

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: October 23, 2015)

JOHN QUATTROCCHI III  
REVOCABLE TRUST

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v.

C.A. No. PC-2014-5924

ZONING BOARD OF THE  
TOWN OF WARREN AND  
THE TOWN OF WARREN

DECISION

**TAFT-CARTER, J.** The matter before this Court for decision is an appeal from a decision of the Zoning Board of the Town of Warren (Board), in its capacity as the appeals board. John Quattrocchi III Revocable Trust (Appellant) appealed the decision of the Board sustaining the January 17, 2014 Stop Work Order issued by the Warren Building Inspector. The Appellant timely filed this appeal. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

**Facts and Travel**

Appellant is the owner of property located at 325 Water Street, identified as Assessor’s Plat 5, Lot 1, and adjacent lots 112 and 138 on Plat 4 in the Town of Warren, Rhode Island (the Property). (Pl.’s Compl. ¶ 1.) On November 1, 2013, the Warren Building Inspector signed a certification allowing the Appellant to seek assent from the Coastal Resources Management Council (CRMC) to conduct dredging and excavation on the Property. *Id.* ¶ 7. The certification states that the Warren Building Inspector had reviewed the plans for the work, the plans conformed to all elements of the Warren Zoning Ordinance, and the Appellant had obtained all necessary approvals. (Pl.’s Appl. for Appeal, Addendum of Facts, Feb. 21, 2014.) On January

7, 2014, the CRMC issued the assent. Id. The Appellant thereafter began excavation. On January 15, 2014, Appellant recorded the assent in the Land Evidence Records of the Town of Warren. Id.

On January 17, 2014, the Warren Building Inspector issued a Stop Work Order. (Pl.’s Compl. ¶ 13.) The Warren Building Inspector based the Stop Work Order on the definition of “excavation” as set forth in the Warren Zoning Ordinance. (Pl.’s Appl. for Appeal, Addendum of Facts, Feb. 21, 2014.) The Appellant filed an appeal of the Stop Work Order to the Board on February 21, 2014. (In re Pet. #14-10 John Quattrocchi III Revocable Trust, Zoning Board of the Town of Warren, Tr. at 3, Oct. 15, 2014.) A hearing was held on October 15, 2014. At the hearing, the trustee and sole beneficiary of the John Quattrocchi III Revocable Trust, John Quattrocchi III, testified as a witness. Id. at 26-31. Quattrocchi testified as to Appellant’s reliance on the certificate and the extent of injury incurred by Appellant as a result of the reliance. Id. Throughout the hearing, Appellant’s counsel maintained that the Warren Building Inspector signed the CRMC certificate, Appellant relied on the certificate, and therefore, the doctrine of equitable estoppel applies. Id. at 20-26. The Board denied the appeal and concluded that the doctrine of equitable estoppel does not apply because the action of the Warren Building Inspector was ultra vires. Id. at 64-65.

The Appellant filed a timely appeal of the decision to this Court. On appeal, Appellant contends that the decision of the Board is clearly affected by an error of law, is in violation of the ordinance provisions, is made upon unlawful procedure, is clearly erroneous in view of the record as a whole, and is arbitrary and capricious. Specifically, Appellant contends that the Warren Building Inspector was not acting outside the scope of his authority and that equitable estoppel applies.

## 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 . . . as to the weight of the evidence on questions of fact. The court may affirm the decision . . . 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.”

Sec. 45-24-69(d).

This Court reviews a decision of a zoning board “under the ‘traditional judicial review’ standard applicable to administrative agency actions.” Restivo v. Lynch, 707 A.2d 663, 665 (R.I. 1998) (quoting E. Grossman & Sons, Inc. v. Rocha, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977)).

When reviewing a decision of a zoning board, a justice of the Superior Court may not substitute his or her judgment for that of the zoning board if he or she conscientiously finds that the board's decision was supported by substantial evidence. Apostolou v. Genovesi, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978). 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 N. 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)). Upon review, this 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.” Restivo, 707 A.2d at 666. However, if after a thorough review of the record, this Court finds a lack of competent evidence or finds a defect in the prior proceedings, then this Court may remand the zoning board decision for further action. Roger Williams Coll. v. Gallison, 572 A.2d 61, 63 (R.I. 1990).

### III

#### Analysis

Appellant contends that the doctrine of equitable estoppel applies, and therefore, the Board erred when it found that the Warren Building Inspector’s action in signing the certification was ultra vires. To justify this authority, the Appellant cites Section 32-5 of the Warren Zoning Ordinance.

Section 32-5 of the Warren Zoning Ordinance sets forth, in pertinent part, “[i]t shall be the duty of the Zoning Officer of the Town of Warren to administer and enforce the provisions of this ordinance, including . . . [t]he issuing of any required permits or certificates[.]” Sec. 32-5(a). Superimposed on this authority is the Warren Building Inspector’s obligation “to follow the zoning ordinance and applicable statutory provisions pursuant to which he or she is authorized to act.” Martel Inv. Grp., LLC v. Town of Richmond, 982 A.2d 595, 600-601 (R.I. 2009) (finding that the building official’s act of issuing a building permit without the required development plan review was ultra vires).

Here, the Warren Zoning Ordinance clearly requires Planning Board review for excavation occurring in the Waterfront Overlay District. Specifically, the ordinance provides that “[t]he Planning Board shall review all development and demolition in the Waterfront

Overlay District. . . .” (Town of Warren Zoning Ordinance, Article XXVI § 32-149(b)(1)). Section 32-148 of Article XXVI defines “development” as “any mining, excavation, landfill or land disturbance[.]” Id. at § 32-148 (emphasis added). There is no dispute that the Property is located in the Waterfront Overlay District, nor is it disputed that Appellant was excavating the Property. Rather, Appellant argues that the Warren Building Inspector had the authority to issue certificates, and therefore, the act was not ultra vires.

Undeniably, a building inspector has the authority to review plans and issue certificates for compliance with state law and local ordinances. See generally G.L. 1956 § 23-27.3-107.5; § 45-24-54. However, a building inspector does not have authority to waive or contravene zoning requirements. See Martel, 982 A.2d at 600-601; see also Zeilstra v. Barrington Zoning Bd. of Review, 417 A.2d 303, 308 (R.I. 1980) (finding that since the building inspector lacked authority to issue a permit for a use not authorized by the zoning ordinance, the inspector’s grant of a permit . . . was illegal and void). Here, by signing the certificate enabling the Appellant to excavate the Property without complying with the Warren Zoning Ordinance, the Building Inspector contravened the requirements of the ordinance. See Town of Johnston v. Pezza, 723 A.2d 278, 284 (R.I. 1999) (stating “the building official had no authority to waive compliance with an entire section of the town’s zoning ordinance”). This act by the Warren Building Inspector is unsanctioned and therefore ultra vires. See Martel, 982 A.2d at 600-601. Accordingly, the Board’s decision finding that the Warren Building Inspector acted in violation of ordinance provisions is not affected by error of law.

Appellant further argues that because it detrimentally relied on the Warren Building Inspector’s certification and began dredging and excavating, the doctrine of equitable estoppel should apply. Specifically, Appellant argues that by issuing the certification, the Warren

Building Inspector confirmed that the plans were in compliance with the Warren Zoning Ordinance. Appellant maintains that it relied on this confirmation to its detriment, and for that reason, the Town of Warren is now estopped from enforcing the provision requiring Planning Board assessment. Conversely, the Board argues that the ordinance clearly indicates the Appellant had to satisfy the Warren Planning Board, even if he did have the certificate and approval from CRMC. (Tr. at 64.)

Equitable estoppel is not applied when a municipality's acts are ultra vires. Pezza, 723 A.2d at 284. In Pezza, the Johnston Building Official issued a permit for construction of an asphalt plant. The permit holder relied on this permit and began substantial construction on the plant. Approximately six months later, the permit was rescinded, and a stop work order was issued because the permit holder had not received approval from the Planning Board, as required by the zoning ordinance. Id. at 280-282. The permit holder claimed the Town of Johnston was estopped from enforcing this provision of the ordinance because the developer had relied on the permit by beginning construction. The Court disagreed, finding the Building Official's actions to be ultra vires and therefore precluding the application of estoppel. Id. at 284. Similarly, the Court in Martel held that the act of issuing a building permit without the required development plan review was ultra vires, making estoppel inapplicable. Martel, 982 A.2d at 600-601. The Court stated that a developer's "failure to comply with the zoning ordinance is neither mitigated nor excused by the mere fact that the town building official also erred." Id. at 600.

Similar to the building officials' actions in Pezza and Martel, here the Town of Warren's Building Inspector issued a certification for Appellant to begin excavation. Appellant relied on the certification and began excavation. The certification was issued erroneously because, under the Warren Zoning Ordinance, Appellant was required to seek approval of the Warren Planning

Board. Just as in Pezza and Martel, the Town of Warren issued a cease and desist order because Appellant had not received approval from the Planning Board.

Mirroring the developers' arguments in Pezza and Martel, Appellant argues that it relied on the certification and began excavation. Specifically, Appellant argues that the Board erred by not examining the factual situation or considering the Appellant's reliance when making its decision. In its memorandum, the Appellant cites the Board's "complete failure to understand the equitable nature of the estoppel claim before [it]," and takes the position that the Town of Warren's "sovereign immunity type defense" is inapplicable in this situation. However, the Town of Warren is not arguing that it is immune from an equitable estoppel argument. Rather, the Town of Warren takes the position that equitable estoppel does not apply in this circumstance because of the law set forth in Pezza and Martel. (Tr. at 23.)

Appellant relies almost exclusively on the case of Ferrelli v. Dep't. of Emp't Sec., 106 R.I. 588, 261 A.2d 906 (1970) for its argument that estoppel should apply. In Ferrelli, our Supreme Court set forth that "in an appropriate factual context the doctrine of estoppel should be applied abainst (sic) public agencies to prevent injustice and fraud . . ." Id. at 594, 261 A.2d at 910. This appropriate factual context occurs when an agency or officer acts within his or her authority in making representations that cause a party to act in reliance. Id. While equitable estoppel may lie against a municipality, the factual context here does not give rise to an equitable estoppel argument because the Warren Building Inspector was not acting within his scope of authority. Here, the Warren Building Inspector did not have authority to issue the certificate because the excavation violated the Warren Zoning Ordinance; therefore, equitable estoppel does not apply. See Pezza, 723 A.2d 278 (holding that the actions of a building official purporting to allow development in violation of the local zoning ordinance is ultra vires and, therefore, the

doctrine of equitable estoppel does not apply); see also Tech. Investors v. Town of Westerly, 689 A.2d 1060, 1062 (R.I. 1997) (stating “estoppel cannot be applicable when the municipality’s acts were clearly ultra vires”).

After considering testimony from both Appellant and counsel, the Board found that the Warren Building Inspector’s action of issuing a certification without Planning Board approval was in violation of the Warren Zoning Ordinance, and therefore, was ultra vires. (Tr. at 64.) The Warren Zoning Ordinance clearly requires that when excavation is done within the Town of Warren, Planning Board approval on the Waterfront Overlay District must be applied for and approved. Id. Accordingly, equitable estoppel does not apply because the Warren Building Inspector acted outside the scope of his authority. It is well established that “a reviewing court merely examines the record below to determine whether competent evidence exists to support the [board]’s findings.” New England Naturalist Ass’n v. George, 648 A.2d 370, 371 (R.I. 1994). After a review of the record, this Court finds that the Board’s decision was not in violation of ordinance provisions, made upon unlawful procedure, nor was it clearly erroneous in view of the whole record. Therefore, this Court affirms the Board’s decision to deny the appeal.

#### **IV**

#### **Conclusion**

After review of the entire record, this Court is satisfied that the Board’s decision was supported by reliable, probative, and substantial evidence. The Board’s decision was not in violation of statutory or ordinance provisions; affected by error or law; or clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Substantial rights of the Appellant have not been prejudiced. Accordingly, this Court affirms the decision of the Board. Counsel for the parties shall submit the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** John Quattrocchi III Revocable Trust v. Zoning Board of the Town of Warren, et al.

**CASE NO:** PC-2014-5924

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** October 23, 2015

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

**ATTORNEYS:**

**For Plaintiff:** Robert J. Healey, Jr., Esq.

**For Defendant:** Peter F. Skwirz, Esq.