too small to support a home. Id. They also contended that the proposed home would alter the character of the neighborhood, that the height of the home would be inconsistent with the heights of neighboring structures, and that the proposed structure would create traffic and parking congestion. Id.

At the hearing's conclusion, the Board denied Jensen's application. (First Zoning Decision, at 1.) The Board found that granting relief would alter the general characteristic of the surrounding area and impair the purpose of the Zoning Ordinance. Id. It supported this finding by concluding that "the proposed dwelling would be entirely

out of character with the surrounding neighborhood due to its relative size and height." Id. The Board additionally found that the variance requested was not the least relief from the provisions of the Zoning Ordinance necessary to remove Jensen's hardship. Id. To support this conclusion, the Board noted that Jensen "proposed a dwelling at the maximum size that could be placed on the lot," but that "a smaller dwelling, compatible with other dwellings in the neighborhood, could be constructed on the lot." Id.

Jensen appealed the decision of the Board to the Superior Court, seeking reversal of the Board's decision. In that case, PC-2005-5555, Maria and Anthony S. Mello—who own the lot directly behind Jensen's Property and who were among the objectors at the hearing before the Board—filed a Motion to Intervene, which the Court granted. (Jensen I, at 4.) The Intervenors argued that the Court should uphold the Board's decision. The Intervenors also contended that the Board lacked the power to grant dimensional relief to Jensen because the undersized Lot had been unlawfully subdivided at its formation.

In PC-2005-5555, this Court, Vogel, J., affirmed the Board's finding that the Lot is a legal subdivision and therefore permissibly subject to dimensional relief. Id. at 7-8. To support this conclusion, the Court noted:

> The Board considered the lot as lawfully non-conforming. At the hearing, Counsel to the Board, Attorney Ryan, advised the Board that this Lot 'appears to be a 3,000 square foot [sic] lot, which is lawfully non-conforming.' In its Brief opposing this appeal, the Board acknowledges that the Lot is 'considered by the Board to be a lawful non-conforming lot[.]' * * * The Intervenors' proffer does not sufficiently challenge the finding of the Board on this issue. It is clear that the Lot presently appears on the tax rolls as a separate parcel, Plat #133, Lot #75. The Intervenors do not proffer evidence suggesting that the parcel was not a separate lot as of July 28, 1961. Absent evidence that the parcel was not lawfully existing or established on July 28, 1961, the Lot is buildable.

Id. Thus, in Jensen I, the Court concluded that the Intervenors failed to establish that the Lot was an illegal non-conforming lot. Although in that appeal the Appellants proffered additional evidence to support the conclusion that the Lot was an illegal, non-conforming lot, this Court concluded that the proffered evidence, even if accepted, would not constitute sufficient proof of the Lot's illegal status. Id. at 7. The Court concluded, therefore, that the Lot was subject to dimensional relief.

The Court found that the Board's conclusions—that the requested variance was not the least relief necessary and that the proposed home would alter the character of the surrounding area—were arbitrary and capricious. Id. at 11-12. Accordingly, the Court remanded the matter to the Board for findings of fact to support its conclusions of law. Id. at 12-13. It directed the Board to reconsider its conclusions without regard to the height of the proposed structure, provided that the height of the proposed structure fell within the Zoning Ordinance's maximum allowable height. Id. at 13. Further, having concluded that Appellants failed to present sufficient evidence to establish that the Lot is not buildable, the Court declined to permit Appellants to present additional evidence on remand. Id. at 7.

On remand, the Board did not hear additional testimony or allow the presentation of new evidence before it. (Zoning Board Decision, September 25, 2007 (Second Zoning Decision), at 1.) Following the hearing, the Board granted Jensen's application for dimensional variances on his Lot. Id. The Board found that Jensen would suffer a hardship if he were not permitted a dimensional variance and that the hardship would be more than a mere inconvenience, because denying a variance would prevent Jensen from all beneficial use of the Lot. Id. In addition, the Board found that the hardship was due

to the unique characteristics of the land, rather than the general characteristics of the area or to an economic disability of Jensen; and was a result of the character of the land, rather than Jensen's prior actions or desire for financial gain. Id. The Board further found that granting dimensional relief would not alter the general characteristic of the surrounding area or impair the intent or purpose of the Zoning Ordinance, as the proposed structure measured twenty feet by thirty feet, and a total footprint of six hundred square feet was not out of character with homes in the surrounding area. Id. The Board also concluded that the variance granted was the least relief necessary from the provisions of the Zoning Ordinance because a smaller building footprint would not allow for a reasonably sized living area. Id.

On October 15, 2007, following the grant of the variance, Appellants filed a complaint in the Superior Court to appeal the Second Zoning Decision. In their complaint, Appellants allege that the Board erred in granting the dimensional variance. Appellants additionally contend that the Board lacked jurisdiction to grant the variance because the Lot at issue is an illegal, non-conforming lot. Accordingly, they argue, the decision granting relief to Jensen was done (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. The Appellants request that this Court vacate the decision of the Board for lack of jurisdiction and deny Jensen's application.

The Appellants did not pursue this claim or seek a scheduling order for briefing until November 9, 2011. The Appellants also did not seek a stay pending appeal. On June 29, 2011, while the appeal was pending, the Town of Bristol issued Jensen a building permit. Jensen began construction of the single-family home. In December 2011, he had the property excavated so that he could pour the house's footings and foundation. On April 11, 2012, Appellants filed for a temporary restraining order to prevent Jensen from further developing the Property, which order was denied on May 2, 2012. After a review of all of the evidence and memoranda filed in this matter, this Decision follows.

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:
> (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.

"[T]he Superior Court reviews the decisions of a plan commission or board of review under the 'traditional judicial review' standard applicable to administrative

agency actions." Restivo v. Lynch, 707 A.2d 663, 665 (R.I. 1998). When reviewing a zoning board decision, the Superior 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 665-66 (quoting Lett v. Caromile, 510 A.2d 958, 960 (R.I. 1986)). The trial justice "must examine the entire record to determine whether 'substantial' evidence exists to support the board's findings." DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979).

The term "substantial evidence" has been defined 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., 424 A.2d 646, 647 (R.I. 1981)). "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Apostolou v. Genovesi, 120 R.I. 501, 509, 388 A.2d 821, 825 (1978) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971); Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)).

III

Analysis

A

Presentation of Additional Evidence

Appellants argue that this Court should reverse the decision of the Board and deny Jensen's application for a dimensional variance. Nonetheless, Appellants do not dispute that the entire record contains substantial evidence sufficient to support the

Board's findings. Rather, they file this appeal "on a very narrow issue of statutory construction of §600 and 601 dealing with the non-conformance at the time the lot was created." They contend the error justifying relief was the Board's failure to review whether the Property at issue was subdivided in compliance with the laws in effect at the time of its creation. Appellants argue that Jensen's Property was not lawfully established prior to the enactment of the 1961 Zoning Ordinance and that the Board therefore lacked authority or jurisdiction to grant a dimensional variance to the Lot at issue. Under this reasoning, the Appellants maintain that the Board exceeded its authority by granting the variances.

In response, Jensen and the Board Members argue that it was not error for the Board to decline to review the Zoning Ordinance. According to Jensen and the Board Members, the Board was not required to hear additional evidence or arguments on remand because the Superior Court remanded the matter with instructions that the Board consider the Lot buildable. Moreover, in Jensen I, this Court declined to consider additional evidence and held that the evidence proffered by Appellants, even if it were accepted, did not constitute sufficient proof that the parcel is an illegal subdivision, and therefore, not buildable. On remand, the Court ordered the Board merely to make findings of fact with regard to whether Jensen sought the least relief necessary and whether the proposed building would alter the character of the area. Appellants failed to request that new evidence be introduced.

Subsection (c) of § 45-24-69 of the Rhode Island General Laws allows this Court to consider additional evidence "if it appears to the [C]ourt that additional evidence is necessary for the proper disposition of the matter[.]" Under that subsection, although a

Superior Court justice is permitted to remand a case to the Board for the taking of additional evidence, that the Board take additional evidence is not a matter of course. See Ne. Corp. v. Zoning Bd. of Review of New Shoreham, 534 A.2d 603, 605 (R.I. 1987). Rather, subsection (b) of § 45-24-69 authorizes the Superior Court to remand a matter to the Zoning Board of Review for presentation of additional evidence when "it is shown to the satisfaction of the [C]ourt that the additional evidence is *material* and that there were *good reasons for the failure* to present it at the hearing before the zoning board of review." Sec. 45-24-69(b) (emphasis added). That is, the statute instructs this Court to remand with instructions that the Board consider additional evidence only when additional evidence is necessary for the proper disposition of the matter, is material, and the Court is satisfied that there were good reasons for the failure to present the evidence at the initial hearing. Sec. 45-24-69(b), (c).

In this matter, the Superior Court declined in Jensen I to permit Appellants to present additional evidence on remand. The Court concluded that permitting such evidence was not necessary because, even if the Court were to accept the Appellants' proffered evidence as true, "it would not constitute sufficient proof of the fact that the [Appellants] seek to establish[.]" (Jensen I, at 7.) In finding that Appellants failed to present sufficient evidence to establish that the Lot is not buildable, the Court also implicitly found that the proffered additional evidence was not material to the outcome. The Court noted that although Appellants offered additional evidence to support the conclusion that the Lot was illegally subdivided—a 1959 deed transferring the parcel from Edward J. and Florence Belmore to Clifford Belmore, a copy of the 1931 Bristol Zoning Ordinance, and field cards relating to the Lot prepared by Town appraisers—that

evidence failed to raise a valid issue as to whether the Lot is buildable. See § 45-24-69(c) (providing that the Superior Court, in reviewing the record of the hearing before the zoning board of review, may permit a party to present additional evidence in the appeal if that "additional evidence is necessary for the proper disposition of the matter"); Edward H. Ziegler, Jr., Rathkopf's The Law of Zoning and Planning, § 62:46 at 62-120 (2006) (noting that such additional evidence is "only used to clarify or supplement the record before the board" and that the Court must still determine whether the Board's determination was arbitrary on the basis of the clarified or supplemented record). The Court declined to consider the additional evidence offered by the Appellants.

The Appellants did not request that additional evidence be considered on remand to the Board under § 45-24-69(b). Furthermore, the Appellants did not articulate any reasonable basis for the introduction of new evidence under that provision. Appellants were not entitled to present additional evidence as a matter of right, and in Jensen I, this Court properly declined to remand with instructions that additional evidence be heard. Accordingly, this Court concludes that the Appellants have failed in their burden of demonstrating that the Second Zoning Decision was in violation of constitutional, statutory, or ordinance provisions; in excess of the authority granted to the Board; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or arbitrary or capricious or characterized by abuse of discretion.

B

Res Judicata

Additionally, according to Jensen and the Board Members, whether the Property is a lawfully established or existing Lot was finally and necessarily determined by this Court, therefore barring relitigation of the issue as res judicata. Jensen and the Board Members argue that Appellants are barred from litigating whether the Lot was lawfully established or existing because the Superior Court found that the Lot is buildable and Appellants failed to appeal that determination.

The Appellants do not address the issue of res judicata in their brief to this Court.[1] They merely contend that the "Board refused to effectively review the laws in effect at the time of the creation of the lot in question." (Appellants' Brief, Camara v. Jensen, No. 2007-5479, at 2.) In essence, Appellants disagree with the Jensen I Court's interpretation of the statute and ask this Court to reconsider its interpretation of the statute.

When a court of competent jurisdiction renders a final judgment on the merits, res judicata bars the relitigation of any issue which was or could have been raised in the prior action. Allen v. McCurry, 449 U.S. 90, 94 (1980); Mulholland Constr. Co. v. Lee Pare & Assocs., Inc., 576 A.2d 1236, 1238 (R.I. 1990); Providence Teachers Union, Local 958, A.F.T. v. McGovern, 113 R.I. 169, 172, 319 A.2d 358, 361 (1974). This doctrine evolved not only to relieve parties to an action of the time and expense of multiple lawsuits, but also to conserve judicial resources. Montana v. United States, 440 U.S. 147, 153-54 (1979). Accordingly, when the requirements of res judicata are met, the doctrine

[1] Further, our Supreme Court has long held that when a party fails to brief or argue an issue, that party waives that issue in later proceedings. E.g., Kennedy v. New England Bakery, 80 R.I. 224, 229, 95 A.2d 454, 456 (1953); State v. Blood, 70 R.I. 85, 90, 37 A.2d 452, 455 (1944); Rynn v. Rynn, 55 R.I. 310, 181 A. 289, 294 (1935).

"serves as an 'absolute bar to a second cause of action.'" Garganta v. Mobile Village, Inc., 730 A.2d 1, 5 (R.I. 1999).

In Rhode Island, res judicata requires (1) an identity of issues; (2) an identity of parties; and (3) that a court of competent jurisdiction has entered a final judgment on the merits of the cause of action. Taylor v. Delta Electro Power, Inc., 741 A.2d 265, 267 (R.I. 1999) (quoting Garganta, 730 A.2d at 4); Mulholland Constr. Co., 576 A.2d at 1238; D'Amario v. Butler Hosp., 921 F.2d 8, 10 (1st Cir. 1990). In evaluating the first requirement—that the prior and subsequent proceedings involve an identity of issues—a court will consider (1) whether "the issue sought to be precluded . . . [is] identical to the issue decided in the prior proceeding"; (2) whether the issue was actually litigated; and (3) whether the issue was necessary to the decision. State v. Godette, 751 A.2d 742, 746 (R.I. 2000).

Here, in evaluating the three factors to determine whether the first requirement of res judicata is met—whether the issue is the same, whether the issue was actually litigated, and whether the issue was necessary to the decision—it is apparent that there is an identity of issues in this case. See id. The issue in Jensen I—whether the Property was a lawfully existing or established lot—is identical to the issue in this Appeal, as Appellants seek to establish that the Property is not a lawfully existing or established lot. It is also clear from the decision in Jensen I that the issue was actually litigated. See id. In fact, this Court summarized Appellants' arguments in the decision. In that matter, Judge Vogel wrote:

> The Intervenors argue that the Board's findings and decision should be affirmed. Furthermore, they argue that the Board failed to consider that the Lot is "an arguably illeagal [sic] subdivision," which would deny the Board the ability to grant any relief. In support of this latter contention,

> they seek to present evidence regarding the history of Mr. Jensen's lot, the Zoning Ordinance then in effect, and Town records regarding the parcel.

Jensen v. Zoning Board of Review of Bristol, P.C. No. 2005-5555 (Super. Ct. May 10, 2007) (alterations in original) (citations omitted). In addition, that issue was necessarily determined in Jensen I. See Taylor, 741 A.2d at 267; Garganta, 730 A.2d at 4. The Lot's status as a lawful or unlawful subdivision affected the Board's authority to grant dimensional variances. Furthermore, the second requirement for res judicata—identity of parties—is met, as the parties to the instant action do not dispute that they are identical to the parties in Jensen I, PC-2005-5555.

Lastly, the third requirement for res judicata—that a court of competent jurisdiction has entered a final judgment on the merits of the cause of action—is also met. For purposes of res judicata, a judgment is final when no appeal is taken from it within the allotted time. Lemieux v. Am. Universal Ins. Co., 116 R.I. 685, 697-98, 360 A.2d 540, 546 (1976); see Title Inv. Co. of Am. v. Fowler, 504 A.2d 1010, 1013 (R.I. 1986). Although an order or remand to an agency will not generally be considered a final, appealable order, the remand may still have preclusive effect on matters for which litigation has been terminated. See State v. Presler, 731 A.2d 699, 701-03 (R.I. 1999); 73A C.J.S. Public Administrative Law and Procedure § 469; Medeiros, 122 R.I. at 410, 408 A.2d at 600.

Here, the case was remanded with instructions that the Board not consider additional evidence in this matter. Appellants did not appeal Judge Vogel's order remanding the matter to the Board for further findings, even though that decision was final and appealable as to her finding that the Lot was buildable. See, e.g., Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1129 (R.I. 1992) (writ of

certiorari requesting Supreme Court to review Superior Court's reversal of Labor Board decision); Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 803 (R.I. 2000) (writ of certiorari requesting Supreme Court to review portion of Superior Court judgment vacating decision of Rhode Island Department of Health); Smith v. Zoning Bd. of Review of Westerly, 111 R.I. 359, 360, 302 A.2d 776, 777 (1973) (petition for certiorari requesting Supreme Court to review Superior Court judgment reversing a decision of a Zoning Board of Review).

Accordingly, because no appeal was taken, Judge Vogel's decision became a final judgment on the merits as to whether the Lot was buildable. See, e.g., Title Investment Co. of Am., 504 A.2d at 1010; see also Dep't of Corr. of R.I. v. Tucker, 657 A.2d 546, 549 (R.I. 1995) (holding that an administrative adjudication may be considered a final determination for purposes of res judicata). On that issue, Judge Vogel's decision terminated the litigation: she remanded the case with instructions that the Board consider the Lot buildable and not hear additional evidence on that issue. See State v. Presler, 731 A.2d 699, 707 (R.I. 1999) (Flanders, J. concurring); 73A C.J.S. Public Administrative Law and Procedure § 469; Medeiros, 122 R.I. at 410, 408 A.2d at 600. When no appeal was filed within the appeal period, the doctrine of res judicata became effective as a matter of law. Therefore, the unappealed decision concluding that the Lot at issue was lawfully existing or established collaterally estops Appellants from again raising that issue before this Court.

Furthermore, this Court notes that even if res judicata did not apply, the law of the case doctrine would bar relitigation of this issue. "[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the

same case." Presler, 731 A.2d at 705-07 (Flanders, J., concurring) (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 815-16 (1988) (quoting Arizona v. California, 460 U.S. 605, 618 (1983))). Similarly, when "one judge has decided an interlocutory matter in a pending suit, a second judge on that same court, when confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing the first ruling." E.g., Salvadore v. Major Electric & Supply, Inc., 469 A.2d 353, 355-56 (R.I. 1983); State v. Infantolino, 116 R.I. 303, 310, 355 A.2d 722, 726 (1976); R.I. Ophthalmological Society v. Cannon, 113 R.I. 16, 20, 317 A.2d 124, 126-27 (1974). In essence, the doctrine ensures consistency and avoids the necessity of reconsidering a matter once it has been decided during the pendency of a single, continuing suit. Id.; 18 Charles Alan Wright et al. Federal Practice and Procedure § 4478 at 788 (1981).

In this case, Judge Vogel determined the Lot's status as a lawful subdivision. Further, this Court concluded that Appellants failed to proffer material evidence entitling them to present further evidence to the Board on appeal. Those determinations became the law of this case. See Columbian Nat'l Life Ins. Co. v. Industrial Trust Co., 57 R.I. 325, 190 A. 13 (1937) (holding that the Court's decision in its previous opinion became the law of the case on the second appeal in the same case); 18 Moore's Federal Practice § 134.24 at 134-60 ("Once an appeal is taken and an issue is decided, that decision becomes the law of the case for that issue, even if decided on an interlocutory appeal.").

Accordingly, this Court concludes that the Appellants failed in their burden of proof to establish that the Board acted in violation of constitutional, statutory, or ordinance provisions; in excess of the authority granted to the Board; or that its decision

was made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or arbitrary or capricious or characterized by abuse of discretion.

IV

Conclusion

After review of the entire record, the Court finds that the Board's decision contains substantial evidence sufficient to support the Board's findings. Further, this Court concludes that the Board's decision was not in violation of the constitutional or statutory provisions; in excess of its statutory authority; affected by error or law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion. Substantial rights of the Appellants have not been prejudiced. Accordingly, the Board's decision granting dimensional relief is sustained. Counsel for the prevailing parties shall submit orders in accordance with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	Camara, et al. v. Jensen, et al.
CASE NO:	PC 2007-5479
COURT:	Providence County Superior Court
DATE DECISION FILED:	April 10, 2013
JUSTICE/MAGISTRATE:	McGuirl, J.
ATTORNEYS:	
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