

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[Filed: October 25, 2016]

GREEN DEVELOPMENT, LLC D/B/A :
WIND ENERGY DEVELOPMENT, :
LLC; and ARPIN ASSOCIATES, LLC :

VS. :

C.A. No. KC 2016-784

THE ZONING BOARD OF REVIEW :
OF THE TOWN OF WEST WARWICK, :
AND JOHN CIMINO, in his capacity as :
the Finance Director for the Town of :
West Warwick :

DECISION

LANPHEAR, J. This matter came on for hearing before Mr. Justice Lanphear on October 24, 2016 on a motion to intervene. Appellants in this action claim that the Zoning Board of Review of the Town of West Warwick inappropriately denied their request for a dimensional variance. Appellants were proposing to construct a wind turbine on their property in West Warwick. Anthony Ciccarone, Lena Ciccarone, Stephen Padula and Barbara Padula move that they be allowed to intervene in this zoning appeal.

Rule 24 of the Rhode Island Rules of Civil Procedure allows for intervention of right and permissive intervention. The Applicants claim that each subpart of the rule justifies their intervention. The Court will review each subpart in turn.

Intervention as of Right

In Tonetti Enterprises v. Mendon Road Leasing Corp., 943 A.2d 1063, 1072-73 (R.I. 2008), the Rhode Island Supreme Court adopted a test established by the United States Supreme Court:

“Intervention as of right is governed by Rule 24(a)(2). Under Rule 24(a)(2), an applicant will be granted intervention as of right if the applicant files a timely application (a factor not challenged here), the applicant claims an interest relating to the property or transaction which is the subject matter of the action, the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, and the applicant’s interest is not adequately represented by current parties to the action (a factor also not challenged here). If the applicant satisfies these four criteria, then the applicant ‘shall be permitted to intervene.’” *Id.*; see Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 382 n.1, 107 S. Ct. 1177, 94 L. Ed. 2d 389 (1987). (Footnote deleted).

Analyzing each element in turn, the Court finds that the Applicants have filed a timely application, in that the motion to intervene was filed within sixty days of the appeal-complaint herein.

The Applicants suggest that they have an interest in the property, claiming that the use of the Applicants’ real property is impaired by this application in that their property is approximately 1000 feet away from the proposed 414 foot turbine. Clearly, they do not have an interest in the property where the turbine will be placed, nor do they have an interest in any of the abutting property. Any interest is therefore limited.

The next step is to weigh whether the disposition may as a practical matter impair or impede the Applicants’ ability to protect their interest. This is difficult to assess without a clear interest being enumerated as set forth above. Applicants suggest that the erection and operation of the turbine would result in noise and impair their view. In terms of noise, the noise generated on Applicants’ street is approximately forty decibels, or the sound of a stream or refrigerator. These are normal sounds which are present when many people sleep, so the Court cannot find that this noise would significantly impair the Applicants’ land. There is no demonstration of diminished value or that the Applicants would be deprived of the full use and enjoyment of their

land. The mere fact that the turbine would be visible from 1000 feet away does not give rise to standing for intervention.

The fourth and final factor is the whether the Applicants' interests are adequately represented by others. The Zoning Board application was denied. There is no reason to conclude that the Town of West Warwick (which, through its Zoning Board, already rejected the application and is defending herein) will not adequately represent the Applicants or other residents of its town. Though the Applicants presented significant evidence at the zoning hearing, and may have submitted substantial proof to justify the denial, that does not automatically allow them to enter independently herein.

Hence there is no right to intervene.

Permissive Intervention

R.C.P. 24(b) allows for permissive intervention in two instances. The first is when a statute confers a conditional right to intervene. The Court knows of none and the Applicants have not cited one here.

When the Applicants' claim or defense and the main action have a question of law or fact in common, permissive intervention may also be allowed. The Applicants have not described any such question in common. In an appeal of a zoning denial, it is unlikely that questions of fact will be in dispute. The Court will not grant intervention to address an issue of law at this time, but reserves the right to do so in the future if the Town fails to adequately address the issue to protect the Applicants.

Therefore, the Applicants' motion for intervention as of right is denied, and the Applicants' motion to intervene permissively is denied without prejudice.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Green Development, LLC d/b/a Wind Energy Development, LLC and Arpin Associates, LLC v. The Zoning Board of Review of the Town of West Warwick, et al.

CASE NO: KC 2016-784

COURT: Kent County Superior Court

DATE DECISION FILED: October 25, 2016

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: John Orest Mancini, Esq.

For Defendant: Timothy A. Williamson, Esq. (Defendants)
Thomas J. Cronin, Esq. (Applicants)