STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: March 16, 2016]

JOHN QUATTROCCHI REVOCABLE TRUST, AND JOHN QUATTROCCHI, INDIVIDUALLY AND AS HIS INTEREST MAY APPEAR,	:	**C.A. No. PC 2014-3383**
Plaintiff/Appellant	:	
v.	:	
THE ZONING BOARD OF THE TOWN OF WARREN, ET AL.,	:	
Defendant/Appellee	:	

DECISION

TAFT-CARTER, J. John Quattrocchi (Appellant) appeals the June 18, 2014 decision of the Zoning Board of the Town of Warren (Appellee or Zoning Board), granting the request of Patrick K. O'Connell and O'Connell's Warren Mill Marina, doing business as PKO Marina, for a variance to change the address for a boat storage business previously located at 321 Water Street in Warren, Rhode Island to 341A Water Street in Warren, Rhode Island. The Zoning Board objects to the zoning appeal. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth herein, this Court remands this matter to the Zoning Board for further proceedings consistent with this Decision.

I

Facts and Travel

On May 21, 2014, the Zoning Board heard Patrick K. O'Connell's (Mr. O'Connell) petition for a special use permit related to the relocation of his business, O'Connell's Warren Mill Marina, doing business as PKO Marina (PKO), from 321 Water Street in Warren, Rhode

Island (Quattrocchi Property[1]), to the abutting property located at 341A Water Street in Warren, Rhode Island (Blount Property[2]). At the hearing, Mr. O'Connell presented his application for a special use variance to relocate PKO from the Quattrocchi Property to the Blount Property. The Appellant was the only objector to PKO's relocation request.

The Zoning Board issued its written decision on June 18, 2014. Thereafter, on July 8, 2014, the Appellant filed a timely appeal. The case was referred to this Justice for decision on January 26, 2016.

II

Standard of Review

Pursuant to § 45-24-69, the Superior Court has jurisdiction to review zoning board decisions. The statute provides as follows:

> "[t]he court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:
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> > "(1) In violation of constitutional, statutory, or ordinance provisions;
> > "(2) In excess of the authority granted to the zoning board of review by statute or ordinance;
> > "(3) Made upon unlawful procedure;
> > "(4) Affected by other error of law;
> > "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> > "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 45-24-69(d).

[1] The Appellant owns this property.
[2] The property in question is owned by Blount Fine Foods Corp., which operates a seasonal clam shack on the property.

The scope of this Court's "review 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). Furthermore, a reviewing court may remand a case when the parties fail to provide a record of the zoning board's proceedings that would allow the reviewing court to perform the statutory duty imposed upon it. See Roger Williams Coll. v. Gallison, 572 A.2d 61, 62 (R.I. 1990) (citing Holliston Sand Co. v. Zoning Bd. of Review of N. Smithfield, 98 R.I. 93, 200 A.2d 9 (1964)).

III

Record before this Court

Pursuant to Rhode Island law, when an appeal from a zoning board decision is filed in the Superior Court, the board must certify to the court within thirty (30) days after service upon it of a copy of the complaint, "the original documents acted upon by it and constituting the record of the case appealed from, or certified copies, together with other facts that may be pertinent." Sec. 45-24-69 (a). The "original documents" referred to would include the record of the proceedings before the Zoning Board; the decision of the Zoning Board; the special use variance application; and copies of any other supporting information filed by Mr. O'Connell when he applied for the special use variance. See id. Therefore, to enable this Court to fulfill its duties under § 45-24-69, it must receive the original or a certified copy of the entire record of the proceedings under review, including a transcript of all hearings the agency held on the matter. See § 45-24-69.

To date, the Zoning Board has not filed a certified copy of its administrative record, a transcript of the May 21, 2014 hearing, or a copy of its decision. Without these items, this Court is unable to fulfill its statutory duty under § 45-24-69. See Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 8 (R.I. 2005); see also § 45-24-69(c) (stating that the

reviewing court must consider the record of the hearing before the zoning board in reaching its ultimate decision).

This Court has broad powers to remand a matter to an agency to correct deficiencies in the record and thus afford litigants a meaningful review. See Kaveny, 875 A.2d at 8; see also Sciacca v. Caruso, 769 A.2d 578, 585 (R.I. 2001); Gallison, 572 A.2d at 62 (stating that "the trial justice [has] the authority to remand a case to the zoning board of review for further proceedings . . . [when] there is no record of the proceedings upon which a reviewing court may act") (citing Holliston Sand Co., 98 R.I. at 93, 200 A.2d at 9). Since the absence of a transcript prevents the litigants here from receiving a meaningful review, this Court remands this matter to the Zoning Board for the completion of the record.

IV

Conclusion

For these reasons, the matter is remanded to the Zoning Board of the Town of Warren. The Zoning Board shall forthwith submit the appropriate documents required by § 45-24-69. This Court retains jurisdiction.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	John Quattrocchi Revocable Trust, and John Quattrocchi, Individually and As His Interest May Appear v. The Zoning Board of the Town of Warren, et al.
CASE NO:	PC 2014-3383
COURT:	Providence County Superior Court
DATE DECISION FILED:	March 16, 2016
JUSTICE/MAGISTRATE:	Taft-Carter, J.
ATTORNEYS:	
For Plaintiff:	Robert J. Healey, Jr., Esq.
For Defendant:	Steven A. Minicucci, Esq.; Chip Muller, Esq.; Maureen A. Hobson, Esq.