STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(FILED: October 30, 2014)

GREENVALE FARM, LLC	:	
	:	
V.	:	
	:	
ZONING BOARD OF REVIEW FOR THE CITY OF PORTSMOUTH, by and through its members, JAMES E. NOTT, KEVIN M. AGUIR, MICHAEL LYGA, JAMES E. EDWARDS, and KENNETH A. JAMES, JR., and NANCY HOWARD	:	**C.A. No. NC-2010-0169**

DECISION

GALLO, J. Before this Court is an appeal from a decision of the Zoning Board of Review for the City of Portsmouth (Zoning Board) that overturned a decision rendered by the Portsmouth Zoning Enforcement Officer, Mr. Gary Crosby, who had found that Appellant, Greenvale Farm, LLC (Greenvale), was lawfully using its property to host weddings. Jurisdiction over this timely appeal is pursuant to G.L. 1956 § 45-24-69(d).

I

Facts and Travel of the Case

Greenvale owns property located on Greenvale Lane, which is situated on the easterly side of Wapping Road in Portsmouth, Rhode Island (the Property). Located in an R-40 Zone, the Property consists of approximately fifty-six acres of land on which Greenvale operates a vineyard.[1] (Mem. of Appellant 1.) The Property was used primarily for farming from 1863, but in the 1990s, Greenvale began to make and sell wine. Id. According to Greenvale, the Property

[1] An R-40 Zone is a residential zone with a minimum lot size of 40,000 square feet. Portsmouth Zoning Ordinance, Art. III, § B(2).

has been used to host weddings and wedding receptions since 2001. Id. Greenvale rents the Property for a fee, but the renter is responsible for providing all services, such as caterers, music, tents, etc. Id. at 1-2.

In 2009, Greenvale wanted to construct a building closer to Wapping Road; the building would be used not only to make wine and store products but also to serve as a "tasting room and [a] base of operations." Id. at 2. When Nancy Howard—an abutter residing approximately 1500 feet from the Property—learned of the proposed construction, she contacted Mr. Crosby. Id. She was concerned that the use of the Property for weddings and receptions was a violation of the Portsmouth Zoning Ordinance (the Ordinance). Id.

In a decision dated October 27, 2009, Mr. Crosby found that "the manner in which Greenvale Vineyards presently conducts this activity is not a violation" of the Ordinance. (Decision, Oct. 27, 2009.) Mr. Crosby noted in his decision that pursuant to Article III, § C(1) of the Ordinance, "[t]he principal use of the Greenvale property is for agricultural purposes and thus permitted by right." Id. He went on to observe that both the Ordinance and the Rhode Island Enabling Act, § 45-24-1, et seq., are silent on the subject of "non-farm accessory uses." He thus looked to the State Right to Farm Act, G.L. 1956 § 2-23-4(a), to determine that Greenvale's activity on its property is "a viable means of contributing to the preservation of agriculture" and is not in violation of the Ordinance.[2] Id.

[2] The State Farm Act, subsection (a) currently defines "agricultural operations" to include:

> "any commercial enterprise which has as its primary purpose horticulture, viticulture, viniculture, floriculture, forestry, stabling of horses, dairy farming, or aquaculture, or the raising of livestock, including for the production of fiber, furbearing animals, poultry, or bees, and all such other operations, uses, and activities as the director, in consultation with the chief of division of agriculture, may determine to be agriculture, or an agricultural activity, use or

Ms. Howard appealed that decision to the Zoning Board, which conducted hearings on December 17, 2009; January 21, 2010; and March 4, 2010. The hearings were properly noticed, and both Greenvale and abutters on both sides of the issue were given an opportunity to be heard and present evidence. Greenvale was not, however, permitted to respond to arguments raised by objecting abutters.

At the hearings, Ms. Nancy Parker Wilson—a principal of Greenvale—testified that ten weddings had been held on the Property since 2009, that "seven more . . . were scheduled by September or October, 2010[,]" and that weddings accounted for "about ten percent of [Greenvale's] income. (Decision at 2, Mar. 18, 2010.) She further testified that each of the four vineyards in Rhode Island hosts weddings, and "[n]ationally it is normal to do so." Id. Mr. Al Bettencourt, Executive Director of the Rhode Island Farm Bureau (RIFB), stated that "he did not know of any successful farm that does not have supplemental activities" and that "[w]eddings are held on farms throughout the country." Id. Mr. W. Michael Sullivan spoke on behalf of the Rhode Island Department of Environmental Management (RIDEM), emphasizing that "having events is common to the [agricultural] industry" and that "state law should be consulted on the question of what activities are included in agriculture." Id. at 1. Several unnamed persons also voiced support for Greenvale, opining that events and activities on the Property would help to support farming. Id. at 2.

> operation. The mixed-use of farms and farmlands for other forms of enterprise *including, but not limited to, the display of antique vehicles and equipment, retail sales, tours, classes, petting, feeding and viewing of animals, hay rides, crop mazes, festivals and other special events are* hereby recognized as a valuable and viable means of contributing to the preservation of agriculture." Sec. 2-23-4(a) (emphasis added to language added in 2014 and absent from the statute at the time of the hearings below).

In opposition to the application, Greenvale testified that the Town of Portsmouth has already issued thirteen permits for various things to Greenvale over a "period of years," that the Property is in a residential area, and that "there are no street lights." Id. at 1. Mr. Ken Ayers, Chief of the RIDEM Division of Agriculture, testified that state law finds that the "mixed use of agricultural land is necessary for farms" but that the law "does not override local zoning." Id. at 2. Additionally, other unnamed neighbors and interested parties "expressed fear about traffic safety based on their own experiences." Id.

The Zoning Board voted unanimously to overturn the decision of Mr. Crosby on two grounds. First, the Zoning Board noted that the Ordinance defines an "accessory use" as one that is "customarily incidental and subordinate to the principal use." Portsmouth Zoning Ordinance, Art. II, § B; Decision at 2, Mar. 18, 2010. The Zoning Board went on to state that hosting weddings and receptions is not a "necessary part of a winery operation" and thus not a proper accessory use to the primary agricultural use of the Property. (Decision at 3, Mar. 18, 2010.) The Zoning Board also stated that the Ordinance limits permitted uses to those set forth in the table of use regulations found in Article V of the Ordinance and that a wedding use is not set forth in that table. Id. Next, the Zoning Board concluded that Mr. Crosby's reliance on the State Right to Farm Act was erroneous because subsection (b) of the relied-upon provision states that "[n]othing herein shall be deemed to restrict, limit or prohibit nonagricultural operations from being undertaken on a farm except as otherwise restricted, regulated, limited or prohibited by . . . ordinance." Id.; § 2-23-4(b). Thus, the Zoning Board found that Mr. Crosby had exceeded his authority by allowing a nonagricultural use that is not allowed under the Ordinance.

The Zoning Board's written decision was recorded in the records of the Portsmouth Town Clerk on March 22, 2010. (Decision at 3, Mar. 18, 2010.) Greenvale filed a timely appeal

to this Court on April 7, 2010. Either before the appeal had been filed, or very shortly afterwards, Greenvale filed a petition with the Zoning Board requesting a special use permit to "conduct weddings, receptions, corporate functions, banquets and the like" on the Property. Greenvale Farm, LLC v. Zoning Board of Review for the City of Portsmouth, 2012 WL 3919754, *2 (R.I. Super. Sept. 5, 2012) (Nugent, J.). That petition was originally assigned for hearing on April 15, 2010, but was not ultimately heard until October 19, 2010. Id. The Zoning Board dismissed the petition in a written decision dated December 30, 2010: the Zoning Board determined that Greenvale's request to hold weddings and receptions was akin to a request to establish an "eating place[,]" a prohibited use in an R-40 Zone, and that, therefore, Greenvale should not be granted a special use permit. Id. at 5; Portsmouth Zoning Ordinance, Art. V, § E(3). Greenvale appealed that decision to this Court in December 2011. The decision of the Zoning Board to dismiss the petition was affirmed on September 5, 2012. Greenvale Farm, LLC, 2012 WL 3919754, at *5.

The briefs for the instant appeal were filed in November and December of 2010, apparently while the parties were awaiting the decision of the Zoning Board on the special use permit petition. Approximately one week after the Zoning Board's written decision denied the special use permit, on January 21, 2011, a motion was filed to assign this appeal for decision. This motion was never heard. No further action was taken by the parties until December of 2013. Thus, by the time this instant appeal reached this Court for decision, Greenvale had applied for and was denied a special use permit by the Zoning Board and the decision had been affirmed by this Court.[3] Greenvale now urges this Court to reverse the decision of the Zoning Board that found that wedding activities are not proper accessory uses to land used primarily for

[3] Greenvale Farm, LLC, 2012 WL 3919754, at *8.

agricultural uses, and the State Right to Farm Act is of no avail to Greenvale because it is subject to limitations set forth in local ordinances.

II

Analysis

A

Greenvale contends that the Zoning Board's refusal to hear its rebuttal arguments at the hearings deprived it of its right to a fair and impartial hearing. Specifically, Greenvale argues that while it was allowed to present an "initial" argument, it was not permitted to respond to subsequent testimony by other interested persons in attendance. The Appellees and Intervenors counter that the hearing was fair and impartial—Greenvale's principal was allowed to testify, Greenvale's counsel gave argument, and abutters spoke on Greenvale's behalf. Further, the Appellees and Intervenors argue that there were no facts in dispute, that the Zoning Board's task was to simply interpret the Ordinance and, thus, no further testimony was needed.

It has long been settled in Rhode Island that zoning boards need not "observe strictly either the rules of evidence or the formality that apply ordinarily in judicial proceedings." Hopf v. Bd. of Review of Newport, 102 R.I. 275, 285, 230 A.2d 420, 426 (1967) (citing Tuite v. Zoning Bd. of Review of Woonsocket, 96 R.I. 307, 191 A.2d 155 (1963)). Rather, the critical and "fundamental requirement" of zoning board hearings is that they be "basically fair and impartial[.]" Id. at 286, 230 A.2d at 426. As such, a zoning board "may not refuse arbitrarily to receive and consider material evidence on the issues being tried." Lumb v. Zoning Bd. of Review of Bristol, 91 R.I. 498, 502, 165 A.2d 504, 506 (1960). Moreover, a zoning board that acts in a quasi-judicial capacity may conduct "hearings . . . with substantial informality in matters of procedure and evidence[,]" so long as the zoning board "appl[ies] rules and

regulations . . . equally and fairly to all persons." Zimarino v. Zoning Bd. of Review of Providence, 95 R.I. 383, 387, 187 A.2d 259, 261-62 (1963) (holding that a zoning board's refusal to permit a party from cross-examining certain witnesses did not render the proceedings unfair, because there was no indication that the board's ruling prevented the party from otherwise presenting competent and relevant evidence); Colagiovanni v. Zoning Bd. of Review of Providence, 90 R.I. 329, 335, 158 A.2d 158, 162 (1960) (holding that a zoning board's refusal to permit *all parties* from conducting cross-examination of witnesses did not render the hearing unfair or partial).

The procedural defect that Greenvale alleges is similar to the zoning board's refusal to permit cross-examination in Colagiovanni, wherein our Supreme Court held that because the zoning board applied its hearing procedures "equally and fairly to all persons . . . before them[,]" it did not err in precluding the cross-examination of adverse witnesses. Colagiovanni, 90 R.I. at 335, 158 A.2d at 162. Here, the Zoning Board permitted *all* parties—Greenvale and other interested persons alike—to present arguments and offer testimony. Furthermore, the Zoning Board precluded *all* parties from giving further testimony in response to other arguments raised. Since it is well established that the Zoning Board need not conduct hearings in strict conformity with the formalities associated with full-fledged judicial proceedings, see Hopf, 102 R.I. at 285, 230 A.2d at 426, and because the Zoning Board applied its procedural rules evenly and to all persons present, see Zimarino, 95 R.I. at 387, 187 A.2d at 261-62, this Court is persuaded that the Zoning Board's denying Greenvale the opportunity to respond to the testimony of objecting parties was not made upon unlawful procedure or in violation of constitutional provisions.[4]

[4] It should also be noted that even if this Court were inclined to find fault with the Zoning Board's hearing procedure, Greenvale fails to offer any potential testimony or evidence that would have been offered at hearing in its rebuttal arguments. With no knowledge of—or even

B

Greenvale next attacks the substantive merits of the Zoning Board decision. Specifically, Greenvale argues that the Zoning Board improperly concluded that a wedding reception is clearly not a "necessary part" of the agricultural use, because the proper consideration is whether an accessory is "customarily incidental and subordinate" to the principal use. Appellees and Intervenors agree that an accessory use must be customarily incidental but posit that "[i]f a principal use is agricultural, there cannot be an accessory use . . . that is non-agricultural" because the accessory and principal uses must be related. The parties also disagree regarding the implications and applications of the State Right to Farm Act.

Rhode Island has long promulgated the doctrine of administrative finality regarding both administrative and zoning appeals. See Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 808 (R.I. 2000); Costa v. Gagnon, 455 A.2d 310, 313 (R.I. 1983). As it applies to zoning laws, this doctrine "bars 'successive applications for substantially similar relief unless a substantial or material change of circumstances has occurred in the interval between the two proceedings.'" Costa, 455 A.2d at 313 (quoting May-Day Realty Corp. v. Bd. of Appeals of Pawtucket, 107 R.I. 235, 237, 267 A.2d 400, 401-02 (1970)). The doctrine of administrative finality "has its roots in the principle that persons affected by a decision in zoning matters ought not to be twice vexed for the same cause and are entitled to have their rights and liabilities settled by a single decision upon which reliance may be placed." Marks v. Zoning Bd. of Review of Providence, 98 R.I. 405, 406, 203 A.2d 761, 763 (1964).

---

context for—the type of evidence that Greenvale was allegedly denied the chance to present, this Court is simply unable to judge whether, and, if so, to what extent Greenvale was prejudiced by the Zoning Board's refusal to hear it.

Importantly, "[t]his rule applies as long as the outcome sought in each application is substantially similar, even if the two applications each rely on different legal theories." Johnston Ambulatory, 755 A.2d at 808 (internal citations omitted). For example, in Costa, the plaintiff sought a variance in 1975 from the Tiverton Zoning Ordinance on grounds that he wished to operate an auto-body on the premises. 455 A.2d at 311. Plaintiff claimed that he already operated a chicken farm on the premises but wished to phase it out in exchange for an auto-body business instead, and that characteristics of the land made it unsuitable for a residence. Id. The zoning board denied the petition, reasoning that plaintiff failed to demonstrate any "inability to use his land" in conformity with the zoning ordinance and that no hardship would result to him by denying his request. Id. Less than a year later, Plaintiff filed a second petition for a variance from an entirely distinct section of the Tiverton Zoning Ordinance and upon a completely different legal theory: that he had been "continuously operat[ing]" an auto-body shop on the premises since 1960, that his body shop constituted a nonconforming use, and that a state law mandating increased floor space for auto-body shops required that he move his auto-body business to a larger building on his premises. Id. at 312. Our Supreme Court held that "the doctrine of administrative finality bar[red] the repetitive petition[,]" even though the plaintiff alleged a different legal foundation for his second variance request. Id. at 313.

In the instant case, Greenvale has already appeared twice before the Zoning Board and once before this Court requesting identical relief—to be allowed to host weddings on its Property, albeit on seemingly different legal theories. See Costa, 455 A.2d at 312-13. Furthermore, there is no evidence or suggestion of any change in circumstance. See id. at 313. This Court recognizes that Greenvale's two appeals ran somewhat parallel in time, rather than successively, but is satisfied that the underlying principle of administrative finality would be

vitiated if Greenvale is once again allowed to seek the same outcome, even while relying on a different legal theory. See Johnston Ambulatory, 755 A.2d at 808. Additionally, the fact that neither party raised the issue of administrative finality in their memorandum to this Court is of no consequence, because at the time the parties submitted their memoranda germane to this matter, Greenvale's special use permit petition had not yet been decided by the Zoning Board.[5] See Johnston Ambulatory, 755 A.2d at 813. Thus, the Court finds that the doctrine of administrative finality bars this repetitive appeal.

Even if this Court were to address the merits of Greenvale's appeal, this Court is satisfied that the written decision of the Zoning Board was made upon lawful procedure, fairly taking into account the evidence presented at the hearing. As the parties have pointed out, the Ordinance defines an "accessory use" as a "use of land . . . customarily incidental and subordinate to the principal use of the land[.]" Portsmouth Zoning Ordinance, Art. II, § B. The Ordinance defines "use" as "[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained." Id. Although some testimony at the hearing indicated that it is increasingly common for farms and vineyards to host weddings and wedding receptions—both nationally and locally—the Zoning Board's decision noted that an accessory use "must be connected to the main [principal] use" of the Property. (Decision at 3, Mar. 18, 2010.) Here, it is beyond dispute that the actual and intended use of the Property is as a farm and vineyard, i.e. agricultural in nature. As such, any "incidental" or "subordinate" use of the Property must necessarily relate to agriculture. See Portsmouth Zoning Ordinance, Art. II, § B. While Greenvale urges this Court to recognize that hosting activities and

[5] Greenvale submitted its memorandum of appeal on November 12, 2010. The memorandum of the Intervenors was submitted on November 16, 2010 and was adopted and joined in full by the Zoning Board on December 6, 2010. The special use permit petition was not ultimately decided by the Zoning Board until December 30, 2010.

events is a common and important function of modern-day farms, the Ordinance does not envision the hosting of weddings as an accessory use to farming. See id. It is "well-settled" that a zoning board "is presumed to have knowledge concerning those matters which are related to an effective administrative of the zoning ordinance." Monforte v. Zoning Bd. of Review of East Providence, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962). Thus, the Zoning Board's finding that holding wedding events is unconnected to the primary agricultural purposes of the Property is supported by substantial evidence of record.

Nor does the State Right to Farm Act change this Court's view of the merits. Under § 2-23-4(a), the General Assembly has recognized the importance of putting "farms and farmlands" to a "mixed-use"—that is, the use of farms "for other forms of enterprise," such as "hay rides, crop mazes, festivals" and the like—as a "valuable and viable means of contributing to the preservation of agriculture." However, the provisions of subsection (b) contain an important limitation: the State Right to Farm Act shall not be "deemed to restrict . . . nonagricultural operations from being undertaken on a farm *except as otherwise restricted, regulated, limited, or prohibited by law, regulation, or ordinance*[.]" Sec. 2-23-4(b) (emphasis added). In construing a statute dealing with agriculture, the language therein should be "given its natural, plain, ordinary, and commonly understood meaning," and "[c]ourts assume that every word, phrase, and clause in a legislative enactment is intended and has some meaning and that none was inserted accidentally." 3B Sutherland, Statutes and Statutory Construction § 77.9 (4th ed. Singer 2011). While subsection (a) may encourage the kind of "mixed-use" requested by Greenvale in seeking to host weddings and receptions, the plain language of subsection (b) makes clear that such a use is specifically restricted by the applicable zoning ordinance. Sec. 2-23-4. Moreover, it is important to emphasize that Greenvale is located in an R-40 Zone, a residential zone that

prohibits a host of uses ranging from retail stores and "eating places" to "Outdoor Trade Shows" and social clubs. Portsmouth Zoning Ordinance, Art. V, §§ A-E. Outdoor recreational facilities are permitted only by special use permit, and indoor recreational and/or entertainment facilities are not permitted at all in this area. Id. at § B. Most importantly, the Ordinance indicates that the use contemplated by Greenvale is prohibited in an R-40 Zone as both a principal use and, therefore, also necessarily as an accessory use. Id. at §§ A-E. As such, this Court does not find the Zoning Board's decision to be an abuse of discretion, clearly erroneous, or otherwise affected by legal error.

III

Conclusion

In sum, the Court declines to address the merits of Greenvale's current appeal on the grounds of administrative finality. However, even if this Court were to address Greenvale's appeal on the merits, it is abundantly clear to this Court that the decision of the Zoning Board was based upon lawful procedure and was not clear error in light of the evidence presented at hearing. Substantial rights of the appellant have not been prejudiced. The appeal is denied. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Greenvale Farm, LLC v. Zoning Board of Review for the City of Portsmouth, et al.**
CASE NO:	**NC-2010-0169**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**October 30, 2014**
JUSTICE/MAGISTRATE:	**Gallo, J.**
ATTORNEYS:	
For Plaintiff:	**David P. Martland, Esq.**
For Defendant:	**Kevin P. Gavin, Esq.** **Jeremiah C. Lynch, III, Esq.**