

On September 13, 2011, Eagleville submitted a Master Plan Application to the Planning Board for Site Ready Materials and Recycling, a major land development project to be located at 322 Eagleville Road in Tiverton, Rhode Island. Eagleville sought to “construct two 25,000 sf+/-

buildings to process single stream recyclables and to transfer construction & demolition debris, recyclables, and municipal solid waste.” (Certified R. (R.) 1, Ex. A.) Hearings were held by the Planning Board between September 5, 2012 and April 2, 2013 regarding the Application. A site visit occurred on May 19, 2012.

During the hearings, Eagleville presented expert testimony and reports in support of their position. Geralyn Small, P.E., a civil engineer at Northeast Engineers and Consultants, Inc., testified regarding the Application, the existing site conditions, and the difference between the two phases of the proposed project. Jason Gold, P.E., another civil engineer, testified regarding environmental safeguards. He testified about the state mandated permits that Eagleville intended to apply for and the approval process with the Department of Environmental Management. Todd Brayton, P.E. and Michael Desmond, P.E., traffic engineers, provided three traffic impact reports which detailed existing traffic conditions, as well as the potential effects the project would have on traffic. These traffic reports concluded that the “surrounding roadways and intersections will experience minimal change with the addition of the traffic generated by the proposed development.” (R. 2 Ex. F (Traffic Impact Analysis), at 152.) Scott P. Rabideau, a wetlands biologist, provided a detailed report that included options for screening and buffering along Route 24. Neighbors, Tiverton Police Chief Thomas Blakey, and Director of Public Works Stephen Berlucchi, P.E. testified before the Planning Board in opposition to the project and raised concerns regarding the increase of trucks pulling out of Eagleville Road and onto Fish Road or Stafford Road daily. Following this testimony, Eagleville offered to reduce the amount of per day tonnage “from 1500 per day to 750 per day” to alleviate traffic concerns. (R. 1 Ex. C (Meeting Minutes), at 38.) The Planning Board, however, found that Eagleville’s offer to reduce the amount of per

day tonnage did not effectively mitigate safety concerns. (R. 1 Ex. C (Planning Board Decision), at 21.)

At the April 2, 2013 hearing, the Planning Board unanimously voted to deny the Application. *Id.* at 36. The Planning Board issued its decision on April 5, 2013, in which it made several findings and maintained that Eagleville “failed to present sufficient credible evidence to show that the Application is consistent with [several] provisions of the Tiverton Comprehensive Community Plan.” *Id.* at 28. The Planning Board detailed the areas in which Eagleville failed to provide sufficient evidence, including the land use plan, circulation, and economic development.

In considering the land use pattern, the Planning Board noted that “the subject area is a mix of Industrial and Residential uses and zones.” *Id.* As such, it found the “proposed development is incompatible with the abutting residential uses for reasons including but not limited to traffic impacts and disruption caused by the nature of heavy truck traffic.” *Id.* at 30. A possible “increase in truck traffic is incompatible with Tiverton’s rural and small town character, as well as the abutting residential uses.” *Id.* The Planning Board further found that Eagleville failed to demonstrate environmental soundness due to potential pollution and groundwater concerns. *Id.*

The Planning Board found Eagleville failed to provide “a plan for traffic mitigation, or for accommodations for alternate forms of circulations such as pedestrians and bicyclists.” *Id.* In making this finding, the Planning Board relied upon the testimony of Chief Blakey, Mr. Berlucchi, and neighboring residents who raised concerns regarding the potential increase in traffic, vehicles on the road, and the number of trucks estimated to be parked on the roadside. The Planning Board further found that Eagleville’s offer to reduce the amount of per day tonnage did not effectively mitigate any safety concerns. *Id.* at 21.

In considering the issue of economic development, the Planning Board considered the large scale of the proposed operation in comparison to the amount of waste and recyclables Tiverton generates per year. The Planning Board noted that the proposed operation “would process volumes far exceeding [the waste] produced by the entire Town.” *Id.* at 22. It also considered the opinions of local residents who argued that residential property values would decrease, and the town’s revenue would be negatively impacted.

Additionally, the Planning Board noted that a special-use permit was required for approval of the Application and Eagleville “failed to provide sufficient credible evidence to show that the Application is compatible with [the] [C]omprehensive [C]ommunity [P]lan of the Town of Tiverton for issuance of a Special Use Permit.” *Id.* at 23-24.

The Planning Board held there was “insufficient information presented in order to determine that the plan had no significant negative environmental impacts,” *id.* at 24, and insufficient evidence showing that the street access “would be safe and the predicted traffic associated with the Application would not have a negative external impact on the surrounding area and the community.” *Id.* at 25. In accordance with the above findings, the Planning Board denied Eagleville’s Application.

B

Zoning Board Decision

Eagleville appealed the Planning Board’s decision with the Zoning Board. On May 13, 2014, the Zoning Board issued its decision denying the appeal and upholding the decision of the Planning Board. In reaching this decision, the Zoning Board maintained that the “Planning Board was within its authority to deny the Master Plan based on the grounds of its inconsistency with the Tiverton Comprehensive Plan.” *See* R. 2 Ex. H (Zoning Board Decision), at 374. The Zoning

Board found sufficient evidence “support[ed] the Planning Board decision, and that there [was] no clear error or prejudicial procedural error in the Planning Board’s decision.” *Id.* at 377.

The Zoning Board reasoned that, “if the Master Plan is inconsistent with the Comprehensive Plan, then there can be no zoning compliance in this case, since zoning compliance also requires consistency with the comprehensive plan.” *Id.* at 378. The Zoning Board rejected Eagleville’s claim that a prejudicial procedural error was committed through the denial of Eagleville’s right to cross-examine. Furthermore, the Zoning Board determined that there was “no clear or other error in the Planning Board’s determination that [Eagleville] failed to provide sufficient information that there would be no significant negative environmental impacts . . . [or] adequate physical access to a public street.” *Id.*

Eagleville appealed the Zoning Board decision to the Superior Court but thereafter did not press the appeal for some time. Upon the creation of the Land Use Calendar in 2024, the parties were directed to submit memoranda pursuant to G.L. 1956 § 8-2-40(d). This matter is now before the Court for decision.

II

Standard of Review

The Superior Court’s review of a zoning board decision is governed by § 45-23-71(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.” Section 45-23-71(d).¹

“It is the function of the Superior Court to ‘examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.’” *Lloyd v. Zoning Board of Review for the City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). The term “[s]ubstantial evidence . . . means 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 Board of Review of Town of North Kingstown*, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting *Caswell v. George Sherman Sand & Gravel Co., Inc.*, 424 A.2d 646, 647 (R.I. 1981)). This Court may not “substitute its judgment for that of the zoning board if it can conscientiously find that the board’s decision was supported by substantial evidence in the whole record.” *Apostolou*, 120 R.I. at 509, 388 A.2d at 825. Similar standards apply to review of Planning Board decisions.

III

Analysis

Eagleville raises several issues on appeal and maintains that this Court should reverse the decisions of the Tiverton Planning Board and Zoning Board and order that the “Master Plan

¹ In reviewing a decision by a local board, this Court must apply the law “[as it existed] when the applicant-developer submitted its application[,]” absent a clear expression of retroactive application. *East Bay Community Development Corporation v. Zoning Board of Review of the Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). The statute governing the Superior Court’s review of a zoning board decision is currently outlined in § 45-23-71(d). However, the governing statute applicable in 2014 when this appeal was filed was § 45-23-70(c). The language of the statutes mirrors each other.

Application for the [Proposed] Project be approved as submitted.” (Eagleville’s Br. 1.) Each issue is considered below.

A

Master Plan Application

First, Eagleville contends the Zoning Board erred in upholding the Planning Board’s decision because the Planning Board applied an erroneously heightened standard in its review of the master plan application. Major land development review consists of three stages of review: master plan, preliminary plan, and final plan. Section 45-23-39(a). A master plan approval is a conceptual approval while a preliminary plan approval is more detailed and focuses on particular aspects of the plan. *Compare* § 45-23-39(c) *with* § 45-23-39(d). However, the applicant is not entitled to approval on a master plan application merely because a master plan is conceptual in nature. The burden is on the applicant to establish that the project meets the requirements of § 45-23-60, no matter the stage of review. Section 45-23-39(c)(5).

The Rhode Island Development Review Act (the Act), requires:

- “(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
- “(2) The proposed development is in compliance with the standards and provisions of the municipality’s zoning ordinance;
- “(3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
- “(4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot.) Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and
- “(5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be

considered in compliance with this requirement.” Section 45-23-60(a).

Eagleville suggests the Planning Board’s decision violated the Act and was clear error as this proposal was for a major land development project. In support, Eagleville relies on *Love’s Travel Stops and Country Stores, Inc. v. Diorio*, No. WC 09-844, 2014 WL 1246540 (R.I. Super. Mar. 21, 2014) which held the Planning Board was not required to make any positive findings under § 45-23-60 during the master plan stage as this statute only applied to the preliminary stage. The statutory requirements are broadly worded, though it is well settled that a master plan approval is conceptual. This Court agrees that a master plan outlines general developmental intentions and a master plan does not yet need all building plans and permits which are submitted later. However, the Planning Board still must determine whether the concept of a potential development is permissible per the Comprehensive Plan.

The Planning Board’s decision addressed different conflicts with the Comprehensive Plan but focused on the development’s failure to fit the zoning requirements and present use of the area, as well as traffic concerns. Maps were before the Planning Board depicting the area’s land use to determine that the subject area is a mix of industrial and residential uses and zones. Testimony provided by residents and members of the public, as well as Chief Blakey and Mr. Berlucchi, expressed concerns regarding the “103 trucks, one truck per minute” backed up on Eagleville Road each morning during rush hour on a narrow, winding single road. (R. 2 Ex. E (Hr’g Tr. 72:10-75:5), at 54-55; R. 2 Ex. E (Hr’g Tr. 89:24-91:12), at 59.)

The Comprehensive Plan discusses the preservation of Tiverton’s small-town character. The proximity to residential areas, the location of Stafford Pond which supplies drinking water and recreation, and the traffic concerns are germane to the potential harm to character. The Application and evidence presented to the Planning Board indicated that Eagleville Road was not

“suitable for the addition of up to 280 vehicles per day (560 trips per day) consisting of two hundred (200) 5-ton municipal packer trucks (carrying municipal solid waste), fifty (50) 10-ton roll-off container trucks (carrying Construction and Demolition Debris) and thirty (30) loads per day of leaf and yard waste[.]” (R. 1 Ex. C (Planning Board Decision), at 25.) This proposed number of trips and vehicles was so large that Eagleville offered to reduce the numbers once neighbors, the police chief, and public works department expressed concern about the increased number of vehicles on the road.

This proposed project is for a large recycling facility in an area near homes, wetlands, and open space. (R. 2 Ex. E (Hr’g Tr. 51:23-54:3), at 128-29.) The Planning Board’s consideration of how the project failed to abide by the zoning and present use of the area, and the increased traffic patterns, were appropriate subjects to address at the master plan stage before approval. Eagleville carried the burden to establish the proposal of a waste and recyclable facility is reasonable and that these potential issues were of no concern or adequately addressed. There is insufficient evidence to indicate that Eagleville successfully established this before the Planning Board. Thus, the Court concludes that the Zoning Board relied upon substantial evidence within the record when upholding the Planning Board’s decision to deny the Application for failing to meet the required elements of the regulations consistent with the Comprehensive Plan.

B

Alleged Errors Related to Comprehensive Plan

Eagleville next raises multiple issues on appeal regarding the Comprehensive Plan.

First, Eagleville argues that the Planning Board did not raise concerns over the Application’s inconsistencies with the Comprehensive Plan until after the close of evidence and informational hearings. The Act clearly places the burden on the applicant proposing a major land

development to either show consistency with the comprehensive community plan or satisfactorily address issues where there may be inconsistencies. Section 45-23-60(a)(1). The burden is on the applicant to affirmatively address these matters, not wait for the Planning Board to raise its concerns. *See* §§ 45-23-39(c)(1) and 45-23-39(c)(5). Accordingly, this argument fails.

Nor was Eagleville denied due process during the appeals process. The Comprehensive Plan is published and available to the public, and Eagleville was required to show consistency with this Comprehensive Plan.

Next, Eagleville argues the Zoning Board “disregarded the fact that the Planning Board misinterpreted various provisions of the Comprehensive Plan” while ignoring others, despite having to consider the Comprehensive Plan in its entirety. Eagleville’s Br. at 35-36; *see also N&M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1147 (R.I. 2009). Specifically, Eagleville alleges errors as it relates to what the Planning Board deemed “Element 5 – Land Use Plan,” “Element 8 – Circulation,” and other provisions. A board, however, is not required to measure all items in the Comprehensive Plan, though it must fairly apply all. As discussed below, Eagleville failed to meet its burden.

i

Element 5 - Land Use Plan

Eagleville first argues the Planning Board ignored and disregarded provisions of the land use plan when it denied the Master Plan. Eagleville avers the Comprehensive Plan’s Future Land Use Plan, as well as the Zoning Map, identify the property as industrial. Eagleville argues the project “was a specially-permitted use in the Industrial Zoning District, and thus should have been issued a conditional Master Plan approval so as to permit [Eagleville] to seek such permit from the Zoning Board.” Eagleville’s Br. at 38.

The Planning Board relied upon testimony which detailed the effect the proposed project would have on the neighboring residences through likely traffic impacts and disruption. The Planning Board had before it maps of the parcel which indicated the different purposes of land use² and showed the proposed project's proximity to residential areas and wetlands which supply drinking water and recreation. Members of the community expressed their concerns with how the proposed project would impact neighboring businesses and homes.

While Eagleville alleges the land use is zoned industrial and consequently heavy use of the roads is to be anticipated, a comprehensive plan specifically determines future land use – heavy road use is not necessarily implied. Clear evidence suggests traffic on several local roads will be substantially impacted. (R. 2 Ex. E (Hr'g Tr. 51:23-54:3), at 128-29.) Some vehicles would pass residences and wetlands through the town. The Planning Board appropriately concluded the entire town would be impacted, regardless of the zoning use in the industrial area.

Eagleville claimed it would prove that “groundwater flow[ed] to the North, away from Stafford Pond” during the preliminary plan stage. (Eagleville's Br. 39.) However, the Planning Board appropriately considered the concern “regarding the proximity of the Stafford Pond Watershed Protection Overlay District and Sucker Brook.” (R. 1 Ex. C (Planning Board Decision), at 24.) As Stafford Pond is both recreational and a water source for Tiverton, the potential for groundwater contamination and negative environmental impacts were reasonable factors to be considered prior to the preliminary plan stage. *Id.* Considering them would save the developer time and future expenses as it would allow them to understand the town's concerns upfront.

² With such a significant impact on traffic at issue, it was reasonable for the town authorities to focus on the different areas which the traffic would move through.

Element 8 – Circulation

Eagleville then challenges the determination that the proposed project did not “provid[e] for the safe and efficient management of automobile traffic while encouraging alternative forms of circulation that complement the community’s special character and quality of place,” as required by the Comprehensive Plan. (Eagleville’s Br. at 42.)

In its decision, the Planning Board noted that “[n]umerous abutting residents and members of the public, as well as Tiverton Police Chief Thomas Blakey and Director of Public Works Stephen Berlucchi, P.E. provided oral testimony expressing concern regarding the existing truck traffic as well as the proposed traffic.” (R. 1 Ex. C (Planning Board Decision), at 21.) Eagleville suggests the Planning Board “disregarded the only competent expert testimony in the record provided by Bryant Engineering and erred by determining the Project to be inconsistent with this Element based solely upon the unsubstantiated lay ‘concerns’ raised by the neighboring property owners.” (Eagleville’s Br. at 42.) (Emphasis omitted.)

In qualifying as an expert, a witness is allowed to testify about their specialized field. A board is not required to find everything the expert says as valid and credible, regardless of other expert testimony. There is “no talismanic significance to expert testimony” and thus “may be accepted or rejected by the trier of fact[.]” *Restivo v. Lynch*, 707 A.2d 663, 671 (R.I. 1998). The Planning Board heard testimony from the police chief and the public works director who are extremely familiar with the town and work on traffic safety every day. (R. 2 Ex. E (Hr’g Tr. 72:10-75:5), at 54-55; R. 2 Ex. E (Hr’g Tr. 89:24-91:12), at 59.) It was reasonable for the Planning Board to admit and weigh their testimony.

The Planning Board considered evidence presented which regarded the potential future traffic. The Planning Board reviewed figures provided by Geralyn Small, P.E. The Planning Board did not ignore or disregard expert testimony but weighed it against other concerns and proof. This Court finds that there was competent evidence within the record for the Zoning Board to determine that the project would disrupt traffic and fail to provide alternate forms of circulation.

iii

Other Provisions

Eagleville contends both decisions “merely plucked a handful of generalized goals and objectives from the Comprehensive Plan, misconstrued them, disregarded the remainder of the Plan, . . . and then employed its own subjective interpretation thereof.” (Eagleville’s Br. at 58.) Eagleville counters that mention of a “goal, policy or other provision in the Comprehensive Plan concerning the future of waste disposal post-landfill closure” was notably absent from the Planning Board’s decision. *Id.* Eagleville references several policies within the Comprehensive Plan emphasizing the Comprehensive Plan’s goal of expanding industrial uses resulting in net tax revenue. Eagleville claims the proposal would “increase net tax revenue through non-residential developments in industrial technology.” *Id.* at 38. Finally, Eagleville argued the project would alleviate the impact on the utilities in the town.

The important task of interpreting the Comprehensive Plan is reserved for the Planning Board which is also charged with drafting the Comprehensive Plan. An applicant simply is required to prove compliance with the Comprehensive Plan—a factual determination of the Planning Board. While applicants may subjectively balance multiple factors in their own favor, the Planning Board’s findings are important. Here, the Planning Board considered the evidence and ultimately determined that the project’s impact on the town outweighed its benefits. Relying

on land use, circulation, and economic development issues, its decision was more than sufficient to substantiate its finding of incompatibility. The Planning Board did not err in finding that Eagleville failed to show that the proposed project was consistent with the Comprehensive Plan.

C

Opportunity to Cross-Examine

The Court turns now to Eagleville’s argument that they were denied the right to cross-examine a witness. The Court has held that, “[a]lthough interested persons have a right to be heard in zoning hearings in accordance with rules and regulations lawfully adopted and impartially applied by such boards for the conduct of their hearings, there is nothing in the law entitling such persons to cross-examine opposing witnesses as a matter of right.” *Colagiovanni v. Zoning Board of Review of City of Providence*, 90 R.I. 329, 335, 158 A.2d 158, 162 (1960). An exception exists when the refusal to allow cross-examination “deprive[s] a party of a complete and impartial hearing in that it prevent[s] him from introducing competent, relevant evidence on the issues raised.” *Westminster Corp. v. Zoning Board of Review of City of Providence*, 103 R.I. 381, 394, 238 A.2d 353, 360 (1968).

Here, Eagleville avers it was “not given a full and complete opportunity to cross-examine a critical witness on issues that the Planning Board ultimately relied upon in rendering the Master Plan Decision.” (Eagleville’s Br. at 25.) A review of the transcript reveals something quite different than a flat denial. The below conversation between the Planning Board chairman and counsel for Eagleville:

“THE CHAIRMAN: I’m sorry. You’re off track. Not talking about Master Plan. They’re Commonwealth Engineering. They are not talking about Master Plan. You asked your questions. Let’s move on.

“MR. BRAINSKY: I think I’m entitled to ask follow-up –

“THE CHAIRMAN: I think you should move on. . . . I have a couple follow-up questions I would like to ask Mr. Desmond.

“MR. BRAINSKY: So I can’t ask my questions of Commonwealth?

“THE CHAIRMAN: Excuse me. I’m asking questions right now. You can have the floor later on.” (R. 2 Ex. E (Hr’g Tr. 31:12-24), at 166.)

Thereafter, the record reflects that the Chairman asked counsel, “do you have anything else, any other testimony to offer?,” to which counsel responded, “I think what I was going to follow up and ask Mr. Loomis a few moments ago was . . .” (R. 2 Ex. E (Hr’g Tr. 54:3-12), at 172.) This was hardly a denial of cross-examination, it was an attempt to keep the testimony on subject. Accordingly, while the cross-examination testimony was temporarily halted, counsel again was provided with an opportunity to continue questioning.

This Court concludes this was not a prejudicial procedural or clear error denying the opportunity to cross-examine.

D

Special-Use Permit

Under the Tiverton Zoning Ordinance in effect at the time of the Planning Board decision, Eagleville was required to obtain a special-use permit for their major development application. Section 45-23-60(a)(1). Approving authorities for major development applications shall make positive findings of the provisions below prior to approval:

“(1) The public convenience and welfare will be served.

“(2) It will not be detrimental to the public health, safety, morals, or welfare.

“(3) It will be compatible with neighboring uses and will not adversely affect the general character of the area.

“(4) It will not create a nuisance in the neighborhood, nor hinder or endanger vehicular or pedestrian movement.

“(5) It will have adequate provision made for water service, sanitary sewage disposal, and fire protection. The board may

accept reports of the state department of health and registered professional engineers, land surveyors or sanitarians, as proof of the adequacy of these facilities.

“(6) It will be compatible with the comprehensive community plan of the Town of Tiverton.” Tiverton Zoning Ordinance Art. XVI, Section 4.

As indicated above, the Planning Board determined that Eagleville failed to present evidence that their proposal was consistent with the Comprehensive Plan. The Zoning Board noted that “if the Master Plan is inconsistent with the Comprehensive Plan, then there can be no zoning compliance in this case since zoning compliance also requires consistency with the comprehensive plan.” (R. 2 Ex. H (Zoning Board Decision) at 378.) Further, “a required special[-]use permit has not been applied for, thus, as it stands, there is no zoning compliance.” *Id.*

Here, testimony from Ms. Deidre Paiva, one of the town’s consulting engineers, detailed the traffic concerns of the consulting engineers. Ms. Paiva’s testimony provided insight into how the project would access different roads throughout town, rush hour traffic conditions, and the level of service capacity that the approval of this project would bring. Regardless of zoning issues, there is evidence to suggest that this project would undoubtedly impact the entire town. Ms. Paiva testified that certain roads pass by residences, wetlands, and open spaces, and this heavy use would pose a pollution threat. This is inapposite to the Comprehensive Plan which notes that the “protection of those [drinking water supply] resources is of crucial importance.” (Comprehensive Plan 26.) Specifically, the Comprehensive Plan notes “Stafford Pond, one of the areas’ major public water resources, faces a continuing contamination threat from failed septic systems and recreational use.” *Id.* This Court holds the evidence in the record supports the conclusion that Eagleville’s Master Plan was not zone compliant and was thus inconsistent with the Comprehensive Plan.

E

Expert Testimony

Eagleville suggests the Planning Board was in error by relying upon the “unsubstantiated opinions of the Public Works Director and Police Chief in lieu of the uncontroverted testimony and engineering data submitted by the experts concerning traffic and internal circulation.” (Eagleville’s Br. at 64.) There is “no talismanic significance to expert testimony.” *Restivo*, 707 A.2d at 671. Chief Blakey and Mr. Berlucchi worked directly in the town and in traffic safety every day. (R. 2 Ex. E (Hr’g Tr. 72:10-75:5), at 54-55; R. 2 Ex. E (Hr’g Tr. 89:24-91:12), at 59.) As such, it was reasonable for the Planning Board to admit their testimony and consider it.

It was appropriate and sufficient for the Planning Board to rely on Chief Blakey and Mr. Berlucchi’s testimony. While Eagleville cavalierly argues “the testimony of neighboring property owners on questions regarding the effect of the proposed development on such issues as neighboring property values and traffic conditions has absolutely no probative force inasmuch as they are lay judgments,” (Eagleville’s Br. at 63), the Planning Board decision reflects that the public testimony was not the only evidence relied upon. *See RBSE Properties, LLC v. Zoning Board of Review of Town of Lincoln*, No. PC-2005-2591, 2006 WL 572817, at *7 (R.I. Super. Mar. 7, 2006). In reaching its decision, the Zoning Board concluded

“[t]he applicant failed to provide a traffic mitigation plan, and failed to address dangers posed to pedestrians and children walking to a nearby bus stop; numerous curves in the road, as well as numerous changes in grade and elevation, *and* competent and appropriate lay *and other* testimony from town officials provided evidence sufficient to support the Planning Board’s decision.” (R. 2 Ex. H (Zoning Board Decision) at 377) (emphasis added).

The record makes clear that the Planning Board relied upon more than just the testimony of community members. (R. 1 Ex. C (Planning Board Decision) at 21, 24-25.) The Planning Board correctly relied on the evidence before it, in addition to sufficient lay testimony, and the testimony

(and unanswered queries) of the Police Chief and Public Works Director to support its decision. *Id.*; *RBSE Properties*, 2006 WL 572817, at *7. The concerns expressed in a public forum were simply rebuffed and not rebutted. The Planning Board did not disregard expert testimony.

F

Access to Street

Eagleville argues the Zoning Board “erred when it upheld the Planning Board’s flawed determination that the Project did not have ‘adequate and safe permanent access to a public street.’” (Eagleville’s Br. at 67.) Oddly, Eagleville suggests there is no statutory language providing safety requirements for street access. Further, Eagleville avers “there is simply no evidence in the record to support the [Zoning Board’s] finding that trucks would [queue] from the site onto Eagleville Road.” *Id.* at 72.

There was evidence in the record to find trucks would queue onto Eagleville Road, specifically from the Police Chief and Public Works Director’s testimony, as well as the neighbors’ concerns. (R. 1 Ex. C (Meeting Minutes) at 41, 43, 49, 66.) The reliance of “‘lay witness testimony [is restricted] to . . . limited circumstance[s].’” *Fagan v. Miller*, No. NC-2021-0031, 2024 WL 1332583, at *3 (R.I. Super. Mar. 21, 2024) (quoting *RBSE Properties*, WL 572817, at *8.) The Court has held that “bare statement[s] given without other supporting evidence or any qualification in the record as to the expertise of this witness” is not probative. *Baker v. Zoning Board of Review of City of Providence*, 102 R.I. 134, 135, 228 A.2d 859 860-61 (1967). However, the Court has further held lay evidence in the record regarding observed conditions on a current issue within a community are not speculative, but rather speak to personal experiences and observations. *See Restivo*, 707 A.2d at 671. Here, the members of the community and the Planning Board have

knowledge of the roads, their use, and their capacity. It is within the Planning Board's realm to consider concerns about trucks travelling to, or waiting outside of, the proposed facility.

Throughout the land use statutes, the public is given notice and an opportunity to be heard in the public forum. The statutes and this Court recognize the importance of listening to and considering public comment within a community dispute through public hearings.³ The neighbors who spoke at the required hearing testified in opposition to the project and raised concerns regarding the increase of trucks pulling out of Eagleville Road and onto Fish Road or Stafford Road every day. Of course, these neighbors and community members have yet to directly observe the impact of the approval of this project. *Polleys v. Ferrazzano*, No. PC-02-5759, 2005 WL 900305, at *4. However, their testimony underscored the concern and observations based on the current traffic conditions as they relate to this proposal. These concerns were not bare assertions, but rather substantiated by additional evidence, experience, and familiarity with their neighborhoods. *Fagan*, 2024 WL 1332583, at *3. Such comment is valuable for the Planning Board to consider and was further substantiated by expert testimony and the Police Chief and Director of Public Work's concerns. (R. 1 Ex. C (Meeting Minutes) at 41, 43, 49, 66.) As such, the record suggests that there was substantial evidence to support the Zoning Board's finding that trucks would queue from the site onto Eagleville Road. *Id.*

The principal responsibility of the Planning Board when considering a Master Plan application is to ensure consistency and compliance with the community's Comprehensive Plan. Section 45-23-60(a)(1). Intra-town transportation and adequacy of public roadways is a vital component of the Comprehensive Plan and the town's growth. The sheer volume of large

³ Testimony under oath and subject to cross-examination is the gold standard. Even if unsworn, however, public comment can be illustrative of the uneasiness of the community toward the project and particular issues of importance.

commercial waste collection vehicles using Eagleville's proposed facility provoked concern. Eagleville's engineer predicted 680 new truck trips would be added each day. (R. 1 Ex. C (Planning Board Decision) at 21.) After Engineer Small testified, the public's apprehension was heightened. Eagleville's oral suggestion to cap its transportation to 750 tons (the equivalent of 370 truck trips), without submitting a formal amendment or revised traffic analysis, did little to appease the local decision makers or neighbors. There was no evidence to show that a revision would result in consistency with the Comprehensive Plan.

As the Zoning Board's decision held, there was no "error in that decision that the Applicant failed to submit sufficient evidence to counter the very basic conclusion that the sheer volume of heavy trucks, when combined with the admitted inevitable queuing of vehicles that would result on Eagleville Road, provided adequate access." (R. 2 Ex. H (Zoning Board Decision) at 378-79.) Because there is sufficient evidence in the record to support the Planning Board's conclusion on this issue, the Court declines to disturb it.

G

Alleged Lack of Evidence in the Record

Lastly, Eagleville argues the Planning Board lacked support based on the overwhelming weight of the evidence in the record. Eagleville maintains the testimony and evidence submitted were "disregarded and in most cases completely ignored by the Planning Board, and then again, by the [Zoning Board] on appeal." (Eagleville's Br. at 79.)

In reviewing the extensive record, it is evident the Planning Board considered all the testimony and evidence properly before it. The evidence in the record suggests the Planning Board considered expert testimony regarding the site plan, drainage, erosion, and sedimentation.

The Planning Board weighed the environmental safeguards, facility design, permits, and financial benefits. It also considered traffic impact reports regarding traffic circulation and safety. In reaching its decision, the Planning Board took into consideration both lay testimony from concerned town residents and expert testimony from a peer review consultant and engineers.

Despite Eagleville's arguments otherwise, the Zoning Board adequately considered all the evidence in the record properly before the Planning Board when issuing a decision. The local board is granted deference in findings of fact. Neither the Zoning Board nor the Planning Board's decisions needed to address every scintilla of evidence. There was no unjust disregard or ignoring of evidence beneficial to Eagleville. This Court finds the decisions rested on substantial and reliable evidence within the record.

IV

Conclusion

For the reasons stated herein, Eagleville's appeal is denied. The Planning Board's denial of the Master Plan Application is therefore upheld.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Eagleville Road Realty, LLC and Pleasant Sales & Construction, Inc. d/b/a Site Ready Materials Recycling Company v. Town of Tiverton Zoning Board of Review, Sitting as the Board of Appeals

CASE NO: NC-2014-0218

COURT: Newport County Superior Court

DATE DECISION FILED: May 16, 2025

JUSTICE/MAGISTRATE: Lanphear, J.

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